IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN

(1) GOOD LAW PROJECT LIMITED
(2) MOLLY SCOTT CATO MEP

Claimants

-and-

(1) SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION
(2) CHANCELLOR OF THE EXCHEQUER

Defendants

CLAIMANTS' STATEMENT OF FACTS AND GROUNDS IN SUPPORT OF CLAIM FOR JUDICIAL REVIEW

List of essential reading for determining application for permission

The Statement of Facts and Grounds (this document)
Witness statements of:

(i) Jolyon Maugham QC
(ii) Molly Scott Cato MEP
(iii) Maurice Frankel
(iv) Alasdair Smith
(v) Swati Dhingra

Acknowledgements of Service and Summary Grounds of Resistance (when available)

List of abbreviations and references

Good Law Project Limited	"the GLP"
Molly Scott Cato MEP	"MSC"
Jolyon Maugham QC	"JM"
Maurice Frankel	"MF"
Alasdair Smith	"AS"
Swati Dhingra	"SD"
Secretary of State for Exiting the European Union	"the DEXEU Secretary"
Chancellor of the Exchequer	"the Chancellor"
Information Commissioner	"the Commissioner"
Freedom of Information Act 2000	"FOIA"
European Convention on Human Rights	"ECHR"
Human Rights Act 1998	"HRA"
The UK's proposed departure from the EU	"Brexit"

References to witness statements are by initials and paragraph numbers: e.g. MSC §1 is paragraph 1 of Molly Scott Cato's statement.

NATURE OF THE CLAIM FOR JUDICIAL REVIEW AND RELIEF SOUGHT

1. This case is about the Claimants' attempt to obtain disclosure from the Defendants of information that is of very considerable public importance in informing public debate about the current Brexit negotiations. The Defendants have refused to make any public disclosure whatsoever of the requested information. The Claimants challenge that refusal by way of judicial review.

2. By letters dated 12th October 2017, the Claimants sought disclosure from the Defendants of the following:

(a) the then most up-to-date versions of certain studies – focussing on 58 sectors of the economy – about the likely impacts of Brexit, to which the Government has made public reference on a number of occasions ("the Sectoral Studies"); and

(b) the then most up-to-date version of a report prepared by HM Treasury, comparing the predicted economic detriment of Brexit with the predicted economic benefits of alternative free trade agreements ("the HM Treasury Report").

3. By materially identical refusal letters dated 30th October 2017 (on behalf of the Chancellor) and 31st October 2017 (on behalf of the DEXEU Secretary), the Defendants:

(a) in relation to the Sectoral Studies, confirmed that they held information falling within the scope of the request, but refused to disclose any part of that information; and

(b) in relation to the HM Treasury Report, refused either to confirm or deny whether they held any information falling within the scope of the request.

4. In subsequent correspondence (including in their response to letters before claim), the Defendants maintained this position. The contents of the refusal letters and the subsequent correspondence are explained in more detail below.

5. The Claimants seek judicial review of the decisions conveyed by the letters of 30th October 2017 and 31st October 2017.

6. The Claimants seek the following relief:

(i) A declaration that the decision of each Defendant to refuse to disclose the Sectoral Studies was unlawful;

(ii) A declaration that the decision of each Defendant to refuse to confirm or deny whether they held the HM Treasury Report was unlawful;

(iii) An order requiring each Defendant to confirm whether the HM Treasury Report exists, and if so whether they hold it;

(iv) An order requiring the Defendants to disclose the Sectoral Studies, and (if held by either or both of them) the HM Treasury Report; or

(v) Alternatively to (iv), an order requiring the Defendants to disclose the Sectoral Studies and (if held by either or both of them) the HM Treasury Report, subject to the omission of specified information that the Court considers can lawfully be withheld by the Defendants.

FACTUAL AND LEGAL BACKGROUND

The decision to leave the EU

7. On 23rd June 2016, pursuant to the European Union Referendum Act 2015, a referendum was held in the UK on the following question:

> *Should the United Kingdom remain a member of the European Union or leave the European Union?*

The outcome of the referendum was that a narrow majority voted in favour of leaving the EU. Just under 52% of those voting voted to leave; just over 48% voted to remain.

8. The process whereby a Member State can leave the EU is governed by Article 50 of the Treaty on European Union ("TEU"), which materially provides as follows:

> *1. Any member state may decide to withdraw from the Union in accordance with its own constitutional requirements.*

2. A member state which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that state, setting out the arrangements for its withdrawal ...

