



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

**Appeal Reference: EA/2021/0092**

**Heard by CVP  
On 1 October 2021  
Representation:  
Appellant: Mr. Hill (lay representative)  
Respondent: Did not appear**

**Before**

**JUDGE BUCKLEY  
DAVE SIVERS  
DAVID WILKINSON**

**Between**

**CLAIRE STRETTON**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**INTERIM DECISION**  
**CORRECTED UNDER RULE 40**

1. For the reasons set out below the appeal is allowed in part.
2. The public authority was entitled to withhold the following information under s 40 (the categories are explained under 'Discussion and Conclusions' below):
  - a. Richard Lingard's contact details ('category 4')

- b. The names of the complainants at para 2.1 of the report of Richard Lingard dated 10 October 2019 ('the Report') ('category 5')
  - c. The names of individuals outside the Council ('category 6')
  - d. The names of council officers other than the senior Council Officer referred to below ('category 7')
3. In relation to the following information the public authority was not entitled to rely on s 40 or s 41 to withhold the information:
    - a. The name of the senior officer referred to, for example, in para 12.2 of the Report (the 'senior Council Officer') (category 1)
    - b. Substantive information relating to the senior Council Officer.
    - c. The comments/version of events of Russell O'Keefe set out in 6.3-6.51.
  4. The Council has relied on s 36 in the alternative. The tribunal will issue a case management order allowing the parties to:
    - a. Make further submissions on the application of s 36;
    - b. Indicate whether or not they consent to the decision on the application of s 36 being made without a hearing.
  5. The Tribunal accepts that the disputed information must not be revealed during these proceedings. There is a closed annex to this decision. The Tribunal will consider whether the closed annex or a redacted version can be released once the proceedings and any appeal have concluded.

## REASONS

### **Introduction**

1. This is an appeal against the Commissioner's decision notice IC-40928-G9N0 of 9 March 2021 which held that the Royal Borough of Windsor and Maidenhead (the Council) was entitled to rely on s 41(1) and s 40(2) of the Freedom of Information Act 2000 (FOIA). The Commissioner held that the Council had breached s 10(1) in providing the final response outside of the statutory time limits.
2. The Commissioner did not require the public authority to take any steps.

### **Factual background to the appeal**

3. This appeal arises out of a speech at Maidenhead Central Mosque ('the Mosque') on 26 April 2019 by Simon Dudley, then Councillor Dudley and Leader of the Council, during the purdah period shortly before local elections. During that speech Councillor Dudley said the following:

"I am the Leader of the Royal Borough of Windsor and Maidenhead, and I wanted to come along and talk to you, because we've been discussing with [redacted], and [redacted] as well how we can make sure that your community has the opportunity to expand over the

coming years... what I as the leader of the Council... and the whole Conservative group guarantee to you, is that as the town develops we will make sure that you have the space to expand here...

With the Ivy Leaf, the council own the freehold of that site and we are negotiating with them for them to surrender their lease. We had thought that we might build apartments, flats on that site. We will never do that. That is my undertaking to you, as the leader, the Conservative leader of the Royal Borough of Windsor and Maidenhead. We have sent an agreement over that when we have control of that site, we will allow the Islamic Trust to acquire that site, so that you can expand here.

...

I hope when we have our local government elections on the second of May, you will vote Conservative..."

4. The reference to 'an agreement' was to a draft options agreement or pre-emption agreement between the Islamic Trust (who occupy the Maidenhead Central Mosque) and the Council that had been prepared by solicitors instructed by the Council and sent to the Maidenhead Mosque by a senior officer at the Council ('the senior Council Officer') on 25 April 2019, the day before the speech.
5. The history of the negotiations in relation to the site of the Ivy Leaf Club is relevant and is set out in the Report of Richard Lingard dated 10 October 2019 ('the Report') at paras 1.1 to 1.12.
6. In summary, an area of land near to the Mosque is owned by the Council but occupied by the Ivy Leaf Club (a private members club founded in 1918) under a lease which had 27 years left to run. This land was originally included in a development site for a residential scheme called the St Clouds Way Scheme. The Council has a wholly owned company called RWBM property company ('the Company') which, in effect, delivers its housing and regeneration functions. The managing director of the Company reports to the Council's Director of Place, Russell O'Keefe, who is also a director of the Company.
7. The Islamic Trust wish to expand, and discussions took place with the Council in 2017 about their desire to buy the Ivy Leaf site. Negotiations with the Ivy Leaf Club about the potential surrender of the lease had taken place in 2017 and 2018. On 19 February 2018 it was agreed at a meeting in the Town Hall that the Council would draft an option agreement in favour of the Islamic Trust in relation to the Ivy Leaf site.
8. By May 2018 discussions about a possible relocation of the Ivy Leaf had ended because no suitable alternative site could be found. In September 2018 the Ivy Leaf Club and the Islamic Trust were informed that the site had been excluded from the St Clouds Way Scheme.
9. Emails from late 2018 show that the Council was aware that the Ivy Leaf Club were insistent that they wished to stay where they were, unless the Council could find

them an alternative site with like provision of space and parking independent of residential development. The Islamic Trust asked the Council for an update in November 2018 and were given the same information.

10. This remained the position in March 2019. It is not entirely clear to us, but the Islamic Trust appear to have emailed the Council asking for an options agreement to be provided in February/March 2019. A Council officer emailed the Islamic Trust on 28 March, stating that the Council's lawyers were working on an options agreement and would send it over when ready.

11. On 24 April 2019 the Islamic Trust emailed the senior Council Officer on 24 April 2019 as follows:

[redacted] and [redacted] met with Simon last week and discussed our concerns and also Ivyleaf site, Simon assured us that he will request you and your lawyers to draft a ROFR agreement between Islamic Trust Maidenhead and RBWM, this document needs to be finalised by Friday 26<sup>th</sup> April when Simon addresses our community about the St Clouds redevelopment and more importantly the adjoining Ivy Leaf site.

12. The draft agreement was produced by the lawyers and emailed to the Islamic Trust on the morning of 25 April, the day before the speech.

13. On 4 May 2019, the day of the elections, a WhatsApp message was sent out by the Maidenhead Mosque, referring to the speech and asking people to vote Conservative.

