

**IN THE FIRST TIER TRIBUNAL (Information Rights)**

**Appeal No: EA/2016/0121**

**BETWEEN:**

**Department of Finance for Northern Ireland**

**Appellant**

**And**

**THE INFORMATION COMMISSIONER**

**Respondent**

**And**

**Mr Sam McBride**

**Second Respondent**

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**CONSENT ORDER**

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**PURSUANT** to Rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended), upon reading the parties' agreed statement (in Annex A)

**IT IS ORDERED BY CONSENT**

1. The appeal is allowed in part.
2. The decision notice FS50569790 dated 31 March 2016 be substituted in the terms set out in Annex B.
3. No further steps are required to be taken by the Appellant.
4. There be no order for costs.

Dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed:.....  
On behalf of the  
Information Commissioner's Office  
Wycliffe House, Water Lane  
Wilmslow, SK9 5AF

Signed:.....  
On behalf of the  
Department of Finance for  
Northern Ireland

Signed:.....  
Mr McBride

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## **ANNEX A**

### **Statement of reasons for consent order**

1. This appeal concerned the First Respondent's Decision Notice FS50569790. The Second Respondent requested from the Appellant a copy of legal advice about the First Minister obtained by the Appellant and information relating to that legal advice.
2. The Appellant confirmed that it did hold information relevant to the first part of the request but said that it was exempt under section 42 FOIA. During the Commissioner's investigation, the Appellant disclosed most of the information falling within the second part of the request but advised the Second Respondent that some information had been withheld under sections 21 and 42 FOIA.
3. The Commissioner concluded that with regard to the remaining withheld information, section 21 was not engaged and that section 42 is engaged in respect of some information but not in respect of other information withheld. The Commissioner also found that the public interest in maintaining the exemption outweighed the public interest in disclosing some but not all of the information exempt under section 42.
4. The Commissioner consequently set out in a confidential annex to the decision notice the information for which he found sections 21 and 42 was not engaged and which the Appellant should disclose.
5. Following the Decision Notice, the Appellant disclosed the information listed in the confidential annex under the heading Schedule 1 Part 3 to which section 21 was previously relied on. The Appellant, however, appealed the Commissioner's decision notice relating to the remaining information withheld under section 42.

6. Following the Appellant's appeal, the Commissioner reviewed his position in respect of (i) whether certain documents engage section 42 and (ii) for those documents which do engage section 42, the balance of public interest between disclosure and maintaining the exemption. The Commissioner now considers that there are no documents for which section 42 is engaged but for which the public interest favours disclosure. The Commissioner considers that certain of the documents he originally ordered to be disclosed should not in fact be disclosed.
7. In view of all the circumstances and subject to the Tribunal's views, the parties jointly submit that it is appropriate for these proceedings to be concluded by way of a consent order and that it is appropriate for the Tribunal to consider their joint application without holding a hearing (as envisaged by rule 37(2)).
8. Following this review by the Commissioner, the Appellant has now disclosed to the Second Respondent (under cover of a letter dated 26 July 2016) the following documents as listed in the confidential annex to the decision notice for which the Appellant now accepts section 42 is not engaged:-
  - i) Under the heading 'Schedule 1 Part 4: documents 3, 4, 5, 6, 8, 10, 11, 12 and 14.
  - ii) Under the heading 'Schedule 2 Part 2: documents 9, 13, 14, 15, 17 and 19.

## **ANNEX B**

1. The information contained in the following documents listed in the confidential annex to the decision notice falling within the scope of the request is exempt under section 42 of FOIA on the basis that the same attracts legal

professional privilege and that the public interest in maintaining the exemption outweighs the public interest in disclosure:-

- i) Under the heading Schedule 1 Part 4, documents: 1, 2, 22, 26 and 27
- ii) Under the heading Schedule 1 Part 2, documents: 16 and 18.