



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

Appeal Reference: EA/2021/0184

**Heard remotely by CVP
On 3 February 2022
Representation:
Appellant: In person
Respondent: Did not appear**

Before

**SOPHIE BUCKLEY
MARION SAUNDERS
SUZANNE COSGRAVE**

Between

ALLAN MARTIN

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION

1. For the reasons set out below the Tribunal dismisses the appeal.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-41920-M5D9 of 28 June 2021 which held that the information held by the Government Actuary's Department ('GAD') was exempt from disclosure on the basis of s 35(1)(a) (formulation and development of Government policy) and that the public interest favoured maintaining the exemption. The Commissioner did not require GAD to take any steps.
2. We have read and taken account of an open and closed bundle of documents and heard oral submissions from the Appellant.

Factual background

3. Most public sector pension schemes are unfunded defined benefit schemes. The benefits are guaranteed by the government and there is no fund of assets from which pension benefits are paid. In effect, the economy acts as the pension fund.
4. To determine the level of employer contribution rates in such schemes the Government uses a process called 'Superannuation Contributions Adjusted for Past Experience ('SCAPE') and sets a SCAPE discount rate which is applied to scheme's expected future pension payments so that the cost of pension promises being built up can be expressed as a present day cost.
5. The Government consulted on the methodology used to set the SCAPE discount rate in 2010. Since 2011 the SCAPE discount rate methodology has been set by HM Treasury based on the advice of GAD, who in turn base the rate on expected long-term GDP growth using the Office for Budget Responsibility's (OBR's) projections of long-term real average GDP growth. This long term growth rate (2.2% p.a. in July 2018 OBR Fiscal Sustainability Report) ignores the significantly lower projection (short term rate) for 2018-2028 (1.6% p.a.).
6. The Government identified in 2010 that the purpose of the SCAPE discount rate is to set contributions such that:
 - the value of benefits being earned today is recognised and total contributions reflect this;
 - employers pay a charge that is appropriate for public service pensions schemes, just as private sector employers must pay contributions that are appropriate for funded pension schemes; and
 - today's decisions by Government and public service employers about how many people to employ, as opposed to other forms of expenditure, take into account the full future cost of employing people today.

7. The outcome of the consultation in 2010 identified two primary objectives in setting the rate:
 - 7.1. The discount rate should represent a “fair reflection of costs”, which should be interpreted as meaning that the future costs of today’s pension promises are fairly reflected in current contributions (that is, there is inter-generational fairness looking at pension contributions relative to future benefits in payment on a stand-alone basis);
 - 7.2. The discount rate should “reflect future risks to Government income”, in the broad sense that, within this fairness principle, Government should have as much confidence as possible that promises made today are made on a sustainable basis, reflecting Government’s ability to meet future payments in order to ensure fairness to future taxpayers. The Government recognised that it may be appropriate for alternative discount rates to be used for purposes other than those stated.
8. Other objectives stated by the Government to be relevant to the choice of SCAPE discount rate included supporting the provision of high-quality public service pensions, supporting the plurality of provision of public services, transparency and stability. In relation to transparency the Government stated in 2011 ‘ the Government is committed to being transparent about the choice of discount rate methodology and the calculation of the appropriate number. While recognising the technical complexity of this policy area, the Government will seek to explain the rationale for the choices made as simply as possible’.¹
9. In its response to the 2010 consultation the Government stated its intention to review the level of the SCAPE discount rate every five years and the methodology every ten years.
10. The SCAPE discount rate was revised in 2016 in line with this intention. It was also revised in 2018 after an ‘out-of-cycle’ review due to significant changes to the OBR’s long-term GDP projections.² A methodology review was due in 2021 and, post the request under consideration, a consultation was launched in June 2021.³
11. As Mr. Martin illustrates clearly in the slides from his talk to the Institute and Faculty of Actuaries in on 5 June 2021, assumptions of GDP growth have consistently been higher than actual GDP growth.