14. A video recording of the speech was made and posted on YouTube. This led to a number of complaints to the police and a petition to have the election declared partially or completely void and to have Councillor Dudley removed from office had attracted over 1000 signatures by 16 May.

15. An article in the Maidenhead Advertiser on 16 May 2021 about the incident quotes a council spokeswoman as saying that Council has been working with the Islamic Trust and:

an 'agreement outlining how we may be able to support them going forward... was shared with them in April'. She added: "As is standard in these processes the council did not publicise the sending of this agreement or make any public comment about it during the pre-election period." She added the council was aware of concerns over comments made ahead of the election but 'there has been no breach of the members' code'.

16. Andrew Hill queried the statement that there had been no breach of the members' code with the Monitoring Officer at the Council on 17 May. He asked for a copy of the code of conduct investigation or the criteria of the code of conduct process relied on to form the initial assessment that the complaints were not to be accepted for further consideration.

17. The Monitoring Officer replied by email on 24 May. She stated:

The situation is that if a Councillor was clearly not acting as a Councillor at the time of the allegation, and taking into account the nature of the allegation, then no part of the code of conduct process applies. In my view I am simply not authorised to deal with it under the Localism Act 2011. It was not therefore strictly correct to say that there was no breach of the Code of Conduct; it was that the Code of Conduct did not apply. To confirm, this was my decision alone.

18. The result of an election can be challenged by an election petition. The time limit for presenting a petition is 21 days from the date of the return.
19. Complaints were submitted to the Council by members of the public and opposition councillors including complaints of breaches of the codes of conduct by Councillor Dudley and the officer(s) responsible for sending the draft agreement to the Mosque. This included a complaint by Ms Stretton. She did not name the officer responsible for sending the agreement because, at this stage, it was not known outside the Council.
20. At some stage the Monitoring Officer reached a different view about her ability to deal with the matter, and in July 2019 an external solicitor, Richard Lingard, was instructed by the Council to 'conduct an investigation into possible breaches of their respective codes of conduct by Councillor Dudley and (unspecified) Council officer(s) following complaints received from members of the public and opposition councillors'. Richard Lingard produced the Report on 10 October 2019.
21. Richard Lingard set out what he considered to be the relevant provisions of the different codes of conduct in appendices to the Report.
22. One of the concerns raised by Ms Stretton, and others, is that the conduct of Councillor Dudley and the officer was in breach of 'purdah'. Although it is not the tribunal's role to determine whether or not there was a breach of purdah, it is helpful to understand what purdah is. With the assistance of the description set out in in **R (Client Earth) v SoS for Environment etc (2017) EWHC 1618 (Admin)** the tribunal's understanding of purdah is as follows.
23. Purdah, in general, describes the period before an election in which ministers, public servants, councillors and officials are expected to refrain from taking controversial decisions. It serves an important function in protecting the electoral process from interference, intended or accidental, by those holding elected public office.
24. In a local government context, the Local Government Association (LGA) uses the terms 'pre-election period' and 'heightened sensitivity' instead of purdah. The LGA notes that 'the pre-election period' describes the period of time immediately before elections when specific restrictions on communications activity are in place. The LGA has produced specific guidance on publicity during the pre-election period but adds that pre-election rules restrict activity wider than just publicity: 'Use of

council facilities and resources; the member's code of conduct, developing new policies and holding of events - including some meetings - featuring elected officials should all be carefully considered during a period of heightened sensitivity.'

25. The LGA guidance states that the Council is allowed to continue to discharge normal council business, including determining planning applications, even if they are controversial. In relation to any communications by the Council addressed to the public or a section of the public the question to ask is 'could a reasonable person conclude that you are spending public money to influence the outcome of the election'.

26. Simon Dudley resigned shortly before he was to be interviewed by Richard Lingard. Richard Lingard's overall conclusions were as follows:

Because he [*Simon Dudley*] is no longer a councillor, and I did not have the opportunity to speak to him and hear his 'side of the story' I am not in a position to draw a conclusion as to whether SD breached the RBWM Code of Conduct.

However, I have been able to conclude that there has not been any deliberate wrongdoing on the part of any of the RBWM officers involved.

27. The Council has stated that that a decision notice would ordinarily have been published on the Council's website if Simon Dudley had not resigned before a decision was made.

28. Once Simon Dudley had resigned as a Councillor, the monitoring officer stated that she 'was unable to take the code of conduct complaint forward as a decision' (email from the monitoring officer to Ms Stretton dated 3 October 2019).

29. The monitoring officer stated in the same email that:

I have however asked Richard to do a report based on what he had been told by interviewees, including Lynne. This will thoroughly deal with officer involvement with the matters complained about under the Code of Conduct by you and Lynne, and others. The report is at a draft stage at the moment I will circulate it among those interviewed to check for any inaccuracies, then we need to consider how we should release the results of that investigation to you and other complainants so that it complies with the requirements of Data Protection rules. I will contact you soon with a formal response to your complaint.

30. The 'formal response' was sent by email to Ms Stretton, and other complainants, on 15 November 2019. In that email the monitoring officer states that once Simon Dudley resigned, Mr. Lingard was unable to continue with regard to the Code of Conduct complaints made against him and that 'Mr. Lingard was therefore instructed to pursue the complaints relating to any officer role with regard to Cllr Dudley's speech to the Mosque'.

31. The email briefly summarises the findings of the Report and then sets out its conclusion as follows:

The conclusion in the report found no evidence whatsoever that officers knew that Cllr. Dudley wished to use the document for election purposes, nor that there was any wrong doing in anything connected with Cllr. Dudley's election speech that day. Mr. Lingard was unable to make any conclusion about whether or not Cllr. Dudley would have breached the Code of Conduct, because he was unable to interview him to obtain the information he needed.

I would like to thank you for your patience in getting a response to your complaint.

## **Requests, Decision Notice and appeal**

### *The Request*

32. This appeal concerns the following request made on 18 November 2019:

Please would you forward a copy of Mr. Lingard's report.

