

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 3 October 2018

Public Authority: Ofcom
Address: Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Decision (including any steps ordered)

1. The complainant has requested communications between Ofcom and the Phone-paid Services Authority on the subject of refund methods for unauthorised debts by premium rate services. The request was to include legal advice. Ofcom identified information which related to a specific consumer complaint that had been received but refused to provide this on the basis of section 36, 42 and 44 of the FOIA.
2. The Commissioner's decision is that Ofcom has correctly engaged section 42 in relation to the legal advice it holds and section 36 in relation to other exchanges between itself and the Phone-paid Services Authority. In both cases the Commissioner finds that the public interest favours maintaining the exemption. She therefore requires no steps to be taken.

Request and response

3. On 30 October 2017, the complainant made an information request to Ofcom. Ofcom responded on 9 November 2017 to this and another similar request made on the same date and considered that the two requests could be aggregated and refused on the basis of section 12 of the FOIA.

4. Following further correspondence the complainant made a clarified request for information on 6 December 2017 in the following terms:

"Please provide a copy all emails and communication with the Phone Paid Services Authority, or any Government Ministers that relates to Premium Rate Services (PRS.) please only include anything sent in the past six months.

Please provide any minutes of meetings where PRS and the failure to comply the Consumer Rights Act have been discussed (please include any legal advice obtained, and the cost of this advice.)

Please provide any information whatsoever held by OFCOM that can assist determining the following questions:-

1) Does s.45(4) of The Consumer Rights Act 2015 apply to purchases of digital content that have been paid for by means of PRS on a Mobile Phone bill?

2) Does The Phone Paid Services Authority 14th Code of Practice (which is approved by OFCOM) have any requirements to ensure that an L2 PRS provider is able to refund back to a consumers mobile phone bill before being able to take money?

3) What is the legal position of OFCOM regarding any PRS provider that is able to take money from a consumer via a phone bill but unable to refund back to a phone bill?

4) Are there any plans in the 15th code of practice to introduce a requirement to ensure any consumers who pay for things with PRS are able to be refunded with the same method as was used to pay?

(In order to answer these questions please search for any information sources that may be relevant please include emails, documents, memos, briefings, presentations, telephone notes, legal advice or any other source. If this information is proving difficult to obtain I would appreciate advice and assistance from OFCOM as to how I could obtain this information.)"

5. Ofcom responded to this revised request on 9 January 2018. For part 1 Ofcom cited section 12 of the FOIA, for part 2 it was stated information was not held and for part 3 and 4 a general overview was provided.
6. The complainant requested an internal review on 21 January 2018. For part 1 he suggested the search should be for anything sent in the past six months and be limited to emails between Ofcom and Phone-paid Services Authority (PSA) on the subject of whether section 45(4) of the Consumer Rights Act 2015 applies to purchases of digital content that

have been paid for by means of premium rate services on a mobile phone bill. For parts 3 and 4 the complainant stated he was not satisfied with the explanations given and clarified he wanted to see the legal advice provided by Ofcom's in-house legal advisers, emails addressing this specific issue or ministerial briefs.

7. Ofcom's internal review response of 7 March 2018 upheld the decision to refuse part 1 on the basis of section 12 but Ofcom explained it had taken the reformulated requests in the complainant's last correspondence to be new requests and endeavoured to search for relevant information on the basis of the following:

All emails and communication between Ofcom and Phone Paid Services Authority and all emails and communications between Ofcom and Government Ministers between 6 June 2017 and 6 December 2017 relating to the topic of unauthorised debits by Premium Rate Services via mobile phone bills and subsequent refund methods used to reimburse consumer for unauthorised transactions.

8. Searching for information within these parameters Ofcom identified information which it considered exempt from disclosure on the basis of sections 36, 42 and 44 of the FOIA.
9. Following an internal review of this decision, Ofcom wrote to the complainant on 17 May 2018 and upheld its decision to refuse to provide the information it had identified on the basis of the cited exemptions.

Scope of the case

10. The complainant contacted the Commissioner on 2 March 2018 to complain about the way his request for information had been handled.
11. The Commissioner considers the scope of her investigation to be to determine if Ofcom has correctly withheld any of the information identified as part of the refined request on the basis of section 36, 42 or 44 of the FOIA.