¹ Summary of responses to the 2010 *Consultation on the discount rate used to set unfunded public service pension contributions*, April 2011

² The explanation above is taken largely from June 2021, HM Treasury, *Public Service Pensions: Consultation on the discount rate methodology* with additional information from the summary of responses to the 2010 *Consultation on the discount rate used to set unfunded public service pension contributions*, April 2011. This was supplemented by information and explanations provided by Mr. Martin, including in his presentation to the Institute and Faculty of Actuaries on 5 June 2021, *Mirror, mirror on the wall is our pensions system fair at all*.

³ June 2021, HM Treasury, *Public Service Pensions: Consultation on the discount rate methodology*

12. The impact of this shortfall between actual and expected GDP growth is also set out clearly in Mr. Martin's slides. The figures taken from the 2019 Whole of Government Accounts (WoGA) estimate the liability for unfunded pension promises as at March 2020 at £2.1 trillion. The illustration by Mr. Martin of a 1% shortfall on a £2 trillion liability is £20 billion. This equates to approximately 2% on income tax or 3% on VAT which either should have been paid or might be required in the future to catch up.
13. Mr Martin's concern is that past service deficits are leading to a huge intergenerational transfer with the future taxpayer footing the bill. In his view the current SCAPE assumption and framework effectively guarantees future austerity. Mr. Martin is concerned about a huge lack of awareness about this issue amongst the media, select committees, ministers and the public.

Request

14. This appeal concerns the following request made on 17 February 2020 by Mr Martin:

I'm grateful to the GAD for previous details of H M Treasury correspondence and advice surrounding the SCAPE discount rate - Reference: MAR301118 was the most recent.

May I however follow up my significant concern on the underlying GDP growth assumption, our multi-trillion pound national commitment/debt and massive intergenerational liability transfer with the following FoI requests?

1. I would appreciate copies of the projected unfunded public sector pension scheme cash flows for the next 5 years. The employee/employer contributions and scheme benefit payments are expected to form a key part of the HMT budgets. Underlying projection assumptions are anticipated. Cost cap variations and case law complications (McCloud) may be caveated and excluded if required.

(My web search only revealed a GAD December 2009 Cashflow Projections Methodology, data and assumptions report, not cash amounts.)

2. I would also appreciate copies of any quantification, analysis or reports considering the financial impact (e.g. WoGA liability) of shortfalls in the SCAPE GDP assumption v actual GDP growth. Quantification might be justified from say 1980, but details from 2000 onwards would be appreciated.

(My web search only revealed the OBR FSR July 2018 table 2.6, WoGA reconciliation, with such shortfalls being dwarfed by the accounting discount rate change.)

15. The GAD replied on 17 March 2020, providing a link to the information requested in question 1. In relation to question 2, GAD confirmed that, after a search of their records, they held information within the scope of the request. The GAD stated that the information might engage s 35(1)(a) and indicated that it was considering the public interest balance.
16. On 9 April 2020 GAD confirmed that the exemption was engaged. The information in scope related to the formulation and development of

government policy on the financing of the unfunded public service pension schemes. This was a live area of policy development with a review of the SCAPE methodology due in 2021. The GAD stated that it considered that the public interest in withholding the information outweighed the public interest in disclosure.

17. The GAD upheld its decision on internal review on 12 May 2020.
18. Mr Martin referred the matter to the Commissioner on 29 May 2020.

Decision Notice

19. In a decision notice dated 28 June 2021 the Commissioner decided that the information was exempt from disclosure under s 35(1)(a) and that the public interest favoured maintaining the exemption.

Engagement of the exemption

20. The Commissioner accepted that s 35(1)(a) was engaged because the withheld information related to the development of government policy on the financing of the unfunded public service pension schemes and in particular the review of the SCAPE methodology, due in 2021. The Commissioner noted that the SCAPE methodology is only reviewed at ten year intervals which supported the position that the policy around the review is a significant piece of work, i.e. a policy development, rather than continued implementations of an existing policy. The Commissioner accepted that any potential decisions concerning the review were likely to be wide ranging and have real world change in terms of these pension schemes.