### *The response*

33. The Council replied on 18 November 2019 withholding the information on the basis that it contained personal data about officers and others interviewed for the Report. Ms Stretton requested a redacted version.
34. The Council released a redacted version on 31 December 2019, withholding some of the Report relying on s 41 (information provided in confidence) and s 40(2) (personal information) in relation to individuals other than Richard Lingard and Councillor Simon Dudley.
35. Ms Stretton requested an internal review on 8 January 2020. The Council upheld its refusal.
36. Ms Stretton referred the matter to the Commissioner on 20 May 2020.
37. During the Commissioner's investigation, on 26 October 2020, the Council disclosed a further version with fewer redactions. They relied in addition on s 36(2)(b)(ii) (disclosure would or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation).
38. The Council removed further redactions on 4 February 2021 on the basis that consent had been obtained from Tracey Moore, one of the individuals whose personal data was in the Report.

### *The Decision Notice*

39. In a decision notice dated 9 March 2021 the Commissioner decided that the Council had correctly applied s 41(1) and s 40(2) FOIA and had breached s 10(1) for the following reasons.

#### *S 41(1) – information provided in confidence*

40. The Commissioner concluded that the information was obtained by the Council from another person. She concluded that it had the necessary quality of confidence. The Commissioner was satisfied that there was an implied obligation of confidence taking account of the nature of the individuals and the circumstances in which evidence was gathered from individuals. She accepted that the information provided was shared in confidence.

41. The Commissioner considered that the investigations constituted information of a personal nature and determined that information provided in such circumstances may cause personal distress and potentially issues between employees.

42. The Commissioner was satisfied that those who gave the information in confidence to the author of the Report would be able to bring a claim for breach of confidence.

43. The Commissioner recognised that some weight should always be afforded to the general public interest in ensuring that public authorities remain transparent, accountable and open to scrutiny. She understood that information concerning the complainant's key remaining issue, in relation to senior officer actions at a sensitive time, remains redacted. The Commissioner concluded that there was clearly a public interest in understanding any wrongdoing by council officers that may have caused some bias. She balanced this against the outcome of the Report which found that the allegations of wrongdoing were not upheld.

44. The Commissioner concluded that although the Report may give further insight and explanation into events, there is a wider public interest in preserving the principle of confidentiality. She was mindful of the impact of the disclosure on the interests of council officers when the allegations were not upheld. The Commissioner concluded that the Council correctly withheld some of the information under s 41.

#### *Section 40 – personal information*

45. The Commissioner was satisfied that the information related to and identified the individuals concerned.

46. The Commissioner agreed that there was a legitimate interest in the transparency of information relating to senior officers of the Council. She found that there was no legitimate interest in identifying other third parties named in the Report or any



contact details. She noted that the purpose of the investigation was into complaints made against the councillor and officers of the Council. The identity of the former councillor is not redacted in the Report. The Commissioner therefore concluded that disclosure would be necessary in order to meet a legitimate interest in the transparency of information relating to senior officers in the Council.

47. The Commissioner agreed that the name within an email quoted in the Report was in the public domain in the context of the other request and may therefore enable an informed reader to deduce the identity within the Report. She did not agree that this equated to the redacted officer's identity already being in the public domain, specifically in the context of the Report.
48. The Commissioner appreciated the complainant's concerns about providing senior officer anonymity in the context of the serious allegations of wrongdoing and her position in regard to the allegations and doubts over the outcome of the Report. The Commissioner considered that debating the validity of the author's investigation and therefore the outcome of the Report was beyond her remit. She concluded that she was limited to considering whether the information should have been redacted within the context of the Report findings which have been released. The Report finds no breach on the part of council officers and the individual(s) have expressed concern about disclosure of their personal data. The Commissioner concluded that, in the context of the investigation, disclosure could cause damage or distress to officers involved.
49. Information that has been published has provided transparency in terms of clarifying that officer wrongdoing was also considered and the outcome of the investigation in this respect.
50. The Commissioner determined that there was insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considered that there was no Article 6 basis for processing and so the disclosure of the information would not be lawful.
51. The Commissioner stated that she would have reached the same conclusion under the UK GDPR.

#### *Section 10(1) – time for compliance*

52. The request was made on 18 November 2019. The Council did not provide its final response until 4 February 2021. The Commissioner found that the Council had breached s 10(1) FOIA by failing to respond to the request within 20 working days.

#### *Notice of Appeal*

53. Ms Stretton relies on six grounds of appeal:

- (1) Erroneous finding of fact in paragraph 105 of the decision notice.
- (2) Deliberate concealment of "summary" report from the Commissioner
- (3) Failure to declare a breach of s 1(1)(b) FOIA in relation to information disclosed during the Commissioner's investigation
- (4) Failure to find a breach of s 17 FOIA.
- (5) Flawed analysis of the public interest tests.
- (6) Incomplete flawed analysis of s 10(1) implications.

54. Although not set out as a separate ground of appeal, Ms Stretton also raises some additional points which may be relevant to the public interest balance including the breach of independence of the Data Protection Officer and the actions of the monitoring officer.

*Ground one*

55. Ms Stretton argues that the Commissioner was wrong to conclude that a particular Council officer's name was not in the public domain, taking account of the Commissioner's guidance on information in the public domain. The Commissioner guidance states that information is in the public domain if it is realistically accessible to the informed observer at the time of the request. As a result of newspaper reports, the Council officer's name was known in the context of the Mosque emails/complaints.

*Ground two*

56. The Council proposed to release a summary of the investigation Report as shown in an email dated 6 November 2019. The Council did not disclose this to the Commissioner. This proves that officers and witnesses were not promised in advance of interviews that their comments would be unreported and anonymous.

*Ground three*

57. The Commissioner should have recorded a breach s 1(1)(b), or explained why redaction was lawful at the time of the request, in respect of witness statements by the Ivy Leaf and Cllr Jones which were disclosed during the course of the Commissioner's investigation.

*Ground four*

58. The Commissioner should have found a breach of s 17 FOIA for the Council's failure to state and explain the exemptions it relied on at the moment of refusal. S 36 was only introduced 10 months later. The Council should not be allowed to choose exemptions retrospectively.

*Ground five*

59. Ms Stretton gives two examples of a flawed analysis of the public interest test. The first is that the Commissioner's assessment of what was in the public interest in relation to the redactions to the Report's conclusions was wrong. Second, the Commissioner was wrong to conclude that there was no finding of wrongdoing in the Report.

