



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL  
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

**Appeal No. EA/2011/0140**

**BETWEEN:**

**MINISTRY OF JUSTICE**

**Appellant**

**and**

**THE INFORMATION COMMISSIONER**

**Respondent**

**and**

**ROBERT WYLLIE**

**Second Respondent**

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**CONSENT ORDER**

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Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement (in Annex A),

**IT IS ORDERED BY CONSENT THAT:**

1. For the reasons set out in Annex A to this Consent Order, the Respondent's Decision Notice FS50326224 dated 9 June 2011 is substituted as follows:

The information to which the Decision Notice relates is exempt information pursuant to s.42 of Freedom Information Act 2000 and the public interest test favours the non-disclosure of this information.

2. Save to the extent provided in paragraph 1, the appeal is dismissed on the basis that it is academic
3. There be no order as to costs.

John Angel  
Judge

Dated: 18 February 2013

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**ANNEX A**

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1. In his decision notice FS50326224 (“the Decision Notice”) dated 9 June 2011, the Commissioner found that section 35(1)(a) of the Freedom of Information Act 2000 (“the Act”) was engaged and that the public interest in disclosure was not outweighed by the public interest in maintaining the exemption. Accordingly he ordered the Appellant to disclose the requested information.
2. In appealing the Decision Notice, the Appellant accepted the Commissioner’s findings in relation to section 35(1)(a).
3. However, on appeal the Appellant also sought to rely (as it is entitled to do) upon the exemption under the s.42 of the Act (legal professional privilege) that was not relied upon before the Respondent.
4. The Respondent has concluded that the information to which the Decision Notice relates is covered by the s.42 exemption and that the public interest test favours the non-disclosure of this information. The Appellant is not therefore obliged to disclose the requested information and no steps are required. The Decision Notice is substituted accordingly.
5. The Additional Respondent does not seek to challenge the substitution of the Decision Notice in relation to section 42.
6. This substitute decision notice renders the Appellant’s other grounds of appeal, which rely upon s.23 and s.40 of the Freedom of Information Act 2000, academic. The parties are agreed that it would serve no purpose for the appeal to proceed on these grounds.