3. The Treaties shall cease to apply to the state in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the member state concerned, unanimously decides to extend this period. ...

9. In *R (ota Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5 the Supreme Court considered the process by which the UK could invoke Article 50. By a majority, the Supreme Court held that an Act of Parliament was required to authorise ministers to give notice under Article 50 of the UK's intention to withdraw from the EU.

10. Subsequently, Parliament passed the European Union (Notification of Withdrawal) Act 2017. On 29th March 2017, the Prime Minister wrote to Donald Tusk (President of the European Council) to notify him of the UK's intention to leave the EU. The 2-year period prescribed by Article 50(3) of the TEU will therefore expire on 29th March 2019, unless that period is extended in the manner prescribed by Article 50(3). Negotiations between the UK and the EU as to the terms on which the UK will leave the EU are currently under way. Both sides anticipate that the negotiations will conclude on or around October 2018 (see JM, §§5, 64). In parallel, a public and parliamentary debate is taking place as to the terms on which the UK could leave the EU. This will lead to a parliamentary vote on the terms that emerge from the negotiations.

The Sectoral Studies and the HM Treasury Report

11. The Sectoral Studies have been referred to in public statements on numerous occasions, and in various ways, some of which are difficult to reconcile with one another. The first reference identified in the Claimants' evidence was in an exchange before the House of Lords EU Select Committee on 4th July 2016. An account and analysis of the various public references relied on by the Claimants is at JM, §§25-35. Despite the various inconsistencies in the way in which the Sectoral Studies have been described, they have been repeatedly described as the most comprehensive body of data and analysis about the likely impacts of Brexit: JM, §35.

12. The HM Treasury Report has been publicly referred to by two individuals: Charles Grant (Director of the Centre for European Reform, who is a highly respected commentator in this field), and James Blitz (writing in the *Financial Times*). Details of these references are at JM, §36. There is no reason to believe that these references are incorrect, and the document is likely to provide very useful data and analysis about the likely economic effect of Brexit: JM, §36.

The Claimants' disclosure request and the Defendants' refusal letters

13. On 12th October 2017 both Claimants wrote to the DEXEU Secretary and the Chancellor, seeking disclosure of the Sectoral Studies and the HM Treasury Report. The letters made it plain that the request was not made under FOIA. Instead, the Claimants asked the Defendants to exercise their common law powers to disclose the documents. The letters of request also made it clear that the Claimants were exercising their rights under Article 10 of the ECHR to receive and impart information and ideas without interference by any public authority. The letters explained that any refusal of the request would constitute an interference with the

Claimants' Article 10 rights, and that such interference could be lawful only where it was necessary and proportionate, in accordance with Article 10(2) ECHR.

14. As indicated above, refusal letters on behalf of the Defendants were provided in materially identical terms on 30th October 2017 (in the case of the Chancellor) and 31st October 2017 (in the case of the DEXEU Secretary). Despite the express terms of the letters of request, the refusal letters purported to respond to the requests under FOIA.

15. In relation to the Sectoral Studies, both Defendants confirmed that they held information falling within the scope of the requests. The Defendants therefore accepted both that the Sectoral Studies existed, and that they held copies of them (there was no suggestion that either Defendant held only *part* of the Sectoral Studies). However, the Defendants withheld the Sectoral Studies in their entirety. They purported to rely on various exemptions to the right of disclosure under FOIA, namely: section 27(1)(b) (prejudice to relations with any international organisation or international court); section 27(1)(c) (prejudice to the interests of the UK abroad); section 27(1)(d) (prejudice to the promotion or protection by the UK of its interests abroad); section 29(1)(a) (prejudice to the economic interests of the UK or any part of it); section 29(1)(b) (prejudice to the financial interests of any administration in the UK); and section 35(1)(a) (information relating to the formulation and development of government policy).

16. Under FOIA, each of the exemptions relied upon (apart from section 35(1)(a)) requires that disclosure would or would be likely to prejudice the specified interests. For all of the exemptions relied upon, even if the exemption was engaged, the information would be exempt from disclosure only if the public interest in maintaining the exemption outweighed the public interest in disclosure (see FOIA section 2(2)(b)).

17. In relation to the HM Treasury Report, both Defendants refused to confirm or deny whether they held the Report. They asserted that the duty to confirm or deny whether the Report was held – under FOIA section 1(1)(a) – did not arise, again purportedly relying on various FOIA exemptions.