*Ground six*

60. Although the Commissioner has found a breach of s 10(1), the breach is unquantified.

*The public interest balance*

61. The Commissioner has not considered the claimant's evidence and arguments on the proper officer to be taking the final decisions on FOI exemptions. The independent Data Protection Officer should have made the decision, not the Head of Legal or the monitoring officer.

62. The public interest in disclosure is increased by the fact that the monitoring officer was responsible for the decision because the monitoring officer wrongly failed to instigate an investigation on the basis that Councillor Dudley had not been acting as a Councillor when speaking to the Mosque. Mr. Lingard found in his Report that Councillor Dudley had been acting in his capacity as Councillor at the time.

63. The public interest in disclosure is extraordinarily high because the monitoring officer was found to be at fault by Mr. Lingard and was responsible for the decision not to disclose the information. The data protection officer concluded that disclosure would assist in improving transparency surrounding the internal decision making process especially in relation to the decision made by the monitoring officer. The monitoring officer, as the direct subject of the request, should not have been making the decision.

64. The Mosque issued an email to all its members to vote Conservative immediately following the meeting so there is at least a real risk that the election was not free and fair. This should have weighted the public interest balance in favour of full disclosure.

65. It is in the public interest for the public to see the evidence so that they can decide for themselves whether any advantage was deliberately or inadvertently bestowed.

*The ICO's response*

*Section 41 – Breach of confidence*

66. The evidence gathered for the purposes of the Report was provided to Richard Lingard and then to the Council and was therefore information obtained from another person.

67. Each of the three elements of an action for breach of confidentiality is present:

**a. Necessary quality of confidence.** The information is neither trivial nor in the public domain.

**b. Imparted in circumstances importing obligation of confidence.** The information was produced for a confidential report, following express assurances of confidentiality and that use of the information would be restricted to the investigation. A reasonable person would understand that the circumstances imported an obligation of confidentiality.

**c. Unauthorised use (public interest).** The public interest in disclosure is not sufficient to justify breaching the confidence owed to the persons providing the information. The Report's finding was that allegations of wrongdoing were not substantiated. A generic public interest in greater transparency and public understanding does not outweigh the public interest in preserving confidentiality (including the reasonable expectations and legitimate interests of the confiders) and avoiding a chilling effect for similar investigations.

#### *Section 40 – Personal data*

68. It would not be fair or lawful to disclose the personal data of the author, Councillors, Council officers and members of the public in the Report.

69. There is no legitimate interest in identifying any individual other than senior Council officers.

70. In respect of the senior Council officers, the Commissioner accepts that greater transparency is a legitimate interest and that disclosure is necessary to satisfy that legitimate interest. On balance, the legitimate interest is overridden by the interests and rights of the data subjects. The individuals have a reasonable expectation that their personal data will not be disclosed given the confidentiality of the Report, assurances given and the fact that the Report found no breaches.

71. Other information has been disclosed where consent has been obtained or where officers could reasonably expect that it would be made public because it relates to the officers' public functions.

72. The decision notice did not go on to consider whether disclosure would be fair but, in the alternative the Commissioner submits that disclosure would not be fair given the data subjects reasonable expectations.

#### *Response to Appellant's grounds of appeal*

(1) *Erroneous finding of fact at DN 105*

73. The Commissioner maintains that the relevant personal data, i.e. the redacted information relating to the Council Officer in the Report is not in the public domain whether as a result of that article or otherwise.

(2) Deliberate concealment of "summary report"

74. The fact that the Council intended to disclose a different document, expressly drafted for public consumption has no bearing on the disclosure of the contents of the detailed, expressly confidential, Report. The mere existence of the summary report gives no indication whatsoever that the assurances were not given. The hearing is de novo and cures any procedural defect and the summary report is not relevant in any event.

(3) Failure to declare a breach in respect of information disclosed before the DN

75. The information had been disclosed and therefore it was not necessary to consider s 1(1)(b).

(4) Failure to find breach of s 17 FOIA

76. Section 36 was not the basis on which the Commissioner upheld the decision to withhold the information. A public authority is entitled to rely on exemptions raised late in the day.

(5) Flawed analysis of public interest test

77. It is not part of the Commissioner's role to assess the scope or merits of the Report or its findings, or to make any substantive findings about the underlying issues, or to assess the procedure undertaken to produce the Report. In this case the public interest in the withheld information is not sufficient to displace the ordinary application of the absolute s 41 and s 40 exemptions.

78. The Commissioner was correct to state that there was no finding of wrongdoing in the Report. In the context of reasonable expectations and fairness the lack of a positive finding of wrongdoing is the key factor.

(6) Incomplete flawed analysis of s 10(1) implications

79. The Commissioner does not understand this ground. Beyond finding a breach of s 10, the Commissioner and the tribunal have no jurisdiction to remedy that breach in circumstances such as these where the information has been disclosed or the public authority's s 1(1) duties have been discharged, albeit late.

***Ms Stretton's reply***

80. The reply is detailed and repeats some of the points already made. We have read and taken it into account in full but have only highlighted some of the points below.
81. In summary, Ms Stretton's argument is that there is a risk of catastrophic harm to public confidence that the May 2019 elections were free and fair if they only see the heavily redacted conclusions of the Report. Councillor Dudley's speech had a severe impact on community relations and impacted on a closely fought local election. Free and fair elections are our most fundamental democratic value.
82. The Report redacts virtually all the reasoning. It is in the public interest for the public to know why the conclusions were reached and for elections to be seen to be free and fair.
83. The evidence shows that the identity of the particular officer was in the public domain in the relevant context. The Commissioner does not apply the 'realistically accessible' test from her own guidance.
84. The public interest in disclosure is increased because it is important to understand Mr. Lingard's findings which cannot be reconciled with the evidence.
85. The public interest argument for disclosure is not simply generic. There is a credible suspicion of wrongdoing. The Commissioner should have placed weight on the public interest in presenting a 'full picture' of how the safety and integrity of a democratic election was maintained or otherwise. The public interest in disclosure would outweigh the expectation of anonymity of one officer. In any event no participants were promised anonymity and none should have been expected in the context of the serious matter of free and fair elections.
86. There should be no chilling effect in relation to senior officers who should be expected to be candid in Code of Conduct investigations without the promise of anonymity.
87. The Commissioner failed to take account of the wrongdoing of the Monitoring Officer or other potential breaches of laws.
88. **Birkett v DEFRA** should not apply where irrelevant exemptions are relied on.
89. On the balance of probability officers were not offered confidentiality at the time of the interviews. No senior officer should have any reasonable expectation of anonymity or confidentiality in this situation. In any event the public interest in disclosure would outweigh this.
90. The Commissioner did not address Ms Stretton's concerns about the independence of the DPO.

