

Independent Commission on Freedom of Information

Minutes of the 4th meeting

10am to 12pm, Tuesday 3rd November 2015

102 Petty France, Room 10.50b

Attendees:

- Lord Burns (Chairman)
- Lord Carlile of Berriew
- Dame Patricia Hodgson
- Lord Howard of Lympne
- The Rt Hon Jack Straw

Secretariat

- Stephen Jones (Secretary)
- Narinder Tamana
- Alexandra Avlonitis
- Poli Stuart-Lacey

Introduction

1. The Chairman opened the meeting by welcoming members of the Commission and introducing Poli Stuart-Lacey, Head of Communications at the Cabinet Office, who was part of the independent press team working for the Commission.

Communications Update

2. The Chairman began by drawing the Commissioners' attention to the media plan prepared by its independent press team and asked that members consider in detail the proposals after the meeting. General discussion followed about engagement to date with key stakeholders, and the Commission acknowledged that more could be done to assure interested parties that the Commission is taking a fair and evidence-based approach to its task.
3. The Commission agreed to publish on the Commission's website minutes of meetings to date, including those of the Chairman's meetings with interested parties; and evidence received through the call for evidence as it is considered.
4. The Commission also agreed that information prepared and submitted to it by the Secretariat should be made publically available; the distinction between what would and would not be published would, the Commission agreed, follow broadly the guidelines of the Act – i.e. statistical, factual, and background information would be released.
5. The Chairman updated the Commission on the meetings that he had had to date with: Maurice Frankel (Director, Campaign for Freedom of Information); Professor Robert Hazel (UCL Constitution Unit); Dr Ben Worthy (Birkbeck University); and with Lewison LJ. It was agreed the minutes would be circulated to other Commissioners quickly after each meeting.
6. The Commission reiterated that it would consider the question of oral evidence if appropriate following consideration of written evidence.

Paper 1: Statistics on ICO decision making trends on section 35 and 36

7. The Commission welcomed the paper and asked the Secretariat to develop it further by making clearer which cases fell into which category of reasons for an adverse finding against a public body. The Commission also expressed a keen interest in seeing the equivalent case analysis for section 36 decision notices. General discussion followed about the reasons for the increased success of public authorities in successfully defending the use of section 35 when challenged at ICO stage.
8. The Commission looked briefly at some of the cases identified in the paper and discussed the public interest test. The Commission requested a further paper on the public interest test.
9. The Chairman said he had asked the Secretariat to develop further analysis on the decisions reached in respect of sections 35 and 36 by the First Tier Tribunal (FTT), and at the Upper Tribunal. The Commission discussed generally the existing appeal system.

Paper 2: Presentation on section 35 and 36

10. The Commission welcomed Paper 2 and explained that it had been very useful in describing the types of information that fell under the different limbs of sections 35 and 36. Commissioners requested that the paper be developed further by including in it hypothetical or real case examples about how different information might be categorised within sections 35 and 36.

Paper 3: Workshop: types of material and appropriate protections

11. The Commission did not have the opportunity to explore in detail Paper 3 due to time constraints. They discussed generally the merits and difficulties posed by different forms of protection and agreed to return to the issue after the call for evidence had closed.

Stephen Jones

**Secretary
November 2015**