



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

Appeal Reference: EA/2021/0156

Heard by CVP

On 25 January 2022

Representation:

Appellant: Peter Lockley (Counsel)

First Respondent: Laura Johns (Counsel)

Second Respondent: In person

Before

**JUDGE SOPHIE BUCKLEY
MARION SAUNDERS
ANNE CHAFER**

Between

THE GENERAL DENTAL COUNCIL

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

DOMINIC O'HOOLEY

Second Respondent

CORRECTED DECISION
[PARA 15 CORRECTED UNDER RULE 40]

1. For the reasons set out below the appeal is allowed.
2. The tribunal substitutes the following decision notice:

SUBSTITUTE DECISION NOTICE IC-53168-M9J8

Organisation: General Dental Council
Complainant: Dominic O’Hooley

For the reasons set out below the General Dental Council were entitled to rely on s 36(2)(b) of the Freedom of Information Act 2000 (FOIA) to withhold the requested information.

The Council is not required to take any steps.

REASONS

Introduction

1. This is an appeal against the Commissioner’s decision notice IC-53168-M9J8 of 27 May 2021 which held that the General Dental Council (‘the GDC’) was not entitled to rely on section 36 of the Freedom of Information Act 2000 (FOIA) to withhold some of the requested information.
2. The Commissioner required the GDC to disclose a copy of an email from the Chairman of the GDC to colleagues dated 27 April 2020.

Background to the appeals

3. The GDC is the UK-wide statutory regulator of over 100,000 dental professionals including approximately 40,000 dentists and 60,000 other dental professionals (DCPs). The Dentist Act 1984 defines the GDC’s roles and powers of registering qualified dental professionals, setting and enforcing standards of dental practice and conduct, protecting the public from illegal practice ensuring the quality of dental education and investigating concerns.
4. The Annual Retention Fee (ARF) is the fee all registered dentists and dental care professionals must pay each year to remain on the dentists/dental care professional register. Nearly all the GDC’s funding is through the ARF (about 95% in 2019 and 2020). The ARF is £980 pa for dentists and £114 pa for dental professionals.
5. The GDC Council is its strategic body. It is made up of six individuals registered with the GDC (‘registrant members’) and six lay members. It decides policy, sets

strategic direction and approves key organisational changes. Council meetings are held several times a year and are held in public. The Council has discretion to consider agenda items in private where to do otherwise would lead to the inappropriate disclosure of confidential or sensitive information or would be likely to prejudice the effective discharge of the Council's functions.

6. All the members of the Council are appointed by the Privy Council. There are differences in the appointment process of the Chair and members, but these are unsurprising given that the Chair acts on occasion as the figurehead for the organisation.
7. The Chair has a casting vote in the event that both a first and second vote are tied. In practice the Council reaches its decision by reaching consensus following debate.
8. At the date of the request the Chair of the Council was Dr William Moyes and the Chief Executive and Chief Accounting Officer was Mr Brack.

Factual findings of the tribunal based on the evidence of Mr Brack

9. The tribunal heard open and closed evidence from Ian Brack, Chief Executive, Registrar and Accounting Officer of the GDC. The following findings are based on that evidence.
10. As a result of the national lockdown which began in March 2020, all routine dental work was suspended, which led to calls for the ARF to be suspended, reduced, or made payable by instalment. There was a concern about hardship, particularly in relation to those dental professionals with lower incomes.
11. The ARF for 2020 had already been fixed by the Council. Any reduction would affect the deliverability of the corporate plan and budget for 2020. The ARF was due to be paid by DCPs in June. The question of whether any change should be made before the June payment was therefore a matter of some urgency.
12. The GDC was already undertaking some work on other closely related issues, including, for example, the question of payment of the ARF by instalments, the setting of the plan and budget for 2021 and the level of ARF for 2021.
13. The Chair discussed with Mr Brack the question of whether he should send an email to the other Council members about the issue, and Mr Brack, in essence, agreed that this would be fine.
14. The Chair sought some statistical information from the GDC strategy team, which he attached to the email. We accept that this information was already available to the team as a result of other ongoing related work and was not produced specifically for the purposes of this email.