Public interest balance

21. The Commissioner accepted that the policy making was live as the SCAPE methodology review was due to take place in 2021 and the withheld information related directly to that policy making. Having considered the content of the information the Commissioner considered that it had the potential to encroach on the safe space, particularly taking into account the significant financial costs of the unfunded public sector pension funds and the interest in these from stakeholders. The Commissioner concluded that the safe space arguments carried significant weight.
22. The Commissioner concluded that the chilling effect arguments attracted notable weight. Although civil servants are expected to be impartial and robust when giving advice, the policy in was still live and the withheld information, at least in parts, represented a candid assessment of the issues in question.

23. Although the requested information may focus on historical estimates of GDP, any discussion of these is still relevant to future policy making in relation to future changes to pension schemes.
24. Having had the benefit of reviewing the withheld information the Commissioner was satisfied that GAD's concerns regarding the impact on policy making have not been unduly influenced because of concerns about the McCloud judgment and resulting changes to the pension schemes to address the discrimination identified by that judgment.
25. Turning to the public interest arguments in favour of disclosure, the Commissioner recognised that the amounts of funds are huge and that there are millions of people potentially impacted by policy making decisions in this area, including taxpayers of the future. These factors added very significant weight to the public interest in disclosure. The Commissioner agreed that there was considerable public interest in ensuring that the government is transparent and open in relation to the management of these pension schemes, including analysis of how accurate and effective previous assumptions about GDP growth have been.
26. In the Commissioner's view the disclosure of the withheld information would assist in meeting these various public interests and as a result the public interest in disclosing this particular information should not be underestimated.
27. The Commissioner concluded by a narrow margin that the public interest favoured maintaining the exemption.

Grounds of Appeal

28. The Grounds of Appeal are, in essence, that the Commissioner was wrong to conclude that the public interest favoured maintaining the exemption. In particular Mr. Martin argues:
 - 28.1. The scale of liabilities and impact of the GDP assumption shortfall demands wide exposure, public debate and greater appreciation;
 - 28.2. The 'lifetime lock' of future index linked contractual payments is not transparent and not understood or known about by most MPs and the media. This is compared to the greater awareness and transparency of the state pension 'triple lock'.
 - 28.3. The Treasury and GAD are carrying out consultations on the cost cap mechanism and SCAPE methodology while restricting access to vital background information. There is a lack of past service analysis of the most important assumption.
 - 28.4. Mr. Martin's presentation to the Institute and Faculty of Actuaries illustrates the scale and significance of the issue.

The Commissioner's response

29. It appears to be common ground that the s 35(1)(a) exemption is engaged. The conclusion is plainly correct:
 - 29.1. The withheld information related to the formulation and development of policy rather than its delivery and implementation because it relates to a substantial, 10-yearly review of the methodology.
 - 29.2. The relationship between the content of the withheld information on policy making is direct and not merely incidental.
 - 29.3. Although the withheld information might concern historical GDP projections, it is directly relevant to future policy making regarding the financing of the schemes.
30. The Commissioner carefully weighed the public interest both for and against disclosure. The Commissioner accorded very significant weight to the public interest arguments in favour of disclosure and decided by only a narrow margin that the balance lay in favour of maintaining the exemption. The decision was made explicitly on the basis that the reason why there was such a strong public interest in favour of disclosure was the very same reason why it was necessary to ensure decision-making of the very best quality by maintaining the exemption and allowing officials and ministers the space to consider policy options out of the public eye.
31. The Commissioner was correct to accord significant weight to the need for a safe space because there is a strong public interest in preserving a private thinking space to develop policy without fear of premature publication of half formed views and because the timing of the request was a fundamental and paramount consideration. Given that the policy making process was live at the time of the request the need for a safe space was at its highest. The Commissioner rightly considered the specific content of the withheld information and concluded that its disclosure would have the clear potential to encroach on the safe space.
32. The Commissioner properly considered that civil servants are expected not to be easily deterred from expressing their views and accorded that risk due weight given that policy making was live and that the withheld information represented a notably candid assessment of live policy and that its disclosure might result in a damaging loss of candour in future.
33. In relation to the appellant's first argument in the grounds of appeal, while the scale of liability under the schemes and the impact of GDP shortfall on that liability is a matter of significant public importance, this is precisely the reason why there is a paramount public interest that policy making as regards the SCAPE methodology should be of the best quality.
34. In relation to the appellant's argument that it is important that there is wider understanding of what he refers to as the 'lifetime lock' (that the extent of the

