



NCN: [2023] UKFTT 00260 (GRC)
Case Reference: EA/2019/0386 & EA/2020/0219

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard: Determined on the papers

**Heard on: 11 August 2021
Decision given on: 7 March 2023**

Before

TRIBUNAL JUDGE LYNN GRIFFIN

Between

DEPARTMENT FOR WORK AND PENSIONS

Appellant

and

**(1) THE INFORMATION COMMISSIONER
(2) JOHN SLATER**

Respondents

Representation: not applicable

Decision: The appeal is Allowed in so far as it relates to the information identified in this decision as items 1 – 4 inclusive. The Appellant public authority does not have to disclose those items to the requestor, the Second Respondent.

Substituted Decision Notice: not applicable

REASONS

Mode of hearing

1. The parties agreed that the appeals should be determined without an oral hearing. Having considered the tribunal rules and the overriding objective in the context of the circumstances of this case I consider it was fair and just to proceed in this way.

Relevant Procedural history

2. These appeals were brought by the Department of Work and Pensions against the decision notice issued by the Information Commissioner on 16 September 2019; reference FS50820378.
3. Mr Slater was the person who had requested the information from the DWP on 24 September 2018. He had requested The Department for Work and Pensions [the Appellant] provide him with copies of the information provided to the Universal Credit Programme Board for each of the last four programme board meetings. Those four meetings had taken place in May, June, July and September of 2018. His request was made under the Freedom of Information Act 2000 (FOIA).
4. On 15 November 2018 the Appellant provided its response to the request relying on section 22 FOIA to withhold the information because it was intended for future publication and having considered the competing interests that they had a reasonable entitlement to make their own arrangements to publish the requested information in a manner and form and time of their own choosing.
5. An internal review was requested on the same day as Mr Slater received the Appellant's response to his request for information and was provided to him on 19 December 2018. In the internal review the Appellant confirmed its stance taken in their initial response to the request and gave a further explanation of its position on publication which is not relevant to the issues in this appeal.
6. Mr Slater then made his complaint to the Information Commissioner on 2 February 2019.
7. The Decision Notice of 16 September 2019 deals only with the issue that was live at that time in relation to section 22 FOIA. The First Respondent's decision was that she required the Appellant to disclose the requested information with the exception of the information redacted under section 40(2).
8. I am not asked to consider that aspect of the appeal because the information at issue has subsequently been published. This decision is focussed on a sub-set of that information about which legal privilege is claimed by the Appellant. The grounds of the appeal filed on 14 October 2019 foreshadowed reliance on section 42 in paragraph 32(g).
9. Mr Slater was joined as Second Respondent by direction of 8 November 2019 in appeal reference EA/2019/0386.
10. The First Respondent's initial response dated 13 November 2019 focussed on section 22, the arguments about which have now fallen away. The Second Respondent's response, dated 25 November 2019, followed a similar path. Both responses reserved their position on the assertion that legal privilege may apply to some of the withheld information.
11. These appeals were joined by direction of Registrar Worth made on 17 November 2020.

12. The consolidated reply from the Appellant of 27 January 2020 was accompanied by a schedule of claimed exemptions. This document maintained reliance on section 22 FOIA but also included reliance on 5 other provisions of the act including section 42(1) which relates to the protection of information covered by legal professional privilege.
 - a. The schedule identified the passages within the documents on which the privilege is claimed as follows
 - b. Meeting in May 2018 Paper F – UC Overview of Legal Risk
 - c. Meeting in June Paper B - UCPB Draft Minutes of May 2018 meeting.
13. Amended grounds of appeal were served on 10 February 2021 in which the Appellant withdrew reliance on certain exemptions under sections 27, 29 and 43 FOIA. Clarification was provided about how the claimed exemptions were said to comply to the documents. The exemption under section 42 was also claimed as regards the following document - Meetings in June and July Paper C – UCPB Open Action.
14. The papers to be considered are contained in an OPEN bundle of 565 pages. I have also received and considered a closed bundle of material. The material within the closed bundle was subject to directions made under rule 14(6) pending this decision.
15. In addition to the bundles, I have received and considered both open and closed submissions from the Appellant and First Respondent, the Information Commissioner.
16. I have also been provided with an electronic bundle of authorities and other relevant material such as National Audit Office documents and passages extracted from Hansard. This bundle of authorities and material is paginated A1 – 1188.
17. I apologise to the parties for the time it has taken to promulgate this decision.