## Evidence

91. We have read and taken account of an open and a small closed bundle of documents. Although a witness attended on behalf of Ms Stretton, he did not give evidence.
92. In accordance with the guidance in Browning, the tribunal records that the closed bundle is made up of the withheld information and an unredacted version of the letter to the Commissioner dated 15 October 2021. Disclosure would reveal the contents of the withheld information and therefore it is necessary to have a closed bundle to avoid defeating the purpose of the proceedings.

## Legal framework

### *Personal data*

93. The relevant parts of s 40 of FOIA provide:

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if –
  - (a) It constitutes personal data which does not fall within subsection (1), and
  - (b) either the first, second or the third condition below is satisfied.
- (3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act –
  - (a) would contravene any of the data protection principles, or..

94. Personal data is defined in s 3(2) of the Data Protection Act 2018 (DPA) as:

Any information relating to an identified or identifiable living individual

95. The definition of "personal data" consists of two limbs:

- i) Whether the data in question "relate to" a living individual and
- ii) Whether the individual is identified or identifiable from those data.

96. The tribunal is assisted in identifying 'personal data' by the cases of Ittadieh v Cheyne Gardens Ltd [2017] EWCA Civ 121; Durant v FSA [2003] EWCA Civ 1746 and Edem v Information Commissioner [2014] EWCA Civ 92, from which the following principles are drawn.

97. In Durant, Auld LJ, giving the leading judgment said at [28]:

Mere mention of the data subject in a document held by a data controller does not necessarily amount to his personal data. Whether it does so in any particular instance depends on where it falls in a continuum of relevance or proximity to the data subject as distinct, say, from transactions or matters in which he may have been involved to a greater or lesser degree. It seems to me that there are two notions that may be of assistance. The first is whether the information is biographical in a significant sense, that is, going beyond the recording of the putative data subject's involvement in a matter or an event that has no personal connotations, a

life event in respect of which his privacy could not be said to be compromised. The second is one of focus. The information should have the putative data subject as its focus rather than some other person with whom he may have been involved or some transaction or event in which he may have figured or have had an interest, for example, as in this case, an investigation into some other person's or body's conduct that he may have instigated. In short, it is information that affects his privacy, whether in his personal or family life, business or professional capacity.

98. In Edem Moses LJ held that it was not necessary to apply the notions of biographical significance where the information was plainly concerned with or obviously about the individual, approving the following statement in the Information Commissioner's Guidance:

It is important to remember that it is not always necessary to consider 'biographical significance' to determine whether data is personal data. In many cases data may be personal data simply because its content is such that it is 'obviously about' an individual. Alternatively, data may be personal data because it is clearly 'linked to' an individual because it is about his activities and is processed for the purpose of determining or influencing the way in which that person is treated. You need to consider 'biographical significance' only where information is not 'obviously about' an individual or clearly 'linked to' him.

99. The data protection principles are set out Article 5(1) of the GDPR and s 34(1) DPA. Article 5(1)(a) GDPR provides that personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

100. Article 6(1) GDPR provides that processing shall be lawful only if and to the extent that at least one of the lawful bases for processing listed in the Article applies.

101. The only potentially relevant basis here is article 6(1)(f):

Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which requires protection of personal data

102. The case law on article 6(1)(f)'s predecessor established that it required three questions to be answered, which we consider are still appropriate if reworded as follows:

1. Is the data controller or a third party pursuing a legitimate interest or interests?
2. Is the processing involved necessary for the purposes of those interests?
3. Are the above interests overridden by the interests or fundamental rights and freedoms of the data subject?

103. S 40(3A) is an absolute exemption and therefore the separate public interest balancing test under FOIA does not apply.

*Information provided in confidence*

104. S 41 provides, so far as relevant:



*S 41 – Information provided in confidence*

- (1) Information is exempt information if –
- (a) it was obtained by the public authority from any other person (including another public authority), and
  - (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
105. The starting point for assessing whether there is an actionable breach of confidence is the three-fold test in **Coco v AN Clark (Engineers) Ltd** [1969] RPC 41, read in the light of the developing case law on privacy:
- (i) Does the information have the necessary quality of confidence?
  - (ii) Was it imparted in circumstances importing an obligation of confidence?
  - (iii) Is there an unauthorised use to the detriment of the party communicating it?
106. The common law of confidence has developed in the light of Articles 8 and 10 of the European Convention on Human Rights to provide, in effect, that the misuse of ‘private’ information can also give rise to an actionable breach of confidence. If an individual objectively has a reasonable expectation of privacy in relation to the information, it may amount to an actionable breach of confidence if the balancing exercise between article 8 and article 10 rights comes down in favour of article 8.
107. S 41 is an absolute exemption, but a public interest defence is available to a breach of confidence claim. Accordingly there is an inbuilt balancing of the public interest in determining whether or not there is an actionable breach of confidence. The burden is on the person seeking disclosure to show that the public interest justifies interference with the right to confidence.

**The role of the tribunal**

108. 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**

109. The issues for the tribunal to determine are:

***Section 40(2)***

- 109.1. Does the information relate to an identified or identifiable living individual?
- 109.2. Is the data controller or a third party pursuing a legitimate interest or interests?
- 109.3. Is the processing involved necessary for the purposes of those interests?
- 109.4. Are the above interests overridden by the interests or fundamental rights and freedoms of the data subject?

#### ***Section 41***

- 109.5. Is any of the disputed information confidential within the meaning of s.41(1) FOIA?
- 109.6. For any information which is confidential, would disclosure be in the public interest such that it would not amount to an actionable breach of confidence?