18. The Defendants asserted that confirming or denying the existence of the Report would in itself prejudice: relations between the UK and any other state; relations between the UK and any international organisation or international court; the interests of the UK abroad; the promotion or protection by the UK of its interests abroad; the economic interests of the UK or any part of it; or the financial interests of any administration in the UK. Hence they asserted that any duty to confirm or deny whether the information was held did not arise, because of section 27(4) and section 29(2). They also relied on FOIA section 35(3), asserting that the requested information was (or would be, if held) exempt information under FOIA section 35(1).

19. Under FOIA, each of these exemptions from the duty to confirm or deny – other than that under section 35(3) – requires that confirmation or denial would or would be likely to prejudice the relevant interests. All of these exemptions (including that under FOIA section 35(3)) would apply only if the public interest in maintaining the exclusion of the duty to confirm or deny outweighed the public interest in confirming whether or not the public authority held the information: FOIA section 2(1)(b).

20. For the avoidance of doubt, although the Claimants have explained above the nature of the Defendants' purported reliance on FOIA, the Claimants do not accept that the Defendants were entitled to address their requests by reference to FOIA. The Claimants return to this issue in more detail below.

Subsequent Parliamentary developments

21. Following the refusal letters, there were further Parliamentary developments in relation to the Sectoral Studies. In referring to these matters the Claimants do not ask the Court to take any view on matters that are properly for Parliament (such as whether Ministers have complied with a Parliamentary resolution). Rather, these matters are referred to in order to explain why – despite the Parliamentary developments – it has been necessary for the Claimants to bring this claim.

22. On 1st November 2017 a motion was put to the House of Commons calling for the Sectoral Studies to be disclosed to the Exiting the European Union Select Committee ("the Committee"). The motion was passed unanimously and covered in the press. The obvious question that arose was whether as a result of the motion the Sectoral Studies would be made public, without the need for further action by the Claimants.

23. Hence on 6th November 2017 the Claimants wrote to the Defendants asking four questions:

    (i) Which of the sectoral studies does the government now intend to disclose in response to the House of Commons vote?

    (ii) In addition to the sectoral studies, does the government intend to disclose the [HM Treasury Report]?

    (iii) Will the government's disclosure be confined to the [Committee], or does it now intend to disclose the sectoral studies and the [HM Treasury Report] more widely?

(iv) Does the government intend to redact any part of the sectoral studies or the [HM Treasury Report] prior to disclosing them?

24. The Defendants replied on 14th November 2017, in materially identical terms. They maintained their refusal to confirm or deny the existence of the HM Treasury Report. In relation to the Sectoral Studies, they referred to a written Parliamentary statement made by the DEXEU Secretary on 7th November 2017. He stated that the Government intended to disclose relevant documents to the Committee. He said that:

> *[t]he sectoral analysis is a wide mix of qualitative and quantitative analysis, contained in a range of documents developed at different times since the referendum*

and that the Government was committed to collating the information in a way that was accessible and informative. No further information was given about the nature of the information to be disclosed; nor was any indication given about the timeline for such disclosure, any conditions or constraints that would be attached to such disclosure, or whether such disclosure would extend to other members of Parliament or to the public.

25. The Claimants then sent letters before claim to both Defendants on 20th November 2017. The Defendants replied on 5th December 2017, maintaining their refusal to disclose the requested information and asserting that the Claimants' request should be dealt with through the FOIA process. The Claimants set out below, where necessary, their position in relation to the points made by the Defendants.

LEGAL BASIS OF CLAIM

A. FOIA, the common law, and Article 10 ECHR

26. The starting point is that the Claimants' requests on 12th October 2017 were expressly not made under FOIA. Instead, the Claimants relied on the Defendants' common law

powers to disclose the information, and on the Claimants' rights under Article 10 ECHR.

27. As a matter of principle, the Defendants must have a common law power to disclose the information, regardless of FOIA. It could not possibly be suggested that, if FOIA did not exist, the Defendants would have no power to disclose the Sectoral Studies or the HM Treasury Report. Any such suggestion would be self-evidently absurd. Likewise, there would clearly be a power to disclose the information in response to a request that did not comply with one of the essential elements of a FOIA request (see FOIA section 8), e.g. a request that was made orally or without giving the requester's name. Given the existence of a common law power to *disclose* information, it must equally be open to a requester to *ask* that information be disclosed under that power, rather than seeking to exercise his right of access to information under FOIA. The common law power to disclose information must be exercised in accordance with fundamental public law principles. The exercise of that power must be both lawful and rational.

