

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 December 2023

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### **Decision (including any steps ordered)**

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1. The complainant has requested the documents used in a review of the Department for Work and Pensions' (DWP) Move to Universal Credit policy.
2. The Commissioner's decision is that section 35(1)(a) is engaged but the public interest favours disclosure of the requested information.
3. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation:
  - Disclose the withheld information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 2 May 2023, the complainant wrote to DWP and requested information in the following terms:

"See annex A:

[https://data.parliament.uk/DepositedPapers/Files/DEP2023-0366/017H1\\_Atkins\\_DWP\\_Move\\_to\\_UC\\_Final\\_Report\\_v1\\_0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2023-0366/017H1_Atkins_DWP_Move_to_UC_Final_Report_v1_0.pdf)

Please provide the documents with the following reference codes:

UC030

UC038

UC039 (unless this is the same as at pp. 9-22 here

<https://committees.parliament.uk/publications/23182/documents/169468/default/>)

UC040

UC041

UC045

UC046

UC065"

6. DWP responded on 31 May 2023 and confirmed that it held the requested information. DWP confirmed that it was withholding this information under section 35(1)(a), formulation or development of government policy, and provided generic public interest arguments. DWP explained that it was satisfied that in this instance the public interest in maintaining the exemption outweighed the public interest in disclosure.
7. The complainant requested an internal review on 2 June 2023. They disputed that section 35(1)(a) was engaged and considered that the balance of the public interest favoured disclosure.
8. DWP provided the outcome of its internal review on 30 June 2023. DWP upheld its original position but acknowledged that it could have provided additional explanations regarding why the information was being withheld. DWP explained that its development of the way in which it delivers the Managed Migration policy has evolved over time. It explained that Move to Universal Credit (Move to UC) is a live policy area and it needs to protect the space to develop the policy and processes within DWP and for this reason, it was satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosure.

## Scope of the case

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9. The complainant contacted the Commissioner on 30 June 2023 to complain about the way their request for information had been handled. Specifically, they considered that the requested information should be disclosed.

10. On 8 September 2023, during the Commissioner's investigation, DWP wrote again to the complainant and confirmed that in light of the passage of time, it could now disclose two of the documents requested. DWP provided the complainant with a copy of these.
11. The Commissioner considers that the scope of the investigation is to determine whether DWP is entitled to rely on section 35(1)(a) to withhold the remaining documents.

## Reasons for decision

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### Section 35: Formulation or development of government policy

12. Section 35 of FOIA states:

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

(a) the formulation or development of government policy”

13. The Commissioner's view is that the formulation of government policy relates to the early stages of the policy process. This covers the period of time in which options are collated, risks are identified, and consultation occurs whereby recommendations and submissions are presented to a minister. Development of government policy, however, goes beyond this stage to improving or altering existing policy such as monitoring, reviewing or analysing the effects of the policy.
14. The Commissioner considers that the purpose of section 35(1)(a) is to protect the integrity of the policy-making process, and to prevent disclosures which would undermine this process and result in less robust, well-considered and effective policies. In particular, it ensures a safe space to consider policy options in private.
15. His guidance<sup>1</sup> advises that often policy formulation will continue until the relevant legislation is passed. Where legislation is not required, a public announcement for the decision is likely to mark the end of the policy formulation process.
16. This exemption is a class based one which means that, unlike a prejudice based exemption, there is no requirement to show harm in

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-35-government-policy/>

order for it to be engaged. The relevant information simply has to fall within the description set out in the exemption.