#### **Submissions**

110. The claimant submitted a skeleton argument and the Commissioner submitted a short response. We have taken both these into account, but it is not necessary to repeat all the arguments here.
111. Mr. Hill made oral submissions on behalf of Ms Stretton, who was unable to attend for unavoidable personal reasons. The oral submissions expanded upon the grounds and arguments already set out above. The tribunal has taken those submissions into account but it is not necessary to set them out here in detail. Mr. Hill's fundamental points were as follows:
  - 111.1. The information was not confidential. The evidence suggests that no promises of confidentiality were given. There could have been no reasonable expectation of confidentiality/anonymity by senior officers in this context.
  - 111.2. Given the fundamental importance of the underlying issues and the evidence that suggests wrongdoing, there is a very strong public interest in seeing the full Report, so that the public can understand how Richard Lingard reached his conclusions.
  - 111.3. This public interest/legitimate interest would, in any event, successfully defeat an action for breach of confidence and override any interests or fundamental rights and freedoms of the data subject(s).

#### **Discussion and conclusions**

##### ***The withheld information***

112. The latest version of the Report that has been released to Ms Stretton is at p D328. The tribunal has divided the information that has not been released into the following broad categories:

**Category 1: Substantive information relating to the senior Council Officer**

Para 11.1-11.7 (primarily Richard Lingard's reasoning)

Para 12.2 -12.5 (primarily Richard Lingard's conclusions)

**Category 2: Name of the senior Council Officer**

**Category 3: The comments/version of events of Russell O'Keefe**

Para 6.3 – 6.51

**Category 4: Richard Lingard's contact details**

**Category 5: Names of complainants**

Para 2.1

**Category 6: Names of others outside the Council**

**Category 7: Names of others inside the Council**

*Personal data s 40*

*Does the information relate to an identified or identifiable living individual?*

113. In relation to all the withheld information we find that it relates to an identified or identifiable living individual either because it is that individual's name, contact details, or in the sense that it is biographical in a significant sense because it relates to a complaint about the senior Council Officer's conduct.

*Is Ms Stretton pursuing a legitimate interest?*

114. We accept that Ms Stretton is pursuing a legitimate interest. The broader legitimate interest is that elections should be and should be seen to be free and fair. Underlying this is a more specific legitimate interest in understanding the findings and conclusions set out in the Report.
115. On the face of the facts set out in the Report, the emails between the Islamic Trust and the Council before the meeting and the transcript of the speech there is, in our view a plausible basis for Ms Stretton's suspicion of wrongdoing. Mr. Lingard concluded in his Report that there was no deliberate wrongdoing on the part of the Council officers involved. Given the plausible basis for the suspicion of wrongdoing on the basis of objective evidence contained in the Report, there is a legitimate interest in a full understanding of Richard Lingard's reasons for reaching his conclusion.

*Is the processing involved necessary for the purposes of those interests?*

*Is processing necessary – categories 4, 5, 6 and 7*

116. In relation to categories 4, 5, 6 and 7 of the withheld information, we do not accept that it is reasonably necessary for the information to be released for the purposes of the legitimate interest.
117. There is no value for this particular legitimate interest in knowing Richard Lingard's contact details (category 4) or the names of the individuals at the Mosque (category 6). It is not necessary to know which individuals made the complaints (category 5). None of these individuals are public servants in public facing roles. Their conduct is not the focus of the Report.
118. On that basis we conclude that the Council was entitled to withhold those categories of information.
119. In relation to the other council officers, category 7, there is one instance where Duncan Sharkey's name has been redacted. The tribunal assumes that this is in error, because all other instances of his name are included.
120. The other redacted name(s) is/are junior officer(s). They are not the individuals into whom the investigation was commissioned. They are not, as far as the tribunal is aware, senior officials or in outward facing roles. In those circumstances the tribunal concludes that it is not reasonably necessary for their name or names to be released for the purposes of the legitimate interest. On that basis we find that the Council was entitled to withhold the information in category 7.

*Is processing necessary – categories 1 and 2*

121. The tribunal has determined that the disclosure of the information in categories 1 and 2 is reasonably necessary for the purposes of the legitimate interests pursued by Ms Stretton.
122. The Council has stated that a decision notice would ordinarily have been published on the Council's website if Simon Dudley had not resigned before a decision was made.
123. However, it is important to note that the scope of the investigation was not simply to investigate any breaches of code of conduct by Simon Dudley. It was also to investigate whether there were any breaches by 'unnamed council officers'. This is clear from the title and the content of the Report. It is also clear from the Report that the conduct of 'unnamed officers' under question was the conduct of the senior Council Officer.

124. We find that this was not conducted as a normal corporate complaint nor an internal disciplinary investigation into the conduct of the senior Council Officer. The complaint was dealt with by the monitoring officer. The monitoring officer instructed an independent solicitor to carry out an investigation into the senior Council Officer's conduct. The investigation was conducted in the same manner and at the same time as an investigation into a breach of the Councillor's Code of Conduct by the Leader of the Council.
125. Once Simon Dudley had resigned as a Councillor, the monitoring officer stated that she 'was unable to take the code of conduct complaint forward as a decision' (email from the monitoring officer to Ms Stretton dated 3 October 2019).
126. The monitoring officer stated in the same email that:
- I have however asked Richard to do a report based on what he had been told by interviewees, including Lynne. This will thoroughly deal with officer involvement with the matters complained about under the Code of Conduct by you and Lynne, and others. The report is at a draft stage at the moment I will circulate it among those interviewed to check for any inaccuracies, then we need to consider how we should release the results of that investigation to you and other complainants so that it complies with the requirements of Data Protection rules. I will contact you soon with a formal response to your complaint.
127. The 'formal response' was sent by email to Ms Stretton, and other complainants, on 15 November 2019. In that email the monitoring officer states that once Simon Dudley resigned, Mr. Lingard was unable to continue with regard to the Code of Conduct complaints made against him and that 'Mr. Lingard was therefore instructed to pursue the complaints relating to any officer role with regard to Cllr Dudley's speech to the Mosque'.
128. The email briefly summarises the findings of the Report and then sets out its conclusion as follows:
- The conclusion in the report found no evidence whatsoever that officers knew that Cllr. Dudley wished to use the document for election purposes, nor that there was any wrong doing in anything connected with Cllr. Dudley's election speech that day. Mr. Lingard was unable to make any conclusion about whether or not Cllr. Dudley would have breached the Code of Conduct, because he was unable to interview him to obtain the information he needed.
- I would like to thank you for your patience in getting a response to your complaint.
129. We do not accept the Council's assertion in the letter dated 15 October 2020 that Mr. Lingard's views were imparted to the Monitoring Officer to assist her in deciding whether officers breached the code of conduct. It is clear from this email that Richard Lingard's conclusions have finally determined the complaints about officer conduct.
130. There is no suggestion that the monitoring officer had any residual decision making role in relation to the complaint about officer conduct once the Report was received. She simply relayed its conclusions to the complainants. In these

particular circumstances this was not simply an investigatory report on the basis of which the monitoring officer, or other appropriate person within the Council, could make a decision to either dismiss or take forward the complaint.