28. As a matter of authority, the points made above are supported by the decision of the Supreme Court in *Kennedy v Charity Commission* [2014] UKSC 20. The Court recognised that the powers of public authorities to disclose information to the public, and the rights of the public to seek access to information, were not exhaustively specified by FOIA, and that a common law right of access to information would exist alongside any access right conferred by FOIA: see *Kennedy* at paragraphs 6-8, 35-42, 106, 139-140, 150, and 155-156. The Court referred in this regard to FOIA section 78, which provides that nothing in the Act is to be taken to limit the powers of a public authority to disclose information held by it.

29. Further, the refusal of the request interfered with the Claimants' right under Article 10(1) ECHR to receive and impart information and ideas without interference by any public authority. Article 10 provides (emphasis added):

> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas*

without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The Claimants rely on the judgment of the European Court of Human Rights in *Magyar Helsinki Bizottság v Hungary* (Application no. 18030/11; judgment of 8 November 2016). In that case, the Court agreed that the public authority's refusal to disclose requested information was an interference with the requester's rights under Article 10(1) ECHR.

30. By application of *Bizottság* (see in particular paragraphs 158-170), the same would be true here. The purpose of the Claimant's request is to enable them to exercise their rights to receive and impart information and ideas to others: the Claimants make this request in order to facilitate a vital public debate. The information sought is of legitimate and indeed overwhelming public interest: see below. In working to facilitate that debate, the Claimants are functioning in effect as forms of "social watchdog" (a term that can extend even to bloggers and social media commentators: see *Bizottság* at paragraph 168); this is therefore the kind of request that would engage the Article 10 right.

31. Although the Supreme Court in *Kennedy* considered that under Article 10 ECHR there was no free-standing right of access to information held by public bodies, their decision was taken prior to the decision in *Bizottság*. The Court should take account

of this subsequent decision of the European Court of Human Rights, and should follow it.

32. In exercising its common law power to disclose information on request, the Government must not act incompatibly with Convention rights, including rights under Article 10: see generally HRA, section 6(1). Refusal to disclose information in a case such as the present constitutes an interference with the Claimants' Article 10(1) rights. Any such interference can only be justified if it is prescribed by law, necessary for one of the objectives set out in Article 10(2), and proportionate.

B. Judicial review and alternative remedies

33. The Government's position is that there is a suitable alternative remedy available. They say that the Claimants could permit their requests to be treated as having been made under FOIA, and could therefore: ask the Defendants to carry out an internal review in relation to their refusal; complain to the Information Commissioner ("the Commissioner") under FOIA section 50, if dissatisfied with the Defendants' response following internal review; and appeal to the First-tier Tribunal (General Regulatory Chamber) (Information Rights) ("the Tribunal"), if dissatisfied with the Commissioner's Decision Notice. This is the only point of substance that is taken in the Defendants' response (dated 5th December 2017) to the letter before claim.

34. The short answer to these assertions is that they assume that the Claimants' request was made under FOIA. They disregard the fact that the requests were made by reference to the Defendants' common law powers, in conjunction with the Claimants' Article 10 rights, as explained above. The Commissioner and the Tribunal are creatures of statute, and their powers and jurisdiction are exclusively defined by statute. The Commissioner's powers in relation to access to public sector information are conferred by FOIA and the Environmental Information Regulations 2004 ("EIR"). The Tribunal's appellate functions in relation to the Commissioner's decision-making about access to public sector information are conferred by FOIA section 57 and by EIR regulation 18. The Tribunal is constituted under the Tribunals, Courts and

Enforcement Act 2007 ("TCEA"). There is nothing – whether in FOIA, the EIR, TCEA, or elsewhere – that would give either the Commissioner or the Tribunal any jurisdiction in relation to common law powers of disclosure, or in relation to free-standing rights of access to information arising under Article 10 ECHR.

35. Moreover, the right of access conferred under FOIA does not constitute a suitable alternative remedy for the Claimants, given the urgency of the present case. As explained above, the 2-year period under Article 50 TEU will expire on 29th March 2019; and the date by which both sides anticipate that the negotiations regarding the terms of Brexit will conclude is on or around October 2018. In order for the requested information to inform public consideration of Brexit, the terms on which the UK is to leave the EU, and the negotiations in relation to those terms, it is essential for the information to be made public as soon as possible. The decision-making process under FOIA will not deliver that outcome.