liability already accrued under the schemes is fixed due to the schemes' contractual nature), the Commissioner underlines that the existence of the lifetime lock is already evident from publicly available information.

35. Insofar as the appellant's argument is that the 'lifetime lock' is an element of the overall picture of the scale of liability and that disclosure of the withheld information, which may form another part of that picture, may help to highlight the significance of the 'lifetime lock' in public understanding, the Commissioner's response is that the public interest in understanding the scale of liabilities is plainly significant but it is ultimately outweighed by the public interest in the protection of a deliberative process of the best quality in an area of live policy development that concerns the management of significant public funds.
36. A more limited understanding of the 'lifetime lock' compared to the state pension 'triple lock' cannot itself be a reason for disclosing the withheld information.
37. In relation to the public consultations the Commissioner relies on para 75(vi) of **Department for Education and Skills v Information Commissioner and the Evening Standard (EA/2006/0006)** ("**DFES**"). Further the Commissioner fully considered and gave significant weight to the public interest in government openness and transparency.
38. The appellant's fourth argument makes essentially the same public interest points as the first argument.

Appellant's reply

39. The Appellant provided annotations on the Commissioner's response, which the Tribunal has read and taken into account.

Oral submissions by Mr. Martin

40. The Tribunal heard oral submissions from Mr. Martin in which he expanded on his grounds of appeal. He highlighted that in his view the Treasury was withholding 'vital information' in the consultations on the SCAPE methodology and the cost cap mechanism.
41. The Judge asked Mr. Martin to clarify exactly what this vital information was: what information he expected to see in the withheld information and how this would serve the public interest. Mr. Martin stated that, in essence, he would expect to see a number of reports that consider the effect of the expected GDP growth compared to the actual GDP growth.
42. Given that the information that was used to produce that table is in the public domain, Mr. Martin was asked what information was missing. His reply was

that he wanted to be able to show that the government actually recognised the issue and that they were feeding it into the Treasury with the scale of the consequences and addressing the issue. He was asked whether, in that case, he was not looking for the underlying facts and figures but the evidence that GAD was considering this issue and feeding it into the consideration of the issue. Mr. Martin agreed. Mr. Martin confirmed that it was not the shortfalls themselves that he was interested in, because he could calculate that from publicly available information, it was GAD addressing the implications and consequences of that and advising the Treasury of this.

43. In terms of the value to the public of that information, Mr. Martin stated that releasing the withheld information would increase awareness of what has been promised in the past and the difficulty of managing that. The £2.1 trillion of future liability needs to be appreciated by the Treasury, the Cabinet, all MPS and taxpayers.
44. The Tribunal explored with Mr. Martin the letters at p C284 – C290 between GAD and HM Treasury from March 2016 which relate to the 5-yearly review in 2016 of the SCAPE discount rate. These letters have been provided to Mr. Martin in response to a previous request. The letter from the Treasury to GAD asks for the Government Actuary's professional opinion on the proposed revision to the SCAPE discount rate.
45. The reply from GAD sets out detailed consideration of possible arguments for alternative rates, and includes consideration of issues of intergenerational fairness and the risks that future generations are taking on as a result of the risks associated with GDP growth which, by nature, will be uncertain. It also includes consideration of whether recent experience of lower GDP growth and short term forecasts of GDP should be allowed for which could lead to a lower SCAPE rate and includes the following:

Following these SCAPE rate being set in 2011, real GDP growth has averaged CPI+ 1.6% per annum. However the pension schemes' valuations applying notional interest to the notional SCAPE funds at the SCAPE rate rather than actual GDP growth. This means that the pension schemes' valuations do not generate deficits or surpluses caused by GDP experience differing from the SCAPE rate.