131. The fact that the Report was the final determination is also supported by the file note of a call from the Council dated 26 January 2021 which records that the Council assert that allegations were 'not upheld' in the Report.
132. The senior Council Officer is a very senior officer within the Council. His precise title is set out in the closed annex. He is in a public facing role. Although unnamed in Ms Stretton's complaint, the Report makes clear that he is the officer who is responsible for the conduct about which she complains. Individuals in this type of role must be accountable to the public for their actions, particularly where the fairness of an election is said to have been affected. In those circumstances such individuals should expect public scrutiny.
133. The Report, in these particular circumstances, was, in practice, the final determination of the complaints about this particular officer's conduct. The Report, in summary, concluded that there was no deliberate wrongdoing on his part. However, four of the five 'final conclusions' are redacted. About half of the 'considerations' in relation to the senior Council officer, which explain how the conclusions were reached, have been redacted. It is impossible without those sections of the Report to fully understand what Richard Lingard concluded in relation to the senior Council Officer and why he reached the conclusions that he did.
134. On this basis we conclude that it is reasonably necessary for the purposes of the legitimate interests set out above for the name of the senior Council Officer and the reasoning and the conclusions in relation to that officer to be disclosed. We find that the legitimate interests amount to a pressing social need for disclosure and we find that this need could not be achieved without disclosing this information.

*Are the above interests overridden by the interests or fundamental rights and freedoms of the data subject? (categories 1 and 2)*

135. In assessing the weight to be attached to the legitimate interests we take account of the fundamental importance in a democracy of elections being and being seen to be free and fair. To protect this principle we accept Ms Stretton's argument that it is important that elected members and officers of the Council not only comply with the rules and guidance intended to protect the fairness of elections but are seen to be doing so.
136. The summary of events in the Report includes the following:
  - 136.1. Simon Dudley was making an electioneering speech;

- 136.2. Although he was obviously campaigning he said on a number of occasions that he was addressing the audience in his capacity as Leader of the Council;
- 136.3. He was in possession of and using information, in the form of the draft option agreement, that was not and would not have been available to anyone outside the Council;
- 136.4. Simon Dudley's statement to the Mosque that the Council was negotiating with the Ivy Leaf Club was factually incorrect in a number of respects.
137. Further the Report records the evidence of Duncan Sharkey, Managing Director of the Council, as follows:
- He emphasised that SD's visit to the Mosque was clearly a political event and that this should have been obvious and sounded alarm bells. There is no reason why in operational terms the dispatch of the draft could not have been delayed until after the meeting or better still until after the elections.
138. Further, we note that the draft document was requested by the Mosque in an email dated 24 April 2019 which explicitly stated that the document 'needs to be finalised by Friday 26<sup>th</sup> April when Simon addresses our community'.
139. In the light of all the evidence before us but in particular in the light of the above, we accept Ms Stretton's argument that the facts as recorded in objective documentation and in the Report raise serious questions about the behaviour of Simon Dudley and the senior Council Officer who sent the agreement to the Mosque the day before the meeting.
140. An independent Report has been carried out and has reached conclusions. At present, only one of the final conclusions has been made public. Approximately half of the considerations have been redacted.
141. In these circumstances there is very clear and weighty legitimate interest in understanding, in relation to the senior Council Officer, what the conclusions were and how they were reached.
142. We then consider whether those interests are outweighed by the interests of the officer.
143. The seriousness of the consequences of disclosure for the officer will be affected by the extent to which the withheld information is already in the public domain. Our reasoning and conclusions on the extent to which the withheld information is in the public domain and the effect of this on the interests of the officer is in the closed annex, on the basis that it would defeat the purposes of the appeal if included in the open decision. In summary we have concluded that some but not all of the information is in the public domain and that this reduces, to some extent, the negative impact of the release of the remaining information.

144. We must consider the extent to which disclosure would be within the reasonable expectations of the officer. The Council's assertions as to what the officers' expectations were are set out below:

At the time of providing their evidence to Mr Lingard, officers were not aware that any evidence provided in confidence may be later imparted to the world at large as part of a freedom of information process and had certainly not given their consent for this purpose... the information provided was of a sensitive nature (evidence supplied as part of a code of conduct investigation concerning the Leader of the Council and the information was provided in confidence' (*Council's response to request for internal review dated 28 August 2020*))

Mr Lingard was commissioned to carry out a report into complaints about the former Leader of the council in which evidence provided by officers as part of the investigation was provided in a confidential context. It was understood that when officers were entering into discussions with Mr Lingard the evidence they were providing would be treated confidentially and for no other purpose than helping to inform the outcome of Mr. Lingard's investigations... Officers were made to understand that their evidence would be treated confidentially and would be used for the sole purpose of the investigation. (*Council's response to request for internal review dated 28 August 2020*)

Both the contents of part 6 and part 7 concern information provided by [redacted] to Mr Lingard to assist in his private investigation into the code of conduct concerns. (*Council's letter to the Commissioner dated 15 October 2020*)

As previously explained in my letter of 28 August 2020 all individuals entering into conversations with Mr. Lingard provided evidence that they were led to believe would be treated confidentially and for no other purpose than helping to inform the outcome of Mr Lingard's investigations (*Council's letter to the Commissioner dated 15 October 2020*)

Officers were made to understand that their evidence would be treated confidentially and would be used for the sole purpose of the investigation. (*Council's letter to the Commissioner dated 15 October 2020*)

A number of the data subjects have expressed concern that their names should be disclosed when consent for disclosure was sought, and furthermore, would not have expected their names to be made public in such a context. (*Council's letter to the Commissioner dated 15 October 2020*)