The facts

18. The factual background was not in contention. I accept the evidence of Mr Neil Couling, which was unchallenged by any other evidence or by cross examination (this case being determined on the papers), as to the organisation of the process and the roles of the participants within it.
19. On the basis of all the evidence and having considered the positions of the parties I find that the essential facts are as follows.
20. The Universal Credit Programme Board acts as the project’s main oversight and decision-making body. The main purpose of the Universal Credit Programme Board is to provide advice and support to the Universal Credit Director General, who is accountable for the delivery of Universal Credit. The UCPB reports to Mr Neil Couling, the senior responsible owner [SRO] accountable for the delivery of Universal Credit.
21. Universal Credit is a social security benefit payable in certain circumstances to claimants who may be in work or out of work. Universal Credit is designed to replace a range of previous benefits payable by different agencies and consolidate any payments into a single amount payable to the claimant dependant on their circumstances in each assessment period. It has been rolled out across the country since 2013. The details of how the benefit operates is not central to this appeal and need not be stated here.

22. At the material times the Universal Credit Programme Board comprised five Directors General and two Directors from DWP, one Director from HMRC, one Director from HMT, a representative of Local Authorities, an Operations lead from Cabinet Office, the Deputy Secretary for Work and Inclusion from the Department for Communities in Northern Ireland and was chaired by a Non-Executive Chair. The UCPB has collective responsibility to:
- a. Maintain an overview of the plan to deliver Universal Credit including the scope, financials and the approach and activities to ensure the plan is delivered.
 - b. Maintain an overview of the systems of programme control and governance including change control, risk management and stakeholder engagement.
 - c. Take receipt of agreed programme reporting which provides visibility of achieved and predicted progress against the plan, including all work strands, and satisfy themselves of its accuracy and robustness.
23. The role of the SRO is to lead and be personally accountable for all aspects of the delivery of Universal Credit. In that task, they are supported by the DWP Executive Team, the UC Programme Board, Ministers and senior civil servants across Whitehall, five Directors and a team of around 500 staff, but the ultimate responsibility sits with the SRO alone as set out in the Ministerial Code, paragraph 5.6 of which states
- “Senior Responsible Owners of the Government’s major projects (as defined in the Government’s Major Project Portfolio) are expected to account to Parliament, for the decisions and actions they have taken to deliver the projects for which they have personal responsibility. This line of accountability relates to implementation (not policy development).”*
24. There is a timetable for the provision of documentation relating to the UCPB which is contained in the Appellant’s Universal Credit Programme Board publication strategy. Due to the effluxion of time caused by the intervention of the coronavirus pandemic, approximately three quarters of the requested information has been published.

The issues in the case

25. The passage of time has meant that much of the information requested and withheld has now been published. The Appellant published the information over which it claimed the exemption contained in section 22 Freedom of Information Act 2000 (“FOIA”)
- a. on 29 October 2020 as it had intended at the time of the request made by the Second Respondent in Appeal EA/2019/0386 and
 - b. on 5 November 2019 and 29 October 2020 as it had intended at the time of the request made by the Second Respondent in Appeal EA/2020/0219
 - c. on 15 April 2021 the final IPA paper covered by the Second Appeal was published. Therefore, as a result of the passage of time, all of the information sought under the request that is the subject of EA/2020/0219 has now been published.
 - d. the vast majority of the information relevant to EA/2019/0386 has been published.

26. The issues to be determined by the Tribunal in the light of that publication, have been reduced in scope and have been agreed between the parties and are set out in the document dated 24 February 2021 supplemented by final submissions which has reduced the issues to a single matter of substance and one of form
 - a. In respect of Appeal EA 2019/0386: Whether DWP is entitled to rely upon section 42 FOIA as pleaded in its Schedule of Exemptions served on 27 January 2020 and as pleaded by way of amendment to the Schedule of Exemptions on 10 February 2021.
 - b. The appropriate means of recording the outcome in the Second Appeal EA/2020/0219 and the outcome in EA/2019/0386 for the other matters which remain for determination on the papers but are now academic due to the passage of time.
27. In reaching their agreement on the issues the parties assumed that the Tribunal would not wish to consider any part of either Appeal where its decision would be academic as outcome given that the relevant information has already been disclosed. The parties are correct, and so I will be considering only whether the exemption contained in section 42 FOIA was properly applied to the limited parts of the disputed information in this joined appeal, that originated with reference EA/2019/0386.
28. The Second Respondent does not dispute the application of section 40(2) to the personal data of junior employees and is content for this information to be redacted. I agree with that proposition having considered the material concerned.