It could therefore be argued that it is appropriate to reduce the SCAPE rate to recognise that real GDP growth has been lower than SCAPE rate set five years ago. However if recognising GDP experience was an objective, in my view would be more appropriate to do this via the methodology for rolling forward the notional SCAPE funds. A methodology adjustment would be a more direct approach to achieve this objective and would therefore reduce the possibility of unwanted consequential effects (for example where the SCAPE rate is used for other purposes).

I also note that the office for budget responsibility's (OBR's) subsequent forecasts will have been made in light of experience since 2011 and so it could be argued that an adjustment for the growth rate since 2011 is not necessary for future assumptions.

OBR's June 2015 fiscal sustainability report (FSR) also breaks down future GDP forecasts by projection period including a transition from current growth rates to the OBR's long term expected annual growth rate. In particular real GDP growth is forecast to be 2.4% pa up to 2025 and then 2.5% per annum between 2025 and 2065.

When the SCAPE rate was set in 2011 the forecast of GDP growth over the period from 2016 to 2050 was used to determine the SCAPE rate. The approach you propose to use to set the SCAPE rate at the forthcoming budget ignores the forecasts up to 2025 and it could be argued that these could be allowed for. However the impact of adjusting the long term GDP growth of 2.5% pa up to 2.4% pa is likely to be negligible after rounding...

46. Mr. Martin was asked whether this showed GAD considering and explaining why they did not recommend adjusting the SCAPE rate to reflect the disparity between assumed and actual GDP. Mr Martin stated that it showed that they recognised the problem, but that there remains the problem of managing the accrued liabilities - what had been built up to date.
47. Mr. Martin's attention was also drawn by the Tribunal to the sections of the 2021 consultation that dealt with the issue of changes in projected GDP and the possible use of actual GDP experience in setting the rates.

Legal framework

48. The relevant parts of s 1 and 2 of the FOIA provide:

General right of access to information held by public authorities.

1(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

Effect of the exemptions in Part II.

.....

2(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

49. Section 35(a) of FOIA provides as follows:

35 Formulation of government policy, etc.

(1) Information held by a government department or by the Welsh Assembly government is exempt information if it relates to –

- (a) the formulation or development of government policy,

50. Section 35 is a class-based exemption: prejudice does not need to be established for it to be engaged. It is not an absolute exemption. The Tribunal must consider if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.
51. Case law has established in the FOIA context that “relates to” carries a broad meaning (see **APPGER v Information Commissioner and Foreign and Commonwealth Office** [2016] AACR 5 at paragraphs 13-25). In **UCAS v Information Commissioner and Lord Lucas** [2015] AACR 25 at paragraph 46 the Upper Tribunal approved the approach of the FTT in the APPGER case where it said that “relates to” means that there must be “some connection” with the information or that the information “touches or stands in relation to” the object of the statutory provision.
52. The question of whether the policy-making process is still ‘live’ is an issue that goes to the assessment of the public interest balancing test, and not to whether the section 35(1)(a) exemption is engaged in the first place (**Morland v Cabinet Office** [2018] UKUT 67 (AAC)).
53. The intersection between the timing of the FOIA request and its relevance to the public interest balancing test is helpfully analysed by the First-tier Tribunal in **Department for Education and Skills v Information Commissioner and the Evening Standard (EA/2006/0006)** (“**DFES**”) at paragraph 75(iv)-(v) (a decision approved in **Office of Government Commerce v Information Commissioner** [2008] EWHC 774 (Admin); [2010] QB 98 (“**OGC**”) at paragraphs 79 and 100-101):