15. The Chair then sent a copy of the draft email to Mr Brack. Mr Brack provided some comments which form part of the closed evidence, but it was confirmed in the open session that as part of those comments Mr. Brack expressly underlined that the email was the Chair's personal opinion. For those reasons we find that the email sent by the Chair did not represent the corporate view of the GDC but represented the Chair's own personal view.
16. The Chair sent the email to the other Council members setting out his views on whether the ARF should be revisited and asked for their responses. The consensus view was that the ARF should not be revisited. According to Mr Brack this was not a decision by Council, but a matter of 'agenda planning'. The question was whether the members wanted the matter to come before the Council or not. If the Council had decided that the matter should be revisited a paper would have come to Council and a formal decision would have been made.
17. This type of email discussion was more common at the start of lockdown Although this email exchange was not a 'meeting' and therefore covered by the GDC rules on public or private meetings, we accept that there would have been an assumption amongst Council members and the Chair that the email discussion would be confidential given the longstanding practice of conducting ARF discussions in private.
18. The Council members' responses were summarised and presented to the Council in a private part of a Council meeting on 13 May 2020 which was held by Skype. Mr Brack's evidence was that initial discussions about the ARF were generally held in private.
19. The public minutes of that part of the meeting state:

The Chair reported that soundings taken of the Council by correspondence had indicated a unanimous view that the Annual Retention Fee should not be revisited. The Council agreed the report and noted that no changes would be made to the Annual Retention Fee.
20. Mr Brack could not recall if there was any discussion beyond what was recorded in the minutes.
21. The GDC published an 'Update from the Chair of the GDC to dental professionals' in the 'News' section of its website on 20 May 2020. The update included the following:

The Council has thought carefully about the options available to us, but we have decided not to make changes to the ARF levels or to introduce a payment scheme. These are not decisions we have taken lightly, and I know they won't be welcomed by some of those we regulate, so I want to be clear about the reasons why we have made them.

22. The update then set out a number of reasons behind the decision. These included some, but not all, of the reasons discussed between members of the Council in the withheld correspondence.

Request, Decision Notice and appeal

23. Mr. O’Hooley made the following request to the GDC on 4 June 2020. The numbers in square brackets were inserted by the GDC in its response and are adopted by the Tribunal:

[1] Please can you give full details of the soundings taken from the Council as detailed by the Chair within point 9.1 of the minutes of the council meeting on 13th may 2020, relating to the reported unanimous view that Annual Retention Fee should not be revisited.

[2] Please can this information include the names of said council members, the full written communication both to them and received from them regarding this matter, as referred to above.

[3] Regarding point 10. Please can you give full details of the decision making process that has led to the Council decision to use the staff payroll budget to top up furloughed staff salaries to 80% of their usual salary amounts, when above the government cap.

[4] Further more, please give full details of the month by month expenditure for this purpose that has been taken directly from the staff payroll budget. in addition, please give details, which can be suitably anonymised, of the exact excess payments for each staff member affected, also on a month by month basis.

24. This appeal relates only to parts 1 and 2 of the request.

The GDC’s reply

25. The GDC responded on 2 July 2020. It confirmed that it held the requested information. In relation to parts 1 and 2 of the request, the GDC stated that s 36(2)(b)(i) (ii) and (c) were engaged and that it had not yet reached a decision on the balance of public interest.

26. In relation to part 3 the GDC provided the requested information. In relation to part 4 the GDC provided some of the requested information and relied on s 40(2) in relation to some of the information.

27. The GDC provided a further response on 27 July 2020. The GDC stated that the information was exempt from disclosure under s 36 (2)(b)(i) and (ii) and (c). The opinion of the qualified person (the GDC Chief Executive, Ian Brack) was that the request was for information the disclosure of which would be likely to inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation and would be likely to otherwise prejudice the effective conduct of public affairs. The GDC had concluded that the public interest favoured maintaining the exemption.

28. The GDC upheld its position on internal review on 27 August 2020. Mr. O’Hooley referred the matter to the Commissioner on the same date.