Background

12. The request relates to the precise refund methods used by phone providers to reimburse customers who have experienced an unauthorised debit levied by a premium rate services.
13. Ofcom has overall responsibility for regulating premium rate services under the Communications Act 2003. However, it has designated the

Phone-paid Services Authority (PSA) to deliver the day-to-day regulation of the premium rate services market, acting in accordance with a Code of Practice approved by Ofcom under the Communications Act 2003.

14. The PSA regulates the provision of premium rate services, the contents of premium rate services, and the facilities made available in the provision of such services. Regulation strategy, scope and policy are developed in dialogue between Ofcom and the PSA but final decisions rest with Ofcom. The relationship between Ofcom and the PSA is set out in a Memorandum of Understanding¹.
15. The current premium rate regulatory framework consists of a hierarchy with three components: (i) the Communications Act 2003; (ii) the premium rate services conditions (PRS Conditions); and (iii) the Code of Practice. Section 120 of the Communications Act 2003 defines premium rate services and provides Ofcom with the power to set the PRS Conditions to regulate the provision, content, promotion and marketing of premium rate services. The PRS Conditions require providers falling within its scope to comply with directions given by the PSA in accordance with the Code of Practice. Ofcom can ultimately take enforcement action for a breach of the PRS Conditions. Premium rate providers and network operators are required to comply with the Code.

Reasons for decision

16. The Commissioner notes that the correspondence between the complainant and Ofcom in this case was protracted as the complainant sought to refine his request to enable it to be considered within the cost limit (section 12). The request that was eventually accepted was as set out in the correspondence of 6 December 2017. As well as this Ofcom also identified information relevant to parts 3 and 4 of the original request based on the complainant's clarification he was seeking legal advice, emails or ministerial briefs. Therefore, for clarity, the requests being considered by Ofcom were:

(i) All emails and communication between Ofcom and Phone Paid Services Authority and all emails and communications between Ofcom and Government Ministers between 6 June 2017 and 6 December 2017 relating to the topic of unauthorised debits by Premium Rate Services

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0023/55166/formalframework.pdf

via mobile phone bills and subsequent refund methods used to reimburse consumers for unauthorised transactions.

(ii) Legal advice by Ofcom's in house legal advisers, such as emails or ministerial briefs.

17. The information located by Ofcom includes correspondence with the PSA and Ofcom in respect of an individual consumer's complaint about particular providers and the related investigation carried out by the PSA. This includes exchanges of advice and views between Ofcom and the PSA about the complainant and investigation as well as legal advice. The bundle of documents provided to the Commissioner also includes draft correspondence to the consumer, facts about the complaint and personal information.
18. Ofcom has provided the Commissioner with the withheld information, clearly marked to show where the different exemptions apply. For the most part information has been withheld under section 42 (with section 44 in the alternative) or under section 36 where it does not constitute legal advice. The Commissioner has therefore firstly looked at the information that Ofcom has withheld under section 42 of the FOIA.

Section 42 – legal professional privilege

19. Section 42 of the FOIA states that a public authority may refuse to disclose information if it is subject to legal professional privilege.
20. This exemption is not absolute, so it is subject to the public interest test. Therefore, in addition to demonstrating that the withheld information is subject to legal professional privilege, a public authority must consider the arguments for and against disclosure and demonstrate, in a given case, that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.
21. Legal professional privilege covers communications between lawyers and clients for the purpose of obtaining legal advice and communication and/or documents created by or for lawyers for the dominant purpose of litigation.
22. Ofcom considers the emails that engage this exemption attract legal professional privilege and the privilege claimed is advice privilege. This applies where no litigation is in process but confidential communications have taken place between a client and lawyer for the dominant purpose of seeking or giving legal advice. The client in this case is Ofcom's consumer policy team and the legal adviser is a professional legal adviser from Ofcom's in-house legal team. The legal adviser in this case is a member of the Law Society for England and Wales and the

recipients of her legal advice were individuals employed by Ofcom to carry out Ofcom's consumer policy work.

23. Ofcom states that the communications between the legal adviser and clients were made for the dominant purpose of obtaining legal advice. The legal advice was given in a legal context; it was sought and obtained in respect of a particular case involving a consumer and the advice was provided during the course of the legal adviser's work at Ofcom, recorded via emails from her work address. Having reviewed these emails it is clear that the information constitutes communications and is information exchanged between the client and lawyer for the dominant purpose of seeking and providing legal advice.
24. The Commissioner will now go on to consider the public interest test.