(iv) The timing of a request is of paramount importance to the decision. We fully accept the DFES argument, supported by a wealth of evidence, that disclosure of discussions of policy options, whilst policy is in the process of formulation, is highly unlikely to be in the public interest, unless, for example, it would expose wrongdoing within government. Ministers and officials are entitled to time and space, in some instances to considerable time and space, to hammer out policy by exploring safe and radical options alike, without the threat of lurid headlines depicting that which has been merely broached as agreed policy. We note that many of the most emphatic pronouncements on the need for confidentiality to which we were referred, are predicated on the risk of premature publicity. In this case it was a highly relevant factor in June 2003 but of little, if any, weight in January 2005.

(v) When the formulation or development of a particular policy is complete for the purposes of (iv) is a question of fact. However, s. 35(2) and to a lesser extent 35(4), clearly assume that a policy is formulated, announced and, in many cases, superseded in due course. We think that a parliamentary statement announcing the policy, of which there are examples in this case, will normally mark the end of the process of formulation. There may be some interval before development. We do not imply by that that any public interest in maintaining the exemption disappears the moment that a minister rises to

his or her feet in the House. We repeat – each case must be decided in the light of all the circumstances. As is plain however, we do not regard a “seamless web” approach to policy as a helpful guide to the question whether discussions on formulation are over.

54. The public interest can wax and wane and the need for a safe space changes over time in relation to development of policy.
55. If disclosure is likely to intrude upon the safe space then there will, in general terms, be significant public interest in maintaining the exemption, but this has to be assessed on a case by case basis.
56. In considering the factors that militate against disclosure the primary focus should be on the particular interest which the exemption is designed to protect, in this case the efficient, effective and high-quality formulation and development of government policy (see e.g. para 57 in the FTT decision in **HM Treasury v ICO EA/2007/0001**).
57. The APPGER case gives guidance on how the balancing exercise required by section 2(2)(b) of FOIA should be carried out:

“... when assessing competing public interests under FOIA the correct approach is to identify the actual harm or prejudice that the proposed disclosure would (or would be likely to or may) cause and the actual benefits its disclosure would (or would be likely to or may) confer or promote. This ... requires an appropriately detailed identification of, proof, explanation and examination of both (a) the harm or prejudice, and (b) benefits that the proposed disclosure of the relevant material in respect of which the exemption is claimed would (or would be likely to or may) cause or promote.”

58. When a qualified exemption is engaged, there is no presumption in favour of disclosure. The proper analysis is that, if, after assessing the competing public interests for and against disclosure having regard to the content of the specific information in issue, the Tribunal concludes that the competing interests are evenly balanced, we will not have concluded that the public interest in maintaining the exemption (against disclosure) outweighs the public interest in disclosing the information (as section 2(2)(b) requires) (**Department of Health v Information Commission and another [2017] EWCA Civ 374**)

The role of the Tribunal

59. 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.

Discussion and conclusions

60. The issues we have to determine are:
 - 60.1. Does the withheld information relate to the formulation or development of government policy?
 - 60.2. Does the public interest in maintaining the exemption outweigh the public interest in disclosure?
61. We note that GAD undertook a search of their records and that the withheld bundle contains all the information they considered to be in scope of part 2 of the request.

ISSUE 1: Does the withheld information relate to the formulation or development of government policy?

62. We have reviewed the withheld information and we are satisfied that it relates to the development of government policy. We find that the exemption is engaged.
63. At the time of the request GAD had been commissioned to provide supporting analysis for the 10-yearly review of the SCAPE methodology, due in 2021. The withheld material consists of advice provided by GAD in 2016 and 2017 which would be used to inform that analysis. We accept that the review of the SCAPE methodology amounted to a significant exercise in policy development. The withheld material is thus directly related to the development of government policy.

ISSUE 2: Does the public interest in maintaining the exemption outweigh the public interest in disclosure?

