

Aspects of the above analysis and conclusion are not shared by the whole panel. The dissenting member's view is that what the Appellant expects and most wants to see is any *internal* guidance or training manuals issued by the Chief Adjudicators to their colleagues concerning their judicial function and casework. The majority focuses (see the "general picture" in para 16 above) on the stream of general *external* guidance on current legal issues that the tribunal will receive from others and pass to adjudicators or, perhaps more likely, the adjudicators are already plugged in to internet-based circulations so local tribunal staff are not in the chain and don't hold the information. This *external* guidance is of a general character and will not impact on judicial independence. It will not explain much about road traffic law. It would be for the distributors not the receivers, if asked, to justify any confidentiality, and they will already have given this expert consideration.

*Internal* guidance from adjudicator to adjudicator, if any exists in closed form, may well impinge on judicial independence if forcibly disclosed. The dissenting member is of the view that it should be for the adjudicators or Chief Adjudicators to control release of documents they have prepared in relation to their own jurisdiction; they should at least be consulted. Their staff should not be asked to disclose behind their backs.

The Appellant could have asked the adjudicators whether there is in fact any confidential guidance material that adjudicators are unwilling to release to him. He chose to approach London Councils perhaps with confidence that this would bring the matter under FOIA jurisdiction. This tribunal is now charged with review of an ICO DN, and as no one seems to have asked the adjudicators about the existence and nature of any closed information we start from an empty bundle as to content and very little by way of description. We know also that there is a potential absolute exemption (s32 FOIA 2000) that carefully describes certain kinds of court document, directly addresses the situation where court or tribunal documents are held by court staff within FOIA while judicial office holders are not within FOIA, and sets out the circumstances where judges retain control over disclosure practices in their court or tribunal. The intention behind the section is to ensure that FOIA processes are not added to and do not override the well-established existing disclosure rules of the courts. But s32 is not relied on, it does not stand to be considered. This is somewhat unsatisfactory to the dissenting member because it misses out an orderly set of considerations and tests, and risks exclusive focus on who holds which papers on behalf of whom. The majority is of the view that s32 is irrelevant, it is not part of London Council's case. London Councils were invited by the ICO to consider additional exemptions and they declined. The majority sees no possibility of impact on judicial independence, and the type of papers at issue, as they see it, would be very hard to match to the types of document specified in s32 (the test for documents created by a court or the staff of a court is that they are "for the purposes of proceedings in a particular cause or matter." Training manuals of the kind described are in a sense for the purposes of proceedings (plural) on particular matters.

A related concern for the dissenting member is whether the group or groups of staff supporting the Environment and Traffic Adjudicators and the Road User Charging Adjudicators can be regarded as merely a Department of London Councils for the purpose of issuing directions. As a technical fact it appears to be common ground that the tribunal staff are subject to FOIA and that they hold requested information which London Councils does

not. But in practice directing tribunal staff, or directing London Councils to direct such staff to obtain and disclose adjudicator documents raises some awkward issues and slides over the significant separation of functions that can be found in road traffic law and associated procedural regulations. The adjudicators, assisted by their staff, preside over the enforcement functions of London Councils' constituent local authorities. They consider appeals against penalty charge notices issued by London Local Authorities and Transport for London, can cancel penalties, restore payments and even award costs against the local authority where the adjudicator considers that the disputed decision was wholly unreasonable. The regulations refer to administrative staff and proper officers of the adjudicators, so they are a formal requirement not something London Councils have simply volunteered. It is clear that the working relationship of staff with adjudicators is very close, and bound by statutory procedures. For the purposes of their work, which includes holding and processing court papers, the staff support the adjudicators' judicial functions and purpose. There is a very significant differentiation of function which, in the FOIA context and in the dissenting member's view, makes it clear that in terms of accountability and direction the staff do not assist the adjudicators as agents of London Councils. Nor do London Councils supervise the judicial work, despite the arrangements for appointment and annual reports. These reporting requirements are set up by formal regulatory instruments that would not have been needed if the Tribunals were "departments" within London Councils. Their function is clearly distinct.

The dissenting member does not agree that there is anything "very odd" about the general transparency position. The judicial functions of adjudicators are generally carried out in a transparent fashion with no mystery about how they are trained in the performance of their role and the conclusions they reach. There is an open and searchable register including concluded cases that anyone can look up, and annual reports including helpful case examples, articles by adjudicators to explain particular points, and lists of issues addressed at training events. The curious can follow up to specific named cases, for which links are given. It is quite easy for a motorist facing a penalty charge to work out what kind of submission has been dismissed, and what stands a chance.

The dissenting member hoped that the majority direction, if needed, could be modified to determine how documents created by adjudicators for judicial purposes should be treated. There should be no implication that these should be disclosed without the adjudicators' consent and without opportunity for them to make representations.

As things stand assessment of the benefits and disbenefits has not been submitted, and the Tribunal is blind as to the papers. Without better information on the particulars and facts, or an agreed solution on a qualified direction, the dissenting member would dismiss the appeal and uphold the Decision Notice because he accepts the fundamentals of London Councils' constitutional argument, as accepted by the Commissioner for the reasons given in paras 22 to 24 of the Decision Notice.