Public interest arguments in favour of disclosure

25. Ofcom acknowledges that disclosure may show how seriously it and the PSA takes complaints and how the regulatory statutory regime is applied to actual complaints. This in turn would help increase public confidence in Ofcom.
26. Ofcom also considers disclosure would show the actions preceding decisions and would demonstrate that careful consideration is given to individual complaints. It would also highlight the professionalism and expertise that exists with Ofcom and the PSA and how this is used to add value to the day to day work which ultimately benefits the public and consumers in the UK.
27. The complainant has provided arguments he considers relevant to the public interest in disclosure. These refer to payforit – a payment mechanism allowing consumers to pay for digital content by adding the costs to mobile phone bills. The complainant argues that there are issues with payforit as there is no requirement for a PIN or password so it leaves consumers at risk. He points to complaints made to the PSA about disputed payforit charges and media articles on this².

² <https://www.thesun.co.uk/money/6035689/help-im-paying-4-50-a-month-to-a-premium-rate-text-service-and-i-dont-know-how-to-stop-it/>

<https://www.express.co.uk/life-style/science-technology/918744/Text-Message-Scam-Charge-Pay>

<https://www.dailymail.co.uk/news/article-5379309/200-000-people-year-charged-scam-text-messages.html>

28. The complainant as well as being concerned about the consent needed to charge, or the lack of consent, is also concerned about what he describes as Ofcom's failure to ensure industry compliance. He argues that there is a right to a refund if a merchant cannot prove that a consumer has consented to enter an agreement. This is based on section 45(4) of The Consumer Rights Act 2015 which states that a trader must give a refund using the same means of payment as the consumer used to pay for the digital content. Ofcom and the PSA argue section 45(4) only applies where the merchant does not have the right to supply the digital content.
29. The complainant argues that the fact that the payforit industry is unable to reimburse consumers in the same way as was used to make payment is in contravention of UK and EU legislation and any advice provided to Ofcom on the subject of whether the industry it regulates complies with the law with regard to reimbursement of consumers should be disclosed in the interests of transparency.

Public interest arguments in favour of maintaining the exemption

30. Ofcom argues that its own and the PSAs legal advisers and clients need to be able to speak freely and frankly with each other so that appropriate legal advice can be sought and obtained. Legal advice cannot be effectively obtained unless they are able to put all facts before in-house advisers without fear that they may afterwards be disclosed and used to its prejudice. Knowledge that their exchanges may be disclosed at any time is likely to discourage future free and frank exchanges taking place, as frequently or possibly, even at all.
31. Ofcom further argues that at times legal advisers need to dispense legal advice under great time pressure, as events unfold. If such advice were to be disclosed, legal advisers may be reluctant to give any advice in recorded form, particularly time-critical advice, unless and until it is first robustly tested. This could lead to policy clients not receiving written/recorded legal advice efficiently and therefore an important tool, necessary to reinforce understanding of the law, may be denied to those clients. The absence of such advice at the point in time it is needed, may result in poor decisions being made, as well as run counter to the administration of justice.
32. On another note; Ofcom has explained that the underlying complaint was relatively recent and at the time of the request was still a live

complaint. The complaint did not concern large number of people or public money and related to one consumer. Ofcom therefore argues that the information relating to this is not information that would be of much public interest. Ofcom is of the view that refund methods in respect of unauthorised debts is not a significant issue amongst consumers generally at this time and therefore there is little public interest in disclosure.