The Decision Notice

29. In a decision notice dated 27 May 2021 the Commissioner decided that sections 36(2)(b)(i) and (ii) were engaged in respect of all the withheld information. In respect of an email from the Chair of the Council to the other members the Commissioner held that the public interest favoured disclosure. In respect of the emails from the members in response and a table summarising the content of those responses the Commissioner held that the public interest favoured maintaining the exemption.

30. The Commissioner was satisfied that Mr Brack was a qualified person within s 36. The Commissioner concluded that the withheld information leaned more towards a process of deliberation than the giving and receiving of advice, but she accepted that disclosure of the responses could inhibit council members from responding with their advice in future. She accepted that disclosure of the Chair’s email could dissuade both the Chair and others from seeking advice in the future. The Commissioner was satisfied that the qualified person’s opinion was reasonable and s 36(2)(b)(i) and (ii) were engaged.

31. In relation to s 36(2)(c) the Commissioner concluded that the qualified person’s opinion was not reasonable, primarily because she did not accept the envisaged prejudice would not be covered by another limb of the exemption.

32. In weighing the public interest the Commissioner considered that the balancing was different for the responses from the individual Council members (and the summary of those responses) compared to the email from the Chair. The Commissioner expects members of the Council to be robust and not easily dissuaded from giving their opinion regardless of the hypothetical possibility of disclosure. The Commissioner recognised that an official’s reasonable expectation of their opinions being disclosed will vary according to their seniority.

33. The Council minutes show that the members of the Council were in unanimous agreement that the ARF should not be reduced so to some extent their views are in the public domain. The withheld information records more detailed reasons and queries and concerns.

34. Members of the Council do not participate in the day to day running of the GDC and are not amongst the most senior members of the organisation. The Commissioner accepted that there would have been a broad expectation that the emails were not intended for publication even though the views were not expressed in the confines of a private meeting.

35. The Commissioner accepted that Council members may be less likely to express private views or be less forthright in expressing opinions and debating options. There is a strong public interest in preserving their ability to do this and the interest in transparency has already been met by the information in the public domain. The Commissioner concluded that the public interest favoured maintaining the exemption in relation to individual members.
36. In relation to the email from the Chair, the Chair is one of the most senior members of the GDC and would be one of the public faces of the organisation he should therefore reasonably expect that his views will be more closely scrutinised and he should be robust enough to put forward his views anyway. In the Commissioner's view the content of the information is likely to represent the corporate view of the GDC. There is a stronger public interest in disclosing information which represents an organisation's rather than an individual's thinking.
37. Whilst there was a realistic possibility that the GDC might need to consider the level of ARF again the Commissioner considered that the withheld information would add little to such a discussion and the possibility of a chilling effect was reduced.
38. The Commissioner concluded that the public interest favoured disclosure of the Chair's email.

Notice of Appeal

39. The GDC's grounds of appeal are:
- 39.1. The Commissioner misunderstood the composition of the Council and role of the Chair and was thus wrong to treat his email differently
 - 39.2. The Commissioner failed to appreciate the full sensitivity of the issue being discussed and gave too little weight to the public interest in maintaining the exemption.

Ground One; The GDC misunderstood the composition of the Council and role of the Chair and was thus wrong to treat his email differently

40. The Chair is not a more senior member of the Council in terms of decision making. Where informal soundings are taken the view of the Chair is his own personal view. The fact that reasons put forward in his email which did not form part of the consensus view were not set out in the blog of 20 May 2020 does not increase the public interest in disclosure.

The Commissioner failed to appreciate the full sensitivity of the issue being discussed and gave too little weight to the public interest in maintaining the exemption.

41. It is vital that personal and preliminary views can be shared before the Council reaches a consensus. The ARF is a particularly sensitive issue. Disclosure would undermine expectations that financial matters are debated in private. There was a

realistic possibility that the ARF would be debated again and a chilling effect was likely.

The ICO's response

42. The Commissioner correctly concluded that the public interest in favour of withholding the information was not sufficient to outweigh the public interest in disclosure. The Chair's email was important in initiating, framing and setting the tone for the discussion. The Chair is in a materially different position to the other members of the Council. All the financial discussions are within scope of FOIA and there can be no reasonable expectation of a guarantee of confidentiality.

