IN THE MATTER OF THE POST OFFICE HORIZON IT INQUIRY

SUBMISSIONS ON BEIS APPLICATION FOR RESTRICTION ORDER

A. Introduction

1. These submissions are made on behalf of the CPs represented by Hudgell Solicitors. They address the Restriction Order Application made by the Department for Business, Energy and Industrial Strategy ("BEIS") dated 24 June 2022 ("the Application"). They respond to the invitation for submissions in the light of the Chair's "minded to" note published on 29 June 2022 ("MTN").

B. Summary

2. CPs are limited in the assistance they can give to the Inquiry as to the relevance of any individual name in the absence of disclosure of any of the 227 documents identified as potentially requiring further redaction (see MTN, [11]). The assessment by the Inquiry team has identified reasons for those names to be disclosed (see MTN, [6], [7], [8], [13], [14]) and in the absence of specific (and evidenced) objections from BEIS as to individual names, the Application should be rejected.

C. Submissions

3. BEIS relies upon the Upper Tribunal decision in *Cox v Information Commissioner and Home Office* [2018] UKUT 119. The Tribunal considered the position of three junior officials for the purpose of releasing their names in an FOI request. The balancing exercise concerned considered evidence on their roles and involvement in policy making; balanced against the legitimate interest of the requester (who was legitimately interested in the work of the UK in the Horn of Africa). The Tribunal asked the questions identified by Lady Hale, in *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55; [2013] 1 WLR 242 (identified as the "*Goldsmith*" questions in *Cox*):

(i) Is the data controller or the third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?

(ii) Is the processing involved necessary for the purposes of those interests?

(iii) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?"

4. The authority cited does not support the propositions in the Application:

   a. First, there is no proposition by the Inquiry of any presumption in favour of disclosure of all junior officials' names. The Inquiry has considered the relevance of the names in the 227 documents in the Stage 1 process and determined that they are relevant and it is necessary they be disclosed to CPs.

   b. Second, in considering whether disclosure of any official's name is necessary: "*it all depends*" (see *Cox*, at [35]-[37]):

      > *"it follows from the above that the legitimate interests of an individual requester may, or may not, involve the disclosure of officials' names – but that is a context-specific and fact-sensitive question. Such a legitimate interest cannot be automatically assumed. To revert to a well-worn phrase, it all depends. The working out of the balance between the requester's legitimate interests and the officials' privacy rights is struck by the Goldsmith questions"* (at [46]) (Emphasis added).

   c. This is the same test applied in *Good Law Project Limited and Everydoctor Limited v Secretary of State for Health and Social Care* [2021] EWHC 1223 (which concerned an application for disclosure in an application for judicial review)**:**

      i. *"These cases are all very fact-specific. The general guidance, namely, that: "Well, it depends" applies in this case as it would in any other case. It is a matter of considering each individual document or categories of document and each individual or categories of individual in order to establish whether or not the identity of those individuals is relevant to an issue that the court has to decide"* at [29].

      ii. In that case, names of junior officials were sought in an unredacted form. Most of these names were to be disclosed into a confidentiality ring to allow the effective conduct of the judicial review. The Court did not apply a strict division between senior and junior officials; the key was

the significance and relevance of the role played to the issue before the Court (at [31]:

> "*I also consider that, in general terms, even if an individual was not senior, if they had significant involvement in the referral of individuals to the high priority lane or significant involvement in the technical or financial appraisals, then, prima facie, such individuals are likely to be relevant."*

iii. The Court considered disclosure into a confidentiality ring (which contained both lawyers and representatives of the Claimants) was significant as it would permit any specific redaction to be challenged (see [37]). (By analogy, in this Inquiry, if the names are not provided to CPs in an unredacted form, there can be limited opportunity for meaningful challenge.)

d. Third, the Inquiry has indicated it intends only to release names it considers relevant and necessary for the effectiveness of the Inquiry (MTN, [7] – [8], [13], [14]). We understand other information has been redacted; together with personal data including contact information and signatures. The Inquiry has (rightly) identified that names should be redacted if disclosure to other CPs is not necessary or would be a disproportionate interference with the rights of the individual in question.

e. Fourth, while it may be "*well-established Government policy that the names of junior civil servants are not normally disclosed or otherwise put into the public domain*" (Application, [28]); this policy is not determinative. If junior officials have been given a "*general expectation*" of non-disclosure (see Application, [28]); such as to expect blanket non-disclosure regardless of the relevance of their involvement then this is inconsistent with the authorities (Application, [30] (see *Good Law*, at [29]).

f. Fifth, and finally, the proposed disclosure is to CPs subject to undertakings. There is no proposition that names are (for now) disclosed any more widely than to CPs to allow for the effective conduct of the Inquiry.

5. The circumstances relevant to this Application must include the significance of ensuring the effectiveness of this Inquiry both for the individuals concerned by the actions taken by officials during the Horizon scandal and for the wider public interest in transparency concerning this miscarriage of justice on an unprecedented scale.

D. The Draft Order

6. In any event, the broad terms of the Order sought by BEIS are inappropriate. The default redaction of all junior civil servants below Grade 7 ignores that:

    a. officials at lower grades may play a significant role in the formulation of policy in practice; including in the provision of professional advice (reliance on advice being an issue for the Inquiry); and

    b. individuals who may initially have gained knowledge of Horizon at a lower grade may, over the course of the relevant period, have been promoted to SCS level (if their earlier involvement is redacted, this would significantly distort the picture available to the Inquiry).

7. If any order is made, it should make clear that any names redacted will be substituted with the consistent use of initials or ciphers (to allow for ease of cross reference). As a general proposition, indication should be given as to the reason for any redaction. Any cipher applied should make clear where the reason for redaction is related to seniority; with liberty for any CP to apply for the name to be published.

8. Making the draft Order requested would undermine the ability of other CPs to assist the Inquiry effectively and the Chair is invited to confirm the Application will be rejected.

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5 JULY 2022