Balance of the public interest arguments

33. There is a weighty public interest in preserving the principle that a client can consult with their legal adviser in a full and frank manner. This is necessary so that they can lay out all the issues relevant to the matter they require advice on and so that the lawyer can respond in full to those enquiries. This may include explaining any weaknesses in, or criticism of their client's position. Without being able to have such frank exchanges it would not be possible for clients to obtain the best legal advice possible and so defend their legal rights, or ensure they are acting in compliance with the law.
34. The Commissioner also recognises the public interest in openness and transparency and she understands the value in providing access to information to enable the public to understand more fully why decisions are made and to encourage public debate and scrutiny.
35. In this case, the withheld information is correspondence in relation to an individual consumer's complaint and an investigation carried out by the PSA. Disclosure would assist the public in understanding more closely how Ofcom applies the regulatory statutory regime to actual complaints.
36. However, the Commissioner considers there are stronger public interest arguments in maintaining the exemption. The withheld information and the legal advice was still relevant at the time of the request, it discusses Ofcom's position on refunds and the reasons for this. The complaint that triggered this discussion and the obtaining of legal advice was still live and disclosing the legal advice would not be in the public interest as it would undermine the principle of legal advice and hinder Ofcom being able to obtain full and thorough legal advice in order to make balanced decisions.
37. To outweigh this clear public interest in maintaining the exemption there would need to be a compelling argument for disclosure and in this case the Commissioner has not been presented with any such argument and does not consider that there is a reasonable justification for disclosure. The complainant considers there is a strong public interest in the disclosure of information which sheds some light on Ofcom's position regarding refunds and its stance not to specify a specific refund method.

However, the Commissioner notes there is public interest in the general issue of unauthorised payments as a result of unsolicited text messages but she is not aware that there is the same level of interest in the matter of how any charges should be refunded.

38. If disclosure were ordered in this case, it would undermine the principle of legal professional privilege and the ability in future for Ofcom to obtain necessarily free, frank and candid legal advice, which in turn would hinder Ofcom's ability to carry out its functions and make fully informed decisions. The Commissioner does not consider such consequences are in the interests of the wider public.

Section 36 – prejudice to the effective conduct of public affairs

39. For the remaining information that has not already been considered exempt from disclosure by virtue of section 42 of the FOIA; the Commissioner has considered whether section 36 provides a basis for withholding the information.
40. In its response to the complainant and internal review, Ofcom refers only to section 36(2). In its submission to the Commissioner, Ofcom has clarified it considers sections 36(2)(b)(i), (ii) and (c) are applicable.
41. Section 36(2)(b) of the FOIA says that information is exempt information if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to inhibit (i) the free and frank provision of advice or (ii) the free and frank exchange of views for the purposes of deliberation.
42. Section 36(2)(c) says that information is exempt information if, in the reasonable opinion of a qualified person, disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
43. Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised, qualified person for that public authority. The qualified person's opinion must also be a "reasonable" opinion, and the Commissioner may decide that the section 36 exemption has not been properly applied if she finds that the opinion given is not reasonable.
44. Other than for information held by Parliament, section 36 is a qualified exemption. This means that even if the qualified person considers that disclosure would cause harm, or would be likely to cause harm, the public interest must still be considered.
45. To determine first whether Ofcom correctly applied the exemption, the Commissioner is required to consider the qualified person's opinion as

well as the reasoning that informed the opinion. Therefore in order to establish that the exemption has been applied correctly the Commissioner must:

- ascertain who was the qualified person or persons
 - establish that an opinion was given by the qualified person
 - ascertain when the opinion was given; and
 - consider whether the opinion was reasonable.
46. Ofcom has told the Commissioner that the qualified person in this case was the Ofcom Corporation Secretary. The qualified person had access to submissions in the form of draft correspondence in response to the requests, hard copies of the withheld information, information confirming the complaint referred to in the bundle was live as well as arguments supporting disclosure and withholding the information.
47. The qualified person concluded that, in his opinion, both sections 36(2)(b) and (c) were applicable and engaged for the following reasons; that disclosure would
- inhibit the free and frank provision of advice or
 - the free and frank exchange of views for the purposes of deliberation or
 - otherwise prejudice the effective conduct of public affairs.
48. The Commissioner is satisfied that the opinion was that of the appropriate qualified person for Ofcom, provided at the appropriate time. She has gone on to consider whether that opinion is reasonable. It is important to note that this is not determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold. This only requires that it is a reasonable opinion, and not necessarily the most reasonable opinion. The test of reasonableness is not meant to be a high hurdle and if the Commissioner accepts that the opinion is one that a reasonable person could hold, she must find that the exemption is engaged.
49. With regard to both section 36(2)(b) and 36(2)(c), the qualified person's opinion in this case seems to be that prejudice *would be likely to occur* if the withheld information was to be disclosed, rather than would occur. 'Would be likely' imposes a less strong evidential burden than the higher threshold of 'would occur'.