Mr. O'Hooley's response

43. If the Chair 'framed' the discussion, this suggests a directorial functionality to the role of the Chair. The Chair was the leader of the GRC regarding its strategic direction. As the Chair is a formal leadership position the Chair should be subject to a level of public scrutiny commensurate to the role.

The GDC's reply

44. The Chair acts a spokesperson and figurehead of the GDC and speaks publicly on behalf of the organisation he represents.

Legal framework

S 36 - prejudice to effective conduct of public affairs

45. Section 36(2)(b) and (c) provide:

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act:

...

(b) would, or would be likely to, inhibit -

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

46. A 'qualified person' for the purposes of this appeal is defined in s 36(5) (o) as any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.

47. S 36 is a qualified exemption, so that the public interest test has to be applied.

The Task of the Tribunal

48. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

49. The issues we have to determine are as follows:
1. Has a 'qualified person' given an opinion that s 36(2)(b)(i) and (ii) are engaged?
 2. Was that opinion objectively reasonable?
 3. If so, does the public interest favour maintaining the exemption?

Evidence and submissions

50. The tribunal heard oral submissions in closed and open from all parties and we have taken account of the content of those submissions. The tribunal also heard closed and open evidence from Mr. Brack.
51. Mr. O'Hooley was provided with the following gist of the closed evidence:
1. In the closed session on 25 January 2022 the Appellant's witness, Mr Ian Brack, was asked additional questions following on from those that were asked in the open session.
 2. Counsel for the Appellant asked Mr Brack about his indication in open session that the Chair's email was not the corporate view of the GDC, and he expanded his answer by reference to the closed information.
 3. Counsel for the Commissioner asked Mr Brack questions about the following matters:
 - a. Mr Brack was asked about the Council meeting on 13 May 2020, and whether particular individuals contributed to the discussions on that occasion. Mr Brack repeated his answer given in open, namely that he cannot remember the discussions at that meeting.
 - b. Mr Brack was asked about the reasons that were given in the Chair's email for not reducing the ARF but which are not reflected in his blog, and about the public interest in transparency around those reasons.
 - c. Mr Brack was asked about the input provided by the Executive into the Chair's email, by reference to the disputed information. Mr Brack repeated his answer given in open, that work was being done by the Executive in the background and was drawn upon by the Chair in writing his email, but the Executive had not formally inputted into the email.
 4. The Tribunal asked Mr Brack questions about the following matters:

- a. Ms Saunders asked which parts of the disputed information were particularly sensitive, and Mr Brack explained by reference to that information.
- b. Ms Saunders asked whether it would have been possible for the Chair to send an email with the same substantive content but in a form which could have been made available publicly. Mr Brack considered that there were some parts of the email that could have been rephrased, but that the particular points he had highlighted in response to Ms Saunders' previous question would have been difficult to recast.
- c. Ms Chafer asked whether the GDC has some form of confidentiality marking that it applies to documents, and Mr Brack explained that the only way to mark an email as such is to put 'Confidential' in the subject line. He considered that there would have been a common assumption among Council members that the e-mail was to be treated as confidential.
- d. Ms Chafer asked how quickly the Executive could have provided input if the Council had decided to consider the ARF reduction formally, and Mr Brack thought 2-3 weeks if it had been worked on intensively.
- e. The Chair asked whether certain pages of the closed bundle are likely to comprise the report to Council which was referred to in the Council minutes of the meeting on 13 May 2020. Mr Brack thought that they were, but could not confirm definitively.
- f. The Chair asked why there was no record in the minutes of 13 May 2020 meeting of the reasons why the Council had decided not to revisit the ARF, but only the Chair's blog. Mr Brack repeated his open evidence that for audit/accountability purposes, all the minutes need to do is record that the discussion has taken place and the auditor can access the 'report'. The blog was prepared for transparency purposes, and it's a communications document rather than a formal document of record hence it uses slightly loose language. There are no reasons for the decision in the minutes because the Council did not take a 'decision' at that meeting.