The legal framework

29. In essence, section 1 Freedom of Information Act 2000 obliges a public authority to whom it applies to provide information when requested unless one of the statutory exemptions applies to that information; it entitles any person, in principle, to have communicated to him information held by a public authority. Section 2(2)(b) provides that, in respect of exempt information, that right does not apply where or to the extent that the public interest in maintaining the exemption outweighs the public interest in disclosing it.
30. Section 42 FOIA states
 - 42(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.*
 - (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.*
31. There are two types of legal professional privilege known as litigation privilege and advice privilege. Section 42 FOIA draws no distinction between litigation privilege and legal advice privilege.
32. The exemption in section 42 FOIA is a qualified exemption (not absolute), see section 2 FOIA. Thus, if the exemption in section 42 FOIA is engaged, it is necessary to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

33. In so far as legal advice privilege is concerned, there is a wealth of case-law that sets out the test to apply in identifying relevant information. A recent formulation encapsulating the body of authority, is found in Addlesee v Dentons Europe LLP [2020] 3 WLR 1255 where Levison LJ held as follows at paragraph 28

“In my judgment, therefore, the boundaries of legal advice privilege, within which it is absolute unless and until waived, are that the communication in question must be a communication between lawyer and client, made in connection with giving or receiving legal advice, otherwise than for an iniquitous purpose.”

34. Thus, to determine whether information is subject to legal advice privilege, requires identification of a communication between a qualified lawyer and a client which must be for the purpose of giving or receiving legal advice.

35. Not all communications between lawyers and clients will be for the purpose of giving or receiving legal advice. The relevant question is therefore whether the dominant purpose of creating or communicating the relevant material was for the purpose of giving or receiving legal advice: see R (on the application of Jet2.com v Civil Aviation Authority) [2020] QB 1027 at [96].

36. If the information meets this test, the privilege which attaches to the relevant material is very considerable. In Addlesee [supra] Levison LJ quotes (at [9]) from the judgment of Lord Taylor in R v Derby Magistrates’ Court ex parte B [1996] 1 AC 487:

“The principle which runs through all these cases, and the many other cases which were cited, is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests.”

37. Legal advice privileged may waived voluntarily by the lay client, not the lawyer. The other circumstances under which it can be lifted are strictly limited. Even where privilege is to be overwritten by statute, that cannot be done by general words, but only by express language or necessary implication: see Addlesee [supra] at paragraph 61.

38. There is no difference in the position of the in-house or external lawyer. Legal advice privilege will still attach to the relevant communication if is created for the purpose of giving or receiving legal advice: see Jet2.com at paragraph 59.

39. The protection will also apply where material “evidences” the substance of legal advice: see In the matter of Edward Group Ltd Estera Trust (Jersey) [2017] EWHC 2805 (Ch) at paragraphs 28 to 37.

40. Litigation privilege applies to any document or communication between the lawyer, in their professional capacity, and the client, or between either of them and a third party. If such documents or communications were made for the dominant purpose of litigation and relate to litigation which is pending, reasonably contemplated or existing. It also applies to a document created by or on behalf of the client or the client's lawyer. Thus litigation privilege has a wider reach than legal advice privilege where the other requirements are met.