50. With regard to section 36(2)(b), the Commissioner considers that the exemption concerns processes that may be inhibited at the time of the request and in the future, rather than harm arising from the content or subject matter of the requested information itself. The key issue in this case is whether disclosure could inhibit the process of providing free and frank advice for the purposes of deliberation, in relation to the handling of complaints.
51. Section 36(2)(c), on the other hand, refers to the prejudice that would be likely otherwise to apply. The Commissioner considers that if section 36(2)(c) is used in conjunction with section 36(2)(b), as in this case, the prejudice envisaged must be different to that covered by section 36(2)(b).
52. In order for the qualified person's opinion to be reasonable, it must be clear as to precisely how the prejudice or inhibition may arise. In her published guidance on section 36 the Commissioner notes that it is in the public authority's interests to provide her with all the evidence and argument that led to the opinion, in order to show that it was reasonable. If this is not done, then there is a greater risk that the Commissioner may find that the opinion is not reasonable.
53. Ofcom provided the qualified person with the withheld information and the context to this – that it was correspondence between the PSA and Ofcom in respect of an individual consumer's complaint about a provider and a mobile company and that the information included exchanges of views and advice between the PSA and Ofcom about the complaint and investigation including draft responses to the consumer. Ofcom stated that it works closely with the PSA to ensure the effective delivery of matters such as regulatory strategy, scope and policy as they have share responsibilities in these areas. The scheme relies on ongoing cooperation, coordination and support including in relation to the implications of specific complaints.
54. It is therefore important to maintain a free flow of information – including information provided in confidence – between the PSA and Ofcom to allow for fully-informed decisions to be made. It is argued that this needs to happen in a confidential space, by not prematurely disclosing information unless there is a sufficient public interest in doing so.
55. Disclosing information withheld under section 36(2)(b) would undermine that confidential space. According to Ofcom there would be a real likelihood that disclosure would impact on the communications between itself and the PSA in the future and may also deter consumers from reporting complaints to regulators if they thought this would be made public.

56. With regard to section 36(2)(c), Ofcom argues that disclosing the withheld information would be likely to prejudice its ability to conduct its public affairs. It says it is likely that the relationship between Ofcom and the PSA would be affected and the flow of information between the parties would be inhibited; therefore restricting the ability to perform their public services as consumer watchdogs serving UK citizens and consumers.
57. The Commissioner has considered the qualified person's opinion, which has been supported by Ofcom's additional reasoning. Although she finds the opinion somewhat broad the Commissioner is prepared to accept that the opinion is reasonable, that the prejudice envisioned under sections 36(2)(b) and 36(2)(c) are different and that both section 36(2)(b) and section 36(2)(c) are therefore engaged. The Commissioner has gone on to consider the public interest arguments associated with these exemptions.

Public interest arguments in favour of disclosing the information

58. Ofcom has recognised the public interest in stakeholders and consumers being confident that decisions are taken on the basis of the best available information and well-informed advice.
59. Ofcom also accepts that there is a case for arguing that if parties exchanging views knew they would be disclosed it may improve the quality of the arguments and the overall debate to arrive at a more robust outcome.
60. It also states that there would be some public interest in disclosing information which shows how regulators work together to resolve complaints.
61. The complainant's arguments for why the information should be disclosed have already been outlined in relation to section 42 so have not been repeated here.

Public interest arguments in favour of maintaining the exemption

62. Ofcom states that as the communications regulator it depends on its ongoing relationship with the PSA, the regulator of content, goods and services charged to phone bills. It would not be in the public interest for either body to be less inclined to share advice and information as it may mean that expertise that is used to make fully informed decisions in the interests of consumers is not shared.
63. It is argued that PSA employees would be less willing to come forward and discuss necessary policy issues and complaints with Ofcom employees and would be less willing to be open in any deliberations if

they knew this may be made public. Similarly, Ofcom employees would be less likely to discuss policy issues and complaints and be open in discussions with other regulators. This impact on the free and frank provision of advice and exchange of views would not be in the public interest as it would impact on Ofcom's ability to make informed decisions based on the best possible advice from other regulators.