52. Mr. O'Hooley was provided with the following gist of the closed submissions:

1. The Appellant and First Respondent made submissions in a short closed session on 25 January 2022, following the conclusion of open submissions.
2. Mr Lockley on behalf of the Appellant:
 - a. Drew attention to those aspects of the Chair's email that Mr Brack had identified as sensitive in his closed evidence, and expanded his submission as to why disclosure of the information would be likely to cause inhibition to the free and frank provision of advice in exchange of views;
 - b. Addressed an aspect of the email on which the Commissioner placed particular emphasis submitting that one of the members had disagreed with the Chair's presentation of this point. Therefore, he said that there had not been unanimity on this issue, this would explain why it is not referred to in the Chair's blog - which sets out the reasons on which consensus was reached;
 - c. Submitted that the same applied to a further reason advanced by the Chair in his email, to which three members had dissented. Overall the Chair had

advanced five reasons for not revisiting the ARF, of which only three had achieved consensus;

- d. Submitted the following further points based on the fact that not all members agreed with all of the Chair's reasons:
 - i. Members were robust and were perfectly willing to express disagreement with the Chair. It was therefore not fair to characterise the Chair's email as seeking to foreclose debate - the Chair would not have expected members to hold back if they disagreed (a point made by Mr Brack);
 - ii. Release of the Chair's email but not the members' emails would give a confusing, partial picture to the public, who would be left wondering why not all of the reasons set out by the Chair were reflected in the blog. The fact of the matter was that not all reasons were ones The council endorsed by consensus, and those that were not, did not form part of the 'corporate view' set out in the blog. However disclosing only the Chair's email obscured that fact and would leave the council open to incorrect accusations that it had been selective when presenting its reasons;
 - iii. If this were to occur, future Chairs will be constrained in how they initiated discussions - they would be concerned only to present those reasons that would ultimately gain consensus, and this would impoverish debate.
3. Ms John on behalf of the Commissioner:
- a. Reiterated the point made in open, regarding the need for transparency around why and how the council's decision was taken not to revisit the ARF; the robustness that the public are entitled to expect from the Chair of the GDC given the seniority and public facing nature of the position; and the limited chilling effect that disclosure would have on future discussions given the exceptional circumstances of the GDC's decision in this case, which related to potential emergency finance measures in response to an unprecedented global pandemic;
 - b. Highlighted that the majority of members had agreed with all of the Chair's reasons;
 - c. On the issue referred to in paragraph 2(b) above, noted that only one member had commented on the Chair's point and that that comment was not a disagreement with the Chair but rather a query relating to whether part of the Executive had considered it;
 - d. Emphasised the degree to which the Chair had sought to steer the discussion in his initial email as a reason why it merited different treatment from the emails of members which followed.
4. The tribunal members asked Ms John about the potential implications of disclosing only part of the overall discussion. She submitted that there was only a partial picture in the public domain at present, and that it would not be misleading to inform the public that the reason referred to in para 2(b) had been advanced, since there had been no dissent from this. Insofar as the prospect of disclosure might give a future Chair reason to pause when framing such an email

in future, she submitted that it was right that the Chair should do so, given that he is steering away members from having a full discussion in council with the benefit of executive input. That should only be done when there was a solid basis for doing so.

5. In reply, Mr Lockley noted that in consensus decision-making, only one objection was needed to break the consensus, so it remains the case that the council did not rely on the issue referred to in para 2(b). Since there were other reasons not to revisit the decision with which all members did agree, it was of less significance that the concerns raised by the one member had not been followed up - the outcome would have been the same whether there were three or four agreed reasons for the decision. The fact that all members agreed with the Chair on three points did not indicate that they were steered into that position by the Chair's email. The more straightforward explanation was that they simply agreed with the Chair in substance - particularly as they had shown themselves willing to say so where they did disagree with the Chair."

Discussion and conclusions

53. Mr. Brack is the qualified person and has given his opinion that these sections are engaged. In our view Mr. Brack's opinion is objectively reasonable, and there is no challenge to the Commissioner's findings on this issue. We therefore conclude that the exemption is engaged.

If so, does the public interest favour maintaining the exemption?