17. Although 'relates to' is given a wide interpretation, as the Court of Appeal noted in the Department of Health v The Information Commissioner and Mr Simon Lewis [2007] EWCA Civ 374, of the First Tier Tribunal's findings in that matter, the phrase "should not be read with uncritical liberalism as extending to the furthest stretch of its indeterminacy, but instead must be read in a more limited sense so as to provide an intelligible boundary, suitable to the statutory context" and that a "mere incidental connection between the information and a matter specified in a sub-paragraph of s.35(1) would not bring the exemption into play; it is the content of the information that must relate to the matter specified in the sub-paragraph".
18. Therefore, there must be a clear and tangible relationship between the content of the information withheld under this exemption and the process that is being protected (ie the formulation or development of government policy).
19. The Commissioner's guidance on section 35(1)(a) sets out that information does not need to have been created as part of the formulation or development of government policy. Information may 'relate to' the formulation or development of government policy due to its original purpose when created, or its later use, or its subject matter.
20. This means that information can engage section 35(1)(a) because it was used to inform the policy position, even if in isolation the information does not obviously relate to government policy.

### **Complainant's position**

21. The complainant disputed that section 35(1)(a) was engaged as they considered that the information related to operational matters rather than the development of policy. The complainant directed the Commissioner to the following information as background:
  - <https://www.gov.uk/government/publications/the-universal-credit-transitional-provisions-amendment-regulations-2022/the-universal-credit-transitional-provisions-amendment-regulations-2022-report-by-ssac-and-statement-by-the-secretary-of-state-for-work-and-pension>
  - <https://committees.parliament.uk/publications/23222/documents/169579/default/>

### **DWP's position**

22. DWP explained that all of the withheld documents relate to the formulation of the Move to UC. It explained that Move to UC is a novel policy formulation area. It set out that moving several million legacy benefit<sup>2</sup> claimants from their existing benefits to Universal Credit is a challenging task involving sensitively handling the move to Universal Credit for large volumes of potentially vulnerable claimants.
23. DWP confirmed that it was moving approximately 2.3 million households on legacy benefits over to Universal Credit. It stated that underpinning managed migration is its commitment to transitional financial protection to ensure that eligible households do not receive less on Universal Credit if their Universal Credit entitlement is lower than their entitlement on legacy benefits.
24. DWP explained that the Universal Credit Programme has always adopted a test and learn approach to moving claimants from legacy benefits to Universal Credit. It explained that the Move to UC policy involves moving the remaining legacy benefit claimants, who are generally more vulnerable than claimants moved thus far since it has been a number of years since their original claim and any relevant changes of circumstance. DWP explained that this is why detailed discovery work including policy approaches covering exclusions, the migration notice and transitional protection is being undertaken in locations across the country to test a variety of policy options. DWP confirmed that it is working with stakeholder representatives, including the complainant, to formulate the Move to UC policy. DWP confirmed that this policy development was ongoing at the time of the request and continues to be under development. DWP confirmed that fortnightly ministerial meetings are held with senior Universal Credit officials to discuss ongoing Move to UC policy developments.
25. DWP explained that all of the withheld documents form part of the body of evidence being used to inform the current discovery activity within the Universal Credit Programme. This discovery phase is focussed on formulating the policy approach and designing the related processes to successfully transfer legacy claimants from their current legacy benefits to Universal Credit.
26. DWP set out that there had been a deliberate strategy of testing and learning while Universal Credit policy and processes are developed. DWP explained that this is why the same test and learn approach with additional input from expert welfare support organisations is being used

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<sup>2</sup> The benefits that were succeeded by Universal Credit, including Employment Support Allowance, Job Seeker's Allowance, Personal Independence Payment and Housing Benefit.

to formulate successful policy solutions to the challenging task of safely moving large volumes of legacy claimants across from legacy benefits to Universal Credit. DWP considered that the Universal Credit policy to move legacy claimants is still in the formulation stage.