Balance of the public interest arguments

64. The opinion of the qualified person is limited to the degree of likelihood that inhibition or prejudice would occur. In assessing the public interest arguments therefore, particularly those relating to withholding the information, the Commissioner considers the relevance of factors such as the severity, extent and frequency with which providing advice and the free and frank exchange of views, and the conduct of public affairs, might be inhibited if the information was to be disclosed.
65. From its submissions Ofcom appears to be saying that disclosing the requested information would diminish the likelihood of free and frank exchanges between regulators and the collaborative approach to dealing with complaints that currently exists. This in turn would be detrimental to how effectively Ofcom can fulfil its public functions.
66. The Commissioner considers that the timing of a request and the continuing relevance of the information will have some bearing on whether it can be accepted there is a potential chilling effect on future engagement. In considering this the Commissioner has taken note of the fact the complaint that was being discussed was still live at the time of the request. Much of the discussions between the PSA and Ofcom related to the complaint itself, the legal position and how to respond.
67. The Commissioner acknowledges that this demonstrates that the information that had been requested was still of relevance as the complaint was still ongoing. However, this does not mean that it has to be accepted there would be a chilling effect i.e. an unwillingness by regulators to engage with one another, or an impact on Ofcom's ability to conduct its public affairs if the information were to be disclosed.
68. As discussed in her published guidance on section 36, chilling effect arguments operate at various levels. If the issue in question is still live, arguments about a chilling effect on those ongoing discussions are likely to be most convincing. Arguments about the effect on closely related live issues may also be relevant. However, once the decision in question is finalised, chilling effect arguments become more and more speculative as time passes. It will be more difficult to make reasonable arguments about a generalised chilling effect on all future discussions.

69. That being said; the information in the exchanges between Ofcom and the PSA is reasonably detailed and there is therefore a more substantial argument for saying there may be a chilling effect on future exchanges if it were to be disclosed. Contributors may be more guarded in their views if they think they might be disclosed. Whilst they will still need to liaise with other regulators from time to time to carry out functions it is not unreasonable to assume they may be less frank in their opinions. Perhaps more compelling is the argument that disclosure may lead to a chilling effect on future exchanges in that it may make consumers wary of submitting complaints if they fear details will be disclosed.
70. Given that it is accepted the complaint was still live the Commissioner would accept there could be a chilling effect if the information were disclosed. It is accepted that the potential for a chilling effect to occur is not in the public interest as it may impact on the quality of future decisions.
71. However, in determining the weight that this argument should be given the Commissioner must consider not just the likelihood of this prejudice occurring but the severity and extent of this.
72. One of the key arguments presented by Ofcom relates to the confidential nature of the exchanges and the fact there is no expectation that exchanges between regulators to establish how to deal with complaints would be made public. It is argued that disclosing the correspondence would undermine the process of dealing with the complaint and making a sound decision.
73. In terms of sections 36(2)(b)(i) and (ii) the Commissioner accepts there is an argument that disclosing the exchanges between the PSA and Ofcom would be likely to have a chilling effect and cause a degree of inhibition to the free and frank provision of advice and exchange of views for the purpose of deliberation. It is reasonable to state that those corresponding may be more guarded in their comments if they believe they will be made publicly available.
74. The Commissioner acknowledges that this argument is weakened somewhat by the fact it is likely regulators will still want to and need to engage with other regulators to collaborate on policy issues, strategy and complaints. Despite this there is still a case for stating that the chilling effect would be likely to occur as the ways in which the regulators interact may change and impact on how effectively Ofcom can make decisions. This would not be in the public interest and nor would it be in the public interest for consumers to lose confidence in the confidentiality of the complaints process.

75. The Commissioner recognises the public interest in transparency and accountability and disclosing information which would show how Ofcom collaborates with other regulators. However, the other arguments presented by the complainant do not seem to be relevant to the information withheld under this exemption and do not therefore carry any weight.
76. Whilst the Commissioner does not consider the arguments for maintaining the exemption to be compelling, she does consider there is sufficient weight to withhold the correspondence identified by Ofcom that does not constitute legal advice. The prejudice claimed by Ofcom is likely, Ofcom has explained how disclosure could lead to a chilling effect and how this would consequently impact ongoing and future discussions with other regulators and its ability to look into complaints effectively.
77. Therefore, the Commissioner has concluded the section 36(2)(b)(i) and (ii) exemptions are engaged and the public interest favours maintain the exemption.

Right of appeal

78. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

79. 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.

80. 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

Jill Hulley
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