54. Our primary focus when considering the public interest in maintaining the exemption is on the particular interest which the exemption is designed to protect, in this avoiding prejudice to the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation.
55. In assessing the public interest balance we have to reach our own view on whether the protected interests would or would be likely to be inhibited or prejudiced and the severity, extent or frequency of such inhibition and prejudice. In doing so we give respect and weight to the opinion of the qualified person as an important piece of evidence.
56. We accept that there is no significant difference between the expectations of scrutiny of the Chair and the expectations of the other Council member in relation to personal opinions expressed during discussions outside a formal Council meeting of a matter such as the ARF. The Chair was not expressing the corporate view of the GDC. Although he had spoken to Mr. Brack, and Mr. Brack had commented on the email, Mr. Brack expressly underlined to the Chair in those comments that the Chair was expressing his personal opinion.
57. Further, although the Chair obtained and attached to his email some statistical information from strategy, this was not prepared specifically for

those purposes. It had been prepared in any event for other ongoing related issues. We do not see this as the executive inputting into the views expressed in the email, rather that strategy provided information on request to assist the Chair in formulating his own view.

58. In our view, all members of the Council, including the Chair, would have been aware that there was no absolute guarantee of confidentiality, because of FOIA, and the possibility that there might be a public interest in disclosure that outweighs the public interest in withholding the information.
59. Nonetheless, we find that there would have been a common assumption of confidentiality given the nature of the discussion and its subject matter. We do not accept that the Chair would have expected his half of the discussion to be significantly more likely to be subject to scrutiny than the other half of the discussion. He was not acting as the representative or the figurehead of the organisation on this occasion.
60. We accept that the Chair does hold a different position and role to the other council members. Further although he was not expressing the corporate view on this occasion, he did initiate and frame the discussion. His email is characterised by the qualified person as 'advice' unlike the other emails, so it is qualitatively different. In effect the Chair sets out his opinion: This is what I think the Council should do, this is why I think the Council should do it, do you agree?
61. The members of the tribunal took a slightly different view as to the effect on the public interest balance of the tone of the Chair's email. The majority took the view that the tone of the email did not significantly increase the public interest in disclosure. The majority took the view that although the Chair expressed his opinion in a robust manner, the other Council members felt able to disagree as evidenced by the fact that Council members expressed opposing views and only three reasons put forward by the Chair received unanimous support.
62. One of the tribunal members took the view that the tone of the Chair's email did increase the public interest in disclosure to some extent. However the tribunal member still took the view that the public interest in maintaining the exemption outweighed the public interest in disclosure and therefore this disagreement was not material to our decision.
63. The exemption recognises the value of a safe space for full and frank advice and full and frank exchanges of views. In terms of the likelihood of prejudice, we note that the ARF is a sensitive and controversial issue and was particularly so during the pandemic. We accept that that ARF issue is likely to come round again for discussion within a relatively short period of time. The pandemic was ongoing and future ARF payments would become due. To

this extent we consider that the issue remained live at the date of the request, even though a decision had been taken at the time not to bring the matter formally before the Council. On this basis we accept that there is significant public interest in maintaining a 'safe space' for these type of soundings to take place to enable the GDC to work efficiently and effectively.

64. In terms of chilling effect, although we expect the Chair of the GDC to be robust against the risk of personal criticism, we take the view that there is a clear risk that the Chair might be inhibited from speaking so frankly and openly about his opinion as to the risks and benefits to the organisation and the profession if he thought that such early stage discussions would be open to public scrutiny. In our view this leads to a real risk of a chilling effect on what are effectively ongoing discussions which carries weight in the public interest balance.
65. In terms of the public interest in disclosure, we accept that this is a matter of importance for at least a reasonable sized section of the public. This means that there is significant public interest in transparency in relation to the decision that was made.
66. Further we accept that the way in which the decision was reached means that there is no official public record of the reasons for the decision. However we find that the need for transparency is adequately served by the update placed on the GDC website explaining the reasons for the decision. Whilst not all the reasons mentioned in the email discussions appear in the update, in our view it adequately reflects the consensus reasoning for making the decision.
67. Taking all the above into account, we have concluded that although there is a significant public interest in transparency, this is served to some extent by the publication of the update, and it is outweighed by the public interest in maintaining the exemption in the particular circumstances set out above.
68. For the reasons set out above the appeal is allowed.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 11 February 2022

Promulgated 16 February 2022