41. The relevant considerations are summarised in Starbev GP Ltd v Interbrew Central European Holding BV [2013] EWHC [4038 (Comm)].
42. In considering whether the relevant communication was made for the dominant purpose of litigation, the Court of Appeal held in WH Holdings Ltd v E20 Stadium LLP [2018] EWCA Civ 2652 that:
- “27 i) Litigation privilege is engaged when litigation is in reasonable contemplation.
 ii) Once litigation privilege is engaged it covers communications between parties or their solicitors and third parties for the purpose of obtaining information or advice in connection with the conduct of the litigation, provided it is for the sole or dominant purpose of the conduct of the litigation.
 iii) Conducting the litigation includes deciding whether to litigate and also includes whether to settle the dispute giving rise to the litigation.
 iv) Documents in which such information or advice cannot be disentangled or which would otherwise reveal such information or advice are covered by the privilege.
 v) There is no separate head of privilege which covers internal communications falling outside the ambit of litigation privilege as described above.”*
43. The same document (and/or part of the same document) can potentially attract both litigation privilege and legal advice privilege.
44. Documents containing both privileged and non-privileged information may be appropriately redacted if disclosed.
45. It is possible for there to be a partial waiver of privilege to certain individuals rather than a waiver as against the world see Gotha City v Sothebys (No 1) [1998] 1 WLR 114.
46. It is a principle of law that the acts of Departmental officials are synonymous with those of the Minister see, inter alia, Carltona v Commissioner of Public Works [1943] 2 All 560. Any attempt to draw a distinction between the Secretary of State and his officials for the purposes of identifying the client when applying legal professional privilege would infringe that principle.
47. If the requested information is covered by privilege of either type the public interest test must be applied. When considering the balance of the competing public interests there is significant inherent weight that attaches to legal professional privilege, see Department for Business, Enterprise and Regulatory Reform v Information Commissioner [2009] EWHC 164 (QB).
48. A fact sensitive weighing of the competing public interests must be carried out in every case, see Savic v Information Commissioner [2016] UKUT 544 (AAC). There may be circumstances where the weight to be attached to legal professional privilege could be outweighed by a countervailing public interest.

The information

49. Therefore, the first issue to be considered is whether the Appellant is entitled to rely on section 42 FOIA in relation to any of the following four documents from the meetings as follows

- a. Meeting 17 May 2018 referred to in the papers as Paper 5, paper F or item 1 – UC Overview of Legal Risk
 - b. Meeting 14 June 2018 referred to in the papers as Paper B or item 2 - UCPB Draft Minutes of May 2018 meeting
 - c. Meeting 14 June 2018 referred to in the papers as Paper C or item 3 – UCPB Action Log - Open relating to the meeting of 17/5/18
 - d. Meeting 19 July 2018 referred to in the papers as Paper C or item 4 – UCPB Action Log - Open relating to the meeting of 17/5/18.
50. Section 42 is relied upon in relation to the following parts of the papers referred to above. I have considered the closed bundle and the open bundle and thus have had sight of the parts over which the exemption is said to apply
- a. Item 1 in whole.
 - b. Item 2 the whole of paragraph 4 under the heading “Legal Risks”, this heading is found in the open bundle at page 558.
 - c. Item 3 the fourth action point in its entirety as found at page 563 of the open bundle, including the action point, reference number, assignment and due date.
 - d. Item 4 the third action point in its entirety as found at page 565 of the open bundle, including the action point, reference number, assignment and due date.
51. If legal privilege attaches to any or all of the documents the second question will be to determine whether, in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The submissions

52. The Second Respondent provided a submission to address the issues arising on 10 March 2021. He submits that neither litigation advice privilege nor legal advice privilege may be claimed for the following reasons
- a. For litigation privilege to apply to Paper F/item 1 it must have been prepared for the dominant purpose of obtaining advice or evidence in relation to the conduct of litigation and not for the purpose of conducting litigation more broadly.
 - b. As Paper F/item 1 is described as an “overview of UC legal risk” this indicates that it cannot qualify for litigation privilege and thus any privilege relied upon must be legal advice privilege which he submits applies to
 - i. confidential communications;
 - ii. that pass between a client and the client's lawyer;

- iii. which have come into existence for the purpose of giving or receiving legal advice.
- c. For legal advice privilege to apply, the UCPB and “anyone else present on that day” would need to qualify as an emanation of the client which cannot be the case because
 - i. The UCPB has no role in seeking or providing legal advice on behalf of the Secretary of State for Work and Pensions (SSWP)
 - ii. Some of the members of UCPB are not employees of the Department for Work and Pensions and the meaning of client cannot be extended to include them.