64. The relevant date for determining the public interest is in our view, at the latest, the outcome of the internal review. In this case the internal review was on 21 May 2020.

Public interest in maintaining the exemption

65. 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 case the efficient, effective and high-quality formulation and development of government policy.
66. At the relevant date, GAD had been asked to provide advice on the supporting analysis for the 10-yearly review of the SCAPE methodology, due to take place in 2021. The consultation on that process took place in June 2021. At the relevant date, May 2020, the development of policy was live.

67. Further the particular documents that contain the requested information consist of advice that would be used to inform the supporting analysis to be provided by GAD at an early stage in that process. It contains frank and candid discussion of policy options and consequences.
68. Both these features increase the importance of the 'safe space' for Government to consider policy options out of the public eye, and its weight in the public interest balance. It is in the public interest that officials and ministers have 'time and space...to hammer out policy exploring safe and radical options alike, without the threat of lurid headlines depicting what has merely been broached as agreed policy' (DfES para 75(iv)). In terms of the actual harm of disclosure of this particular information, we consider that disclosure of these documents before the consultation had even commenced is likely to have caused harm to the policy development process.
69. Further, the efficient, effective and high-quality development of policy in relation to the SCAPE methodology is clearly of fundamental importance, given the huge impact of that methodology on the finances of public sector workers and future generations of taxpayers. Further we note that the SCAPE rate is used for a number of purpose and therefore a change to the SCAPE rate has wide implications.
70. For those reasons, we place very significant weight on the need to maintain a safe space to enable the efficient and efficient, effective and high-quality development of policy.
71. We place less weight on any potential 'chilling effect' because we expect civil servants to be robust in the advice we give. However, given the early stage in the policy development process, the nature of the policy options being explored and the candid nature of the advice we accept that disclosure would have led to a real risk of a chilling effect on those ongoing policy discussions which carries significant weight in the public interest balance.

Public interest in disclosure

72. We consider first the actual benefits that disclosure of this particular information might confer. Part of Mr. Martin's concern is a general lack of understanding and awareness, amongst both the general public and amongst MPs and Ministers, of the consequences of the shortfall between expected and actual GDP growth and the burden on future generations imposed by the contractually fixed liability ('the lifetime lock'). We accept Mr. Martin's assertion that there is a lack of public appreciation of this issue and its impact.
73. Whilst the Tribunal accepts that the withheld information would help to inform public debate, there is a considerable amount of information already available in

the public domain. Mr Martin himself demonstrated the amount of information available and his ability to do comparisons of the expected and actual GDP.

74. The general lack of public awareness and understanding of this issue could be remedied to a very large extent using information in the public domain, and thus the release of this particular information does not serve this particular aspect of the public interest to any great extent. We do not accept that the withheld information is 'vital' to enable effective participation in the 2021 consultations.
75. In terms of Mr. Martin's concerns about whether or not this issue has been recognised and fed into the Treasury, the Tribunal notes that the letters between GAD and the Treasury in 2016 disclosed to Mr. Martin illustrate that both were aware of and had considered many of the particular concerns that Mr. Martin raises, even if those letters do not contain the particular analysis which is of interest to Mr. Martin.
76. Further we note that there is nothing in the withheld information which supports Mr. Martin's concern that GAD might be 'hiding' something untoward.
77. We accept that this issue is extremely significant, given the effect on the public both in terms of the cost to society as whole and the cost to individuals and families who are directly affected. We find that there is a strong public interest in transparency and informed scrutiny of the process and decision making behind the government's policies in this important area. Release of the requested information would have contributed to an informed public debate and might have enabled more informed responses to the consultation.
78. Further we accept that there is a general public interest in promoting transparency and openness in the way public authorities operate and a general public interest in transparency of discussions within government.
79. Taking all the above into account, we find that the significant public interest in maintaining the exemption, as detailed above, outweighs the strong public interest in disclosure.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 4 March 2022

Promulgated: 10 March 2022