27. DWP explained that it recognises that claimants' confidence, experience and trust in the benefit system will vary. DWP stated that this is why the managed migration track will be underpinned by a customer-focused approach with effective processes and systems to move people across safely.
28. DWP explained that there are several key tasks to focus on to start managed migration:
  - i. Gathering data on the different circumstances of legacy benefits' claimants;
  - ii. Designing the processes and tools to calculate both UC entitlement and transitional protection (where applicable), then paying the correct award;
  - iii. Assessing and providing the different levels of support required to make a successful claim;
  - iv. Considering how best to notify claimants about their move; and,
  - v. Understanding the difference challenges claimants may face after making their claim to Universal Credit and the support they need.
29. DWP explained that work to design the managed migration process was, at the time of the request, moving small numbers of legacy claimants to Universal Credit with a focus on refining the policy and systems to support its claimants move as effectively as possible.
30. DWP explained that while it was now expanding its approach to moving greater numbers of single-claimant households claiming only working tax credit and/or child tax credit, it is still in the early learning stages of how it migrates couple tax credit claims as well as how it migrates all other legacy benefit combinations (eg those receiving Housing Benefit, Income Support, Jobseekers Allowance and Employment and Support Allowance).
31. DWP considered that optimising its support for claimants in moving to Universal Credit is a critical part of the managed migration process. It set out that it is working closely with its stakeholder groups throughout this work to monitor and understand what support is required and what works best for claimants. DWP set out that it expects that finalising its

policy will take several months before it starts scaling the managed migration process for all legacy benefit groups in earnest.

32. DWP explained that while it was expanding its approach to moving single claimant households claiming only working tax credit and/or child tax credit, it was still in the learning stages for how it migrates couple tax credit claims as well as how it migrates all other legacy benefit combinations (eg those receiving Housing Benefit, Income Support, Jobseekers Allowance and Employment Support Allowance).
33. DWP explained that the Move to UC is still in the development phase as it has legislation in place and is refining exactly how this works in practice. It set out that learning from how Universal Credit has operated during the pandemic and from key insights in the pilot, it has revised its strategy for the migration of approximately 2.3 million households from legacy benefits and tax credits to UC. DWP set out that it still needs to finalise its policy, particularly for the managed migration of legacy claimants, and is undertaking further work in some parts of the country, learning what support different claimants are likely to need in order to make a successful claim for Universal Credit.
34. DWP set out that for those claimants who do not choose to move and have not migrated naturally following a change in circumstance, it will need to manage their migration to Universal Credit. DWP explained that managed migration is a significant undertaking and requires it to design and build an end to end service that safely supports claimants to make the move to Universal Credit. DWP set out that this includes being able to confidently identify and contact eligible claimants, appropriately support claimants through their claim and accurately calculate transitional protection for eligible claimants, to ensure their entitlement on Universal Credit at the point of managed transition is not below that of legacy benefits.

### **The Commissioner's position**

35. Having reviewed the withheld information and DWP's submissions, the Commissioner accepts that the 'Move to UC' policy was still being developed at the time of the request and the withheld information forms part of the development of this policy.
36. The Commissioner accepts that a large scale project such as Universal Credit will have different phases of the project at implementation, development and formulation stages. Therefore, whilst Universal Credit has been implemented for new claimants, the Commissioner accepts that DWP is still developing its policy on how and when legacy benefit claimants should be migrated to the new system.

37. The Commissioner notes that the decision to move claimants on to Universal Credit had been made, however, he accepts that the policy was still in development. The Commissioner's guidance on section 35 states:

"For complicated policies, it is possible that formulation may continue even after this point. In some cases the government announces a high-level policy, or passes a 'framework' bill into law, but leaves the finer details of a policy still to be worked out. The high-level policy objective has been finalised, but detailed policy options are still being assessed and debated. Later information about the formulation of the detailed policy will still engage the exemption".

38. The Commissioner accepts that in the specific circumstances of this case, whilst a high-level decision had been made to move claimants on to Universal Credit, the decision on how all claimants will be moved had yet to be finalised at the time of the request.

39. The Commissioner therefore considers that section 35(1)(a) is engaged in relation to the specific withheld information. As section 35 is a qualified exemption, the Commissioner will now consider the balance of the public interest.