145. There is no evidence that those interviewed were told that their evidence or the Report would be confidential. The assertions by the Council are that the officers were 'made to understand that' or 'led to believe that'. There is no evidence as to how they were made to understand or led to believe that the evidence would be confidential. There is no record in the Report of what interviewees were told. There is no evidence from the officer as to what he was told and when. Further although the Council states that all individuals entering into conversations with Mr. Lingard were led to believe that the evidence would be treated confidentially, this is not the case. Ms Moore and Councillor Jones have confirmed that they were not offered nor did they expect confidentiality.
146. The purpose of the interview of this particular officer was not for the sole purpose of an investigation into the conduct of Simon Dudley. It was also for



the purpose of an investigation into his conduct, which was to be finally determined by the outcome of the Report. We think it unlikely in those circumstances that the officer would have been told that his evidence or the conclusion would be kept confidential. We have already set out the fact that the senior Council Officer concerned is a very senior officer in a public facing role. He must expect to be accountable to the public for his actions, particularly where the fairness of an election is said to have been affected.

147. We take account of the fact that the conclusion of the Report was that there was no deliberate wrongdoing. We do not accept that this means that there would be a reasonable expectation that this conclusion would be disclosed without full disclosure of the other final conclusions of the Report and the basis on which those conclusions were reached.
148. In those circumstances we conclude that the officer would have had no reasonable or legitimate expectation that (a) his or her identity would not be disclosed or (b) the reasoning and conclusions of the investigator on the officer's conduct would not be disclosed, even if the overall conclusion reached was that there was no deliberate wrongdoing on the officer's part.
149. We have considered the question of lack of consent and the potential for any potential harm or distress to the particular officer in the closed annex. We have concluded that the release of the information will not cause any significant harm or distress.
150. Taking all the above into account, we conclude that the legitimate interest outweighs the interests of the individual.

Is processing necessary - category 3

151. We have set out our conclusions on this matter in the closed annex, because to do otherwise would defeat the purpose of the proceedings. In summary we have concluded that disclosure is necessary for the purposes of the legitimate interests.

Are the above interests overridden by the interests or fundamental rights and freedoms of the data subject? (category 3)

152. We have set out our conclusions on this matter in the closed annex, because to do otherwise would defeat the purpose of the proceedings. In summary we have concluded that the above interests are not overridden by the interests or fundamental rights and freedoms of the data subject.

*Was disclosure lawful, fair and transparent?*

153. We must then go on to consider whether disclosure would be generally lawful, fair and transparent. Taking into account all the matters set out above, we conclude that it would be.
154. We conclude that the Council was not entitled to withhold the information in categories 1, 2 and 3 under s 40(2).

### *Confidential information – s 41*

155. It is not necessary to consider s 41 in relation to information which we have held the Council is entitled to withhold under s 40. We have therefore considered s 41 only in relation to information in categories 1, 2, and 3.
156. In summary we have concluded that the information is not confidential within the meaning of s 41(1). However, we have in any event, gone on to conclude that even if the information were confidential, disclosure would be in the public interest such that it would not amount to an actionable breach of confidence.

### *Categories 1 and 2*

157. The information was provided to the authority to the Council by another person, Richard Lingard.
158. We consider first whether the information was imparted in circumstances importing an obligation of confidence.
159. Although the entire Report is labelled ‘private and confidential’ we do not accept that this necessarily means that it was imparted in circumstances importing an obligation of confidence. We note that large parts of the Report have already been disclosed. As set out above, this Report was the final determination of the complaint about the officer’s conduct. It was not advice to the monitoring officer upon which she intended to reach her own decision on any breach by the officer. In those circumstances we do not accept that the Report can be considered to be imparted in circumstances importing an obligation of confidence.
160. In case we are wrong in this, we have gone on below to consider the question of whether or not disclosure would be in the public interest such that a breach of confidence would not be actionable.
161. We have considered also whether there was any express or implied obligation of confidence in relation to the information given to Richard Lingard by the senior Council Officer. For the reasons set out above under s 40 on the issue of legitimate or reasonable expectations we consider that there was not. In case

we are wrong on this, we have gone on to consider the question of whether or not disclosure would be in the public interest such that a breach of confidence would not be actionable.

Would disclosure be in the public interest such that it would not amount to an actionable breach of confidence?

162. If we had concluded that the information was provided in circumstances that imported an obligation of confidence, we would have concluded that the public interest in disclosure was sufficient to justify breaching the confidence owed to either Mr. Lingard or the officer in question.
163. We have taken into account the fact that this is not the application of the usual public interest test to a qualified exemption. We are considering if the public interest in disclosure is sufficient to outweigh the public interest in maintaining the confidence.
164. In terms of the level of public interest in disclosure, we take into account the matters set out under s 40 above in our consideration of the legitimate interests. On this basis we conclude that there is a weighty public interest in disclosure.
165. In terms of the interest in maintaining the duty of confidence, we take note of the inherent weight in the wider public interest in maintaining confidences.
166. We take into account the Council's argument of a 'chilling effect', but we note that the senior Council Officer has given information in relation to an investigation which was, in part, about his own conduct, and that the decision is accordingly unlikely to impact upon the willingness of officers to give information in relation to investigations about the conduct of others.
167. Further we note that this was an unusual situation, where the independent solicitor reached the final decision rather than simply provided an investigatory report upon which the monitoring officer acted. It is therefore unlikely to have any ongoing impact on officers' behaviour.
168. We also note that the allegations were not upheld, in the sense that there was a finding that there was no deliberate wrongdoing. However, given the seniority of the officer involved, the nature of the allegations and all the factors considered under s 40 above, we consider that impact of disclosure on the officer of the information does not weigh heavily in the balance.

*Category 3*

169. For the reasons set out in the closed annex, the Tribunal has reached the same conclusion in relation to the evidence provided by Russell O'Keefe.

## S 36

170. The Council relies on the alternative on s 36. We have given the Commissioner and Ms Stretton the opportunity to provide further submissions before we reach a decision on the whether or not the information can be withheld under s 36.

### **Other matters raised in the notice of appeal**

171. It is not necessary for us to determine the other matters raised in the grounds of appeal which are either not relevant to the issues we have to determine, or outside our statutory remit.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 14 October 2021