53. In their open final submissions dated 19 May 2021 the Appellant submits that legal privilege applies to each of the 4 items over which it is claimed and that the balance of public interest in each case lies in favour of maintaining the exemption. Items 2-4 relate back to the contents of item 1 which is called “Legal Risks”, is concerned with the legal risks arising from the Universal Credit Programme and was provided by an in-house lawyer. The Appellant submits

- a. The date at which the public interest should be assessed is (at the latest) the date of the internal review
- b. There is an inherently strong public interest in non-disclosure of information over which legal professional privilege can be claimed, and so it would require some very strong countervailing factor to justify disclosure and there is none in this case
- c. That it is not correct to assume that the exemption is claimed only on the basis of legal advice privilege.
- d. The UCPB are emanations of the client; as a matter of principle the acts of Departmental officials are synonymous with those of the Minister. The notion of client is wider than simply an embodiment of the relevant legal personality
- e. the purpose of the UCPB is to provide advice and support to the UC Senior Responsible Office (“SRO”). The SRO is the Director-General responsible for overseeing implementation and delivery of UC, namely Mr Neil Couling. Mr Couling is an emanation of the Secretary of State.
- f. The UCPB has an interest in understanding the legal risks arising from the UC Programme as do the DWP officials charged with its delivery. Thus, it is submitted they had a clear role to play in seeking legal advice so as to understand those risks.
- g. Even if part of the membership or attendees at the UCPB were not held to be emanations of the client then there would be (at most) a limited waiver of privilege.

54. The Information Commissioner has submitted, on 9 June 2021, that she supports the Appellant’s contentions on certain matters. The First Respondent

- a. agrees with the Appellant that section 42 is engaged in relation to item 1 and that the public interest test favours nondisclosure

- b. accepts that section 42 is engaged and that the public interest test favours maintain the exemption in relation to the remainder of the items except for two extracts from item 2, about which she submits that section 42 is not engaged.

Analysis and conclusions

55. The appellant is entitled to rely upon the exemption in section 42 FOIA on the basis of the approach approved by the Court of Appeal in Birkett v Department for Environment, Food and Rural Affairs [2011] EWCA Civ 165.
56. Item 1 and item 2 are headed “Legal Risks”, item 1 was prepared by an in-house lawyer.
57. Having read the withheld information I have decided that all the items are covered by legal professional privilege. Item 1 is concerned with legal risks arising out of the UC Programme. Items 2, 3 and 4 all relate back to item 1.
58. Mr Slater has based his submissions on an assumption about the nature of the material and why it attracts legal professional privilege. It is in the nature of proceedings under FOIA that the requestor cannot know the nature of the material he seeks that has been withheld from him. However, as regards the issues he raises in relation to the material at issue in this case I have concluded as follows
 - a. The title of a document does not determine whether it is by its nature covered by legal professional privilege nor whether it would attract litigation privilege or legal advice privilege. I have determined that question in this case in relation to each document by reference to its content. It is not possible to state in an open decision which type of legal professional privilege attaches to each document as to do so would reveal the nature of the contents of that document.
 - b. The UCPB’s role is to act as the project’s main oversight and decision-making body. The main purpose of the Universal Credit Programme Board is to provide advice and support to the Universal Credit Director General, who is accountable for the delivery of Universal Credit. The UCPB reports to Mr Neil Couling, the senior responsible owner [SRO] accountable for the delivery of Universal Credit. Mr Couling is an emanation of the Secretary of State for Work and Pensions.
 - c. The UCPB are emanations of the client; as a matter of principle the acts of Departmental officials are synonymous with those of the Minister. The notion of client is wider than simply an embodiment of the relevant legal personality. The UCPB has an interest in understanding the legal risks arising from the UC Programme as do the DWP officials charged with its delivery. They had a clear role to play in seeking legal advice so as to understand those risks.
 - d. Legal advice must be capable of being circulated “internally” while still maintaining its character as legally professionally privileged see Jet2.com [supra]. Litigation privilege can attach to communications with other individuals. In either case it is not necessary for everyone present at a meeting that considers a document to be emanations of the client.

- e. Even if I am wrong about that, the dissemination of the material to the other members of the UCPB would be a limited waiver of privilege to those individuals alone, not a waiver to the world.
59. Turning to the public interest balance. The relevant time for assessment of the public interest is the time at which the public authority, here the Appellant, made its decision on the request for information. Even if I am wrong about that, the inherently strong public interest in favour of maintaining the exemption from disclosure of legally privileged material is unlikely to change over time as it applies to the nature of documents or the purpose for which they were created at the time they were made rather by reference to changing circumstances, but I have concluded on the facts of this case that the strength of that inherent interest in maintaining the exemption in this case has not changed, and in particular has not diminished over time.
60. In order for the disclosure of Items 1-4 to be justified, there would have to be some very strong countervailing factor that outweighed the inherently strong public interest in non-disclosure of information over which legal professional privilege is established. This must be more than a general reference to the importance of transparency, or the need for the public to understand the basis upon which the UC Programme is being organised and delivered.
61. The Second Respondent does not suggest any such factor or factors in his final written submissions which focus on the engagement of legal professional privilege. His response to the grounds of appeal refers to the policy intent behind FOIA and the importance of transparency in achieving the accountability of public authorities including government departments thereby increasing public confidence in the government. These submissions were made before the issues were narrowed but are nonetheless relevant. I accept that is an important public interest, but it is insufficient in this case to outweigh the inherently strong public interest in favour of maintaining the exemption from disclosure of this legally privileged material.