### **Public interest in disclosure**

40. The complainant directed the Commissioner to DWP research that they stated shows that the managed migration risks causing and exacerbating vulnerability<sup>3</sup>.

41. The complainant stated that both the Social Security Advisory Committee<sup>4</sup> (SSAC) and the Work and Pensions Select Committee<sup>5</sup> have raised concerns about managed migration, and its impact on vulnerable claimants and that there are issues relating to moving to the next managed migration implementation phase.

42. The complainant referred to DWP's statement at internal review that the delivery of managed migration has 'evolved' since the requested

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<sup>3</sup> Paragraphs 7 & 8 [https://data.parliament.uk/DepositedPapers/Files/DEP2021-0836/7G-UCPB\\_16-04-19-Paper6-Move\\_to\\_Universal\\_Credit\\_Update.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2021-0836/7G-UCPB_16-04-19-Paper6-Move_to_Universal_Credit_Update.pdf)

<sup>4</sup> <https://www.gov.uk/government/publications/draft-universal-credit-managed-migration-regulations-2018-ssac-report-and-government-statement> & <https://www.gov.uk/government/publications/universal-credit-managed-migration-regulations-2018-ssac-correspondence>

<sup>5</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/1762/176202.htm> & <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/2091/209102.htm>



documents were written. The complainant considers that given the evolution which has taken place since, any arguments against publication must be given less weight.

43. The complainant also raised that Managed Migration to UC involves significant amounts of public funds.
44. The complainant set out that the Independent Review referred to in the request dates from February 2021 and DWP has separately committed to publish Universal Credit Programme Board<sup>6</sup> papers after two years. The complainant therefore considers that as two years had passed by the time of the request, DWP's position did not align with its own publication schedule regarding Universal Credit information.
45. DWP acknowledged that there is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. DWP stated that FOIA is a means of helping to meet that public interest and so it always gives appropriate weight to the public interest in disclosure.
46. DWP explained that it was acutely aware of the understandable public interest in Universal Credit which is the biggest single welfare change this century and directly impacts around 8 million people.
47. DWP confirmed that it welcomes the necessary scrutiny that is applied through parliamentary questions, the National Audit Office and the Infrastructure and Projects Authority. DWP explained that it routinely answers large volumes of FOI requests related to Universal Credit. DWP stated that it is right that DWP should be transparent about Universal Credit, its objectives and the policy approach being adopted.
48. DWP recognised the need for transparency in the development of Universal Credit and the formulation of Move to UC policy in particular. The Universal Credit Programme has regularly published a number of publications explaining how the development of Move to UC has been taken forward.
  - i. Completing the move to UC (April 2022)
  - ii. Completing the Move to UC: lessons from the discovery phase (January 2023)

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<sup>6</sup> The Board overseeing the implementation of Universal Credit and the development of Move to Universal Credit.

- iii. Move to UC statistics release (August 2023)
- iv. Lessons learned from initial migrations of tax credit claimants to UC (August 2023)

### **Public interest in maintaining the exemption**

- 49. DWP considered that whilst transparency is necessary and assists in the development of effective outcomes, there is a need for some space for officials to explore policy options and discuss a variety of policy approaches away from the distractions of public debate.
- 50. DWP considered that publishing the detailed information in the withheld documents would be highly likely to result in public discussion of the policy options being tested in the current Move to UC discovery phase. DWP considered that discussion of the specific policy ideas being tested on social media or in the specialist press will constrain the freedom of policy officials to explore the full range of potential policy options and is highly likely to result in suboptimal policy outcomes. DWP stated that publication of all of the withheld documents will result in significant prejudice to the Move to UC policy development process for moving legacy benefit claimants.
- 51. DWP explained that the information contained within the withheld documents contains detailed information about ongoing policy development but does not serve the public interest by adding further value to the material DWP has already placed in the public domain regarding Move to UC.
- 52. DWP stated that the section 35 exemption is intended to safeguard the candid and uninhibited exchange of ideas during the policy formulation process. DWP considered that disclosing the detail of the withheld documents at a very early stage of policy development will deter open discussions, potentially leading to less effective policies. DWP set out that the exemption is designed to encourage officials to explore different options without fear of premature public exposure and it was highly likely that the release of these documents would impede the effective formulation of coherent policy options due to public discussions around discovery work.
- 53. DWP set out that it was uniquely working – in confidence – with a wide variety of stakeholders to develop the policies required to move the many vulnerable claimants that are currently on legacy benefits across to Universal Credit. DWP confirmed that it holds regular stakeholder forums where aspects of current discovery work is shared with stakeholders and contributions from stakeholders are encouraged and