36. The Claimants rely in this regard on the witness statement from MF. This is evidence from a highly experienced user and observer of the FOIA system. MF's statement analyses a sample of cases dealt with by the Tribunal (see MF, §§39-40). The analysis covers the last 31 published Tribunal decisions involving government departments. These decisions run from mid-February 2017 to 30 November 2017. Twenty-one involved hearings and ten were decided on the papers. The full results are shown in the Appendix to MF's statement, but in summary the analysis shows that the time from the original request to the Tribunal decision was an average of 467 working days (approximately 1 year and 10 months). Six cases took over 600 working days and another took over 700 working days, i.e. close to 2 years and 9 months.

37. Given the importance of the present case, even if the Commissioner ordered disclosure it is highly likely that the Defendants would appeal to the Tribunal. Assuming that the case proceeded with average speed, the period that would elapse between the request and the Tribunal decision would be a little under 2 years. The request was made in October 2017; if a decision about disclosure was not reached until a little before October 2019, then the UK would have already left the EU, and by that time the material requested would be of interest only to historians.

38. The points made above respond to the assertion in the Defendants' letter of 5th December 2017 (replying to the letter before claim) that the Claimants have access to an alternative remedy and cannot proceed by way of judicial review. They also explain why the Claimants have not pursued an internal review in relation to their requests for disclosure of this information. The request for internal review is part of the FOIA process, and these are not FOIA requests. Contrast the position in relation to a separate request for the Sectoral Studies, made on MSC's behalf on 31st August 2017: this request *was* made under FOIA, has been refused, and the internal review requested on 6th October 2017 has not yet been completed (see MSC, §4).

C. Refusal to disclose the 58 sectoral studies

39. The short point here is that the Defendants have approached these requests on a fundamentally wrong basis. They have considered them by reference to FOIA, when they are not FOIA requests. They have failed to address, in any way, the considerations arising under Article 10 ECHR. The Defendants have not sought to identify which of the matters set out in Article 10(2) is capable of justifying an interference with the Claimants right under Article 10(1). They have not explained how any interference is prescribed by law, necessary, and proportionate. In short, the Defendants have not addressed themselves to the relevant legal issues.

40. To the extent that the matters raised by the Defendants in their refusal letters are relevant in the context of the common law power of disclosure and/or Article 10, their reliance on those matters does not justify their refusal to disclose the information requested. The refusal is *irrational*; and it involves an interference with the Claimants' Article 10 rights that is *neither necessary nor proportionate*.

41. The starting point in relation to these matters is that the public interest in favour of disclosure of the requested information is exceptionally strong: see generally JM §§38-49, and the entirety of the witness statement of MSC (but especially at §§9-33).

42. The strong public interest in disclosure flows from the Government's own descriptions of the nature and role of the Sectoral Studies. These are consistently referred to as the Government's most comprehensive and detailed body of data and analysis about the likely economic impacts of Brexit. It is clear that this material is the factual bedrock of the Government's approach to the Brexit negotiations. The Government has consistently relied on this documentation as evidence of its rigorous preparations for those negotiations.

43. As far as the Claimants are aware, there is no other documentation of this nature or importance when it comes to the economic implications of Brexit.

44. MSC's evidence explains the vital importance of these documents in holding the Government to account, i.e. in checking whether what it says about the outlook for a given sector or for the economy as a whole is borne out by its own data and analysis. Her evidence also explains the vital importance of these documents in helping businesses, organisations and individuals make concrete plans for life after Brexit. Her statement gives cogent examples of the concerns raised by her constituents about the difficulty in planning for Brexit without access to information of this nature: see MSC, §§17-23.

45. The documents that the Claimants seek are necessary for a fully informed parliamentary and public debate about the likely economic consequences of Brexit, and about the terms on which Brexit should take place. Without these documents, the public and their parliamentary representatives will be asked to approve the terms of a Brexit deal (by as early as October 2018) without being in a position properly to understand and assess the likely economic consequences of that deal. Given the unique importance of Brexit to all sectors of the economy, such a prospect is entirely contrary to the public interest.

46. Overall, the public interest in the production of the Sectoral Studies goes far beyond a general public interest in being informed about what the Government is doing. The Sectoral Studies could very well shape the terms of Brexit and the UK's future relationship with the EU.

47. By contrast, the matters relied upon by the Defendants to justify non-disclosure are unpersuasive, and the reliance on those matters is irrational and disproportionate.

48. First, even the Government's own description of these documents suggests they do not discuss such matters as negotiating targets, positions or tactics: see the analysis of the public statements about those documents, at JM §§25-35. This is plainly not information of negotiating sensitivity, which is why a number of European Governments have released their own Brexit impact assessments on their own economies without hesitation (see, for example, the German and Irish Government's disclosure of such internal studies described at JM, §55).