Recording the outcome of the appeals

62. For the reasons set out above, and in the CLOSED decision, I allow the appeal in relation to items 1-4 inclusive. Items 1-4 inclusive all attract legal professional privilege and the public interest in maintaining the exemption from disclosure outweighs the public interest in disclosing it.
63. I note the Appellant's position that it lawfully relied upon the exemption in section 22 FOIA in not disclosing the information requested and that the First Respondent maintains that such reliance was unlawful for the reasons set out in her decision notices. The Second Respondent does not support the appeal on section 22 FOIA, or at all. The Appellant has not, and indicates it will not, withdraw the appeals or any part of them.
64. Given the subsequent publication of the material any determination of the majority of the matters raised in both Appeals would be academic. With reference to the principle of proportionality in the over-riding objective, I am invited to record briefly the history of the Appeals in the decision on the section 42 exemption to provide a permanent record of why the Tribunal was not required to rule on the Appellant's handling of the majority of the

information in issue EA/2019/0386 and the entirety of the Information in EA/2020/0219. I do so below

- a. The first appeal EA/2019/0386 (the “First Appeal”) was commenced on 14 October 2019. That appeal lay against a decision notice of the Commissioner concerning DWP’s handling of a request for information made by Mr Slater relating to Universal Credit (“UC”) Programme Board papers. At the time of handling the request, DWP relied upon the exemption in section 22 FOIA. In its Grounds of Appeal and by way of a Schedule of Claimed Exemptions attached to its Reply the DWP also sought to rely upon a number of further exemptions.
- b. A hearing of the First Appeal was originally scheduled for June 2020 but postponed because of the impact of the COVID-19 pandemic.
- c. The second appeal EA/2020/0219 (the “Second Appeal”) was commenced on 14 July 2020. That appeal lay against a decision notice of the Commissioner concerning the DWP’s handling of a request for information made by Mr Slater relating to scrutiny oversight of the UC Programme by the Infrastructure and Projects Authority (“IPA”).
- d. As a continuing result of the COVID-19 pandemic, neither the First nor Second Appeal was listed for hearing during 2020 following the postponement of the June hearing. Meanwhile, the planned dates for publication of most of the First Disputed Information and Second Disputed Information were reached. Except for limited parts of the First Disputed Information, the First Disputed Information and Second Disputed Information were published on 29 October 2020 and 15 April 2021 in accordance with the DWP’s original and stated intentions at the time of the relevant requests.
- e. In preparing the First Disputed Information for publication, the DWP noted that it had not included certain limited passages of the First Disputed Information within the Schedule of Claimed exemptions and had also failed to note that for one item a different timetable for publication was intended, i.e. that which applied to the Second Disputed Information.
- f. By the beginning of 2021 the only information which had not been published and thus remained subject to the Appeals comprised limited parts of the First Disputed Information and one IPA paper forming part of the Second Appeal.
- g. On 26 January 2021, the Tribunal issued directions allowing DWP to amend its pleading and asking that the parties seek to agree those matters which remained to be determined.
- h. An Amended Notice and Grounds of Appeal and amended Schedule of Claimed Exemptions was served and filed on 10 February 2021. The Issues Document was filed on 24 February 2021.
- i. On 15 April 2021 the final IPA paper covered by the Second Appeal was published.
- j. Consequently, purely as a result of the effluxion of time, all of the information sought under the request whose handling is the subject of the Second Appeal has now been published. Further, the vast majority of the information sought under the request whose handling is the subject of the First Appeal has also been published save that information in relation to which I have allowed this appeal.

Signed Tribunal Judge Lynn Griffin

Date: 8 February 2023