taken on board as part of the discovery work in the interests of developing the most effective policy solutions.

54. DWP explained that some of the elements of the current Move to UC policy were being challenged. DWP acknowledged that interested parties are entitled to lobby for changes to policy particularly around the movement of several million potentially vulnerable claimants. However, it considered that the public reporting and recommendations in these specific areas demonstrate that these areas continue to be live policy development. DWP provided briefings created by Child Poverty Action Group which reference this:
  - i. [https://cpag.org.uk/sites/default/files/files/policypost/CPAG\\_managed\\_migration\\_briefing\\_1.pdf](https://cpag.org.uk/sites/default/files/files/policypost/CPAG_managed_migration_briefing_1.pdf)
  - ii. [https://cpag.org.uk/sites/default/files/files/policypost/CPAG\\_managed\\_migration\\_briefing\\_2.pdf](https://cpag.org.uk/sites/default/files/files/policypost/CPAG_managed_migration_briefing_2.pdf)
55. DWP confirmed that on balance, it considered that there was a high likelihood of significant prejudice to the formulation of Move to UC policy if the withheld documents were disclosed. DWP considered that it has placed a large volume of material into the public domain setting out its approach to the development of Move to UC. It confirmed that it is strongly of the view that DWP has struck the appropriate balance between being open about policy development whilst maintaining some space to test and develop policy options for moving legacy claimants and it believed that the public interest is best served by withholding the disputed documents.
56. DWP provided information specific arguments for the documents being withheld which cannot be repeated in this notice as they will reveal the contents of the withheld information.
57. DWP explained that the development of the Move to UC policy continues to be iterative based on lessons learned from the ongoing discovery work being undertaken to test a variety of approaches to moving legacy claimants to Universal Credit. DWP considered that there needs to be some space for this policy formulation work to be undertaken without public debate about the detail of the options being considered. DWP explained that publication of the pilot readiness document would be likely to result in live commentary of the ongoing discovery work in the specialist press and on social media. DWP considered that this would constrain the space needed to explain policy options for moving vulnerable legacy claimants to Universal Credit.
58. DWP explained that the withheld information will be used to test different approaches applied to specific legacy claimant move scenarios

and will inform the formulation of the specific policy approach in moving legacy claimants. DWP confirmed that the withheld information contains references to specific areas of ongoing policy development.

59. DWP explained that publication of the research documents would be very likely to generate discussion. DWP considered that the current discovery work needs to be undertaken in the light of the full range of research undertaken. It considered that publication of research that pre-dates the pandemic, and the subsequent change in media narrative around Universal Credit, risks diverting policy development work away from addressing the optimum approach to current issues. DWP explained that this was because it would reflect claimant concerns informed by the pre-pandemic negative media narrative around Universal Credit.