49. Secondly, the UK's EU negotiating partners will plainly be capable of – and will indeed have undertaken – their own factual analysis. They would base their negotiating positions on their own analysis, not the UK's. For this reason also, these disclosures would do no harm to the UK's negotiating position.

50. The Claimants rely on the detailed evidence of AS and SD in this regard. Their analysis makes it clear that there is no rational basis for asserting that disclosure of these documents would damage the UK's position in the Brexit negotiations: see especially AS, §§14-46.

51. Given the points made above about the balance of the respective interests for and against disclosure, this is not a case where it would be appropriate for the Court simply to order the Defendants to reconsider their decision to withhold the requested information. The decision to withhold the information is irrational and disproportionate, and the only appropriate remedy is to order disclosure.

D. Refusal to confirm or deny whether the HM Treasury Report is held

52. The Defendants' refusal to confirm even the existence of the HM Treasury Report is a striking and surprising feature of this case. There is good reason, based on material in the public domain, to believe that the Report exists (see JM, §§36-37); in the

circumstances, it is hard to see how any worthwhile purpose is served by refusing to confirm this in response to the Claimants' requests. Further, the suggestion that merely confirming or denying the existence of the Report would damage the UK's interest in some way is extraordinary. No material has been put forward that comes anywhere near justifying this as a rational or proportionate response to the request.

53. On the footing that the HM Treasury Report does indeed exist, and that it is held by one or both of the Defendants, the Claimants seek disclosure of it for essentially the same reasons as are set out above in relation to the Sectoral Studies.

E. Will the Defendants adopt a more moderate position?

54. The Defendants have so far adopted an extreme position in relation to this request. They say that the entirety of the Sectoral Studies should be withheld, and that the very existence of the HM Treasury Report should remain unconfirmed. It may well be that as this litigation progresses they will take a more moderate position, seeking to withhold only *some* of the requested information, by reference to the (alleged) harmful consequences of disclosing those parts of the information.

55. To be clear, the Claimants' primary case is that for the reasons given the requested information should be disclosed in its entirety.

56. If the Court nevertheless considers that the Defendants are justified in withholding some part of the requested information, the Claimants will seek an order that the remainder of the information should be disclosed. Further, in relation to partial disclosure:

    (i) it is for the Defendants to establish that withholding the information, even in part, is necessary and proportionate, given the interference with the Claimants' Article 10 rights;

(ii) if any part of the requested information is to be withheld, then the relevant part will need to be carefully identified and precisely specified by the Defendants; and

(iii) the Court will be asked to scrutinise carefully the scope of any redaction to ensure that it does not go beyond the bounds of what is necessary and proportionate.

FUTURE CONDUCT OF THIS CLAIM

57. In view of the urgency of this matter, the Claimants ask the Court to adopt an abbreviated timetable for consideration of the case, as follows.

(i) The Defendants should be required to provide their Acknowledgments of Service and Summary Grounds of Resistance by the last working day before Christmas (22nd December 2017).

(ii) A decision about permission should be taken on the papers by 19th January 2018 (this being the end of the first full week of Law Term).

(iii) If permission is granted on paper, the substantive hearing of the claim should take place no later than 17th February 2017.

(iv) If permission is refused on paper, any renewed oral application for permission should be heard by Friday 17th February, with the hearing taking place on a "rolled up" basis: that is, the permission hearing and the substantive hearing (if permission is granted) should be conducted on the same day.

58. Assuming that judgment is reserved but is given with reasonable expedition, there would be a decision on disclosure by the end of February 2018.

59. The Claimants will raise separately with the Defendants the question of agreeing a mutual cap on recoverable costs (i.e. agreeing that neither party will seek to recover more than a specified sum from the other by way of costs, if unsuccessful). Should it not prove possible to reach agreement, the Claimants will make an appropriate application to the Court.

CONCLUSION

60. For the reasons set out above, the Claimants ask the Court:

(i) to grant them permission to bring a claim for judicial review;

(ii) to adopt a timetable for the consideration of this claim as set out above;

(iii) to grant them the relief sought, including disclosure of the requested information; or

(iv) alternatively to (iii), to grant disclosure subject only to permitting the Defendants to withhold specified parts of the requested information, to the extent that the Defendants are able to justify that course as being lawful, rational, and proportionate.

TIMOTHY PITT-PAYNE QC
ROBIN HOPKINS
11KBW

7th December 2017