

**IN THE FIRST TIER TRIBUNAL GENERAL REGULATORY CHAMBER**  
**(Information Rights)**

**Appeal No: EA/2017/0054**

**BETWEEN:**

**THE DEPARTMENT FOR WORK AND PENSIONS**

**Appellant**

**- And -**

**THE INFORMATION COMMISSIONER**

**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 the parties request that the Tribunal, if it considers it appropriate, consents to the following order disposing of the proceedings:

- 1) By consent it is ordered:
  - a) The above appeal against the Information Commissioner's Decision Notice FS50654155 dated 23<sup>rd</sup> February 2017 is allowed to the extent and for the reasons set out in Annex A.
  - b) The Commissioner's Decision Notice FS50654155 dated 23<sup>rd</sup> February 2017 is substituted to record that:
    - i. The DWP was entitled to withhold some information within the scope of the request on the basis of s.36(2)(c) FOIA; disclosure of the relevant guidance would be likely to prejudice the effective conduct of public affairs, and the public interest favoured maintaining the exemption.

ii. The DWP was not entitled to withhold some information relating to guidance on information gathering and orders for sale given that the disclosure of the information was not likely to prejudice the effective conduct of public affairs.

iii. The DWP is ordered to disclose the information which the Commissioner considers to not be exempt under s.36(2)(c) FOIA.

c) No further steps are required.

d) There is no order as to costs.

Dated this \_\_\_\_ day of August 2017

Signed:.....

Information Commissioner's Office

Signed:.....

Government Legal Department  
On behalf of the Department for Work  
and Pensions

## **ANNEX A**

### **Statement of Reasons for Consent Order**

#### **Background**

1. On 12<sup>th</sup> July 2016 the Department for Work and Pensions (“DWP”) received a request for information asking for a hyperlink to “*Official staff manuals or staff guidance for the Child Maintenance service*”. The DWP responded informing the requestor that “*The Child Maintenance Service is in the process of developing the capability to have an accessible version of its decision making guidance available online. This work is being completed in line with a wider Department for Work [and] Pensions project that is introducing a new Internet platform for hosting its online resources.*” On 2<sup>nd</sup> August the requestor asked that “*As these instructions are not yet available online please can you send me a hard copy of these instructions by post. Or a pdf version by email*”. The DWP provided the requestor with a CD-ROM containing the Child Maintenance Service Online Procedures.
2. However, the requestor noted that the procedures repeatedly referred to “*Policy, Law and Decision Making Guidance*” (“PLDMG”), and requested this guidance on 6<sup>th</sup> September 2016. The DWP responded on 14<sup>th</sup> September 2016, refusing to provide the information in reliance on the exemption to disclosure provided by s.22 FOIA (information intended for future publication). The requestor complained to the Commissioner about the DWP’s reliance on s.22 FOIA.
3. The Commissioner investigated the requestor’s complaint and obtained a copy of the PLDMG from the DWP. By Decision Notice FS50654155 of 23<sup>rd</sup> February 2017 the Commissioner decided the DWP had incorrectly applied s.22 to withhold the requested information. Accordingly, the Commissioner required the DWP to disclose the PLDMG to the requestor.

#### **The Appeal**

4. By its Notice of Appeal, the DWP challenged the Commissioner’s requirement that it disclose the PLDMG in its entirety. The DWP no longer sought to rely on s.22 FOIA, but relied on ss.36(2)(c), 35(1)(a) and 31(1)(d) FOIA to withhold four sections of the guidance which it stated were not intended for publication, and were not provided to the Commissioner during her investigation.

## **The Agreed Terms**

5. During the appeal the DWP amended its position in respect of one of the sections of guidance entitled “Compliance Opportunity”, considering it to be outside the scope of the request. The Commissioner ascertained during her investigation that the request was for the DWP’s current guidance in use by decision makers at the date of the request. During the appeal the DWP explained that whilst the Compliance Opportunity guidance was not operational until 21 October 2016 and was therefore not being used by decision-makers at the time of the request. The Commissioner has reviewed the matter and agrees that this information is not within the scope of the request.
6. The Commissioner, having considered the DWP’s submissions and supporting evidence on appeal, accepts that the appropriate minister has provided a reasonable opinion that the disclosure of some of the remaining withheld guidance would be likely to prejudice the effective conduct of public affairs. This is on the basis that disclosure would be likely to prejudice the effective collection of child maintenance. Furthermore the Commissioner accepted that the public interest in ensuring the collection of child maintenance was not prejudiced by the disclosure of internal guidance and procedures, which would be likely to assist non – resident payments evade, delay or avoid the payment of child maintenance, outweighed the public interest in disclosure. In respect of this information the Commissioner accepts that s.36(2)(c) FOIA is engaged.
7. However, the Commissioner considered that some of the information contained in the DWP’s guidance on “Information Gathering” and “Orders for Sale” would not be likely to prejudice the effective collection of child maintenance in the event of disclosure. This related to powers and procedures where such powers and procedures were either publicly available and / or would not be likely to prejudice the effective collection of child maintenance. The DWP has now agreed that the disclosure of this information would not be likely to prejudice the effective conduct of public affairs, and has agreed to disclose this information.
8. The Commissioner and DWP have therefore agreed what information contained within the three remaining guidance documents can and can’t be withheld under s.36(2)(c) FOIA (the fourth guidance document being considered out of scope). The DWP will send a copy of the information that can be disclosed to the requestor by 1 September 2017.