### **The balance of the public interest**

60. The Commissioner accepts that significant weight should be given to safe space arguments – ie the concept that the Government need a safe space to develop areas, debate live issues and reach decisions away from external interference and distraction – where the policy making is live and the requested information relates to that policy making.
61. Whilst the Commissioner accepts that the public interest in maintaining the exemption will be strongest while the policy is still being formulated or developed, this does not convert the exemption to an absolute one where information will not be disclosed simply because of the stage that the policy process has reached. There will be occasions where the government policy is at the formulation or development stage and the public interest in disclosure is sufficiently strong that the public interest in maintaining the exemption will not outweigh this.
62. The Commissioner's guidance on section 35(1)(a) clearly sets out that the relevance and weight of the public interest arguments depend entirely on the content and sensitivity of the information itself and the effect of its release in all the circumstances of the case. The guidance confirms that the Commissioner's position is that arguments that routine publication of particular types of information are not in the public interest are misconceived as each case must be considered on its individual circumstances.
63. In the specific circumstances of this case, the Move to UC policy has been in development for several years and the specific information being withheld was at least two and a half years old, with one document being nearly four years old, at the time of the request.

64. The Commissioner acknowledges that the global pandemic during this time period will have prevented progress from occurring as quickly as originally intended. However, he considers that the minimum two and a half years that had passed are sufficient to address the issues and planning set out within the documents. The Commissioner considers that whilst the overall policy development may still be live, DWP has not provided persuasive arguments regarding how disclosure of information at least two and a half years old would lead to public debate about current policy options. The Commissioner considers that if this were the case, then there is a strong public interest in understanding why the policy had not moved on in the intervening time between the review referred to in the request and the request itself.
65. The Commissioner considers that there is clearly a strong public interest in disclosure of information that would improve the public understanding and allow scrutiny of the Government's approach to migrating legacy benefit claimants onto Universal Credit.
66. The Commissioner considers that there is a very significant and weighty public interest in understanding, and scrutiny of, a policy that will affect millions of people, including the most vulnerable in society. The Commissioner considers that the public is entitled to be able to scrutinise the information feeding into decisions which affect so many people and involve significant amounts of public funds. Disclosure of this information would allow the public insight into the decision making process and an understanding of the decisions made and challenges overcome. The Commissioner considers that there is greater understanding to be gained from the timely disclosure of information than retrospective scrutiny.
67. The disputed information provides insight and understanding of how the policy is being developed, the factors considered and the quality of the information used to inform the policy process. This public interest in disclosure is further strengthened by the fact that this decision will impact on those applying for and in receipt of disability benefits. This will impact on millions of people, including some of the most vulnerable in society. The Commissioner considers that the public is entitled to scrutinise a decision such as this at an early opportunity.
68. The First Tier Tribunal found in *Department for Work and Pensions v Information Commissioner & Slater EA/2022/0328<sup>7</sup>* stated at paragraph 75:

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<sup>7</sup> The First Tier Tribunal's decision has not yet been published

"Ultimately, as the move to UC (and the benefit payments involved) is about such a large amount of public money, and of importance to 6.5 million households (and many vulnerable people), the Tribunal agrees with the Commissioner that for the public interest in withholding the information to prevail the strongest justification is necessary. As Mr Couling says in his witness statement '20% of working-age individuals will receive Universal Credit by the time the Move to UC process has concluded'. We note all the points raised by the DWP and we are sure that it has a strong preference, for good reasons, for the material not to be disclosed. But we agree with the Commissioner that the public 'is entitled to be well informed as to the reasoning behind policy decisions which are likely to shape British society. Disclosure of this information would allow the public insight into the decision-making process and an understanding of the decisions made and challenges overcome'."

69. Whilst the Commissioner accepts that there is some weight to the public interest arguments regarding allowing DWP the space to develop policy away from external interference, the Commissioner is not persuaded that this is sufficient to outweigh the strong public interest in disclosure.
70. Having reviewed the withheld information, the Commissioner is not persuaded that DWP's public interest arguments in favour of maintaining the exemption are sufficient to outweigh the strong public interest in disclosure of the information.
71. The Commissioner therefore requires DWP to disclose the withheld information.

## Right of appeal

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72. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

73. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
74. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## Signed

**Victoria Parkinson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**