



## **FREEDOM OF INFORMATION ACT**

### **Previously released information / disclosure log**

**FY 2016–2017**

#### **NOTES**

Logs are updated at the end of each quarter  
Questions are produced in their original format

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# 1ST QUARTER

<b>Topic</b>	1) Civil complaint
<b>Date of Response</b>	31/03/16
<b>Details of Request</b>	<p>In respect of the following:  Magistrates' Courts Act 1980 CHAPTER 43  PART II  CIVIL JURISDICTION AND PROCEDURE  Jurisdiction to issue summons and deal with complaints  F151 Issue of summons on complaint  Where a complaint relating to a person is made to a justice of the peace, the justice of the peace may issue a summons to the person requiring him to appear before a magistrates' court to answer to the complaint.]  Hearing of complaint  53 Procedure on hearing.  (1) On the hearing of a complaint, the court shall, if the defendant appears, state to him the substance of the complaint.  (2) The court, after hearing the evidence and the parties, shall make the order for which the complaint is made or dismiss the complaint.  (3) Where a complaint is for an order for the payment of a sum recoverable summarily as a civil debt, or for the variation of the rate of any periodical payments ordered by a magistrates' court to be made, or for such other matter as may be prescribed, the court may make the order with the consent of the defendant without hearing evidence.  Please provide the authorisation (documented authority) by which a complaint can be laid at a civil hearing in a Magistrates Court for debt when precedent, orthodoxy and Common Law deem a 'claim' to be</p>

	<p>the correct vehicle to bring a case to a civil proceeding to establish liability.</p> <p>Acts and Statutes do not provide an answer, therefore will not be acceptable as a response.</p>
<p><b>Answer</b></p>	<p>You requested information from the Law Commission under the Freedom of Information Act 2000. We acknowledged your request on 8 March 2016. You asked us to:</p> <p>" Please provide the authorisation (documented authority) by which a complaint can be laid at a civil hearing in a Magistrates Court for debt when precedent, orthodoxy and Common Law deem a 'claim' to be the correct vehicle to bring a case to a civil proceeding to establish liability."</p> <p>You expressly state that "Acts and Statutes do not provide an answer, therefore will not be acceptable as a response". However, it is my understanding that a magistrates' court has jurisdiction to hear a complaint in civil proceedings under section 52 of the Magistrates' Courts Act 1980 subject to any other enactment giving jurisdiction on the particular issue. The Court will be able to hear proceedings in relation to particular categories of debt where jurisdiction is granted under some other Act. For example, section 65 of the Taxes Management Act 1970 allows the recovery in the Magistrates' Court of sums less than £2000 owed in income, capital gains or corporation tax.</p> <p>The complaint procedure is set out in sections 51 – 57A of the 1980 Act (available here: <a href="http://www.legislation.gov.uk/ukpga/1980/43/contents">http://www.legislation.gov.uk/ukpga/1980/43/contents</a>) and the Magistrates' Courts Rules 1981 (available here: <a href="http://www.legislation.gov.uk/uksi/1981/552/contents/made">http://www.legislation.gov.uk/uksi/1981/552/contents/made</a> ).</p> <p>Please feel free to send clarification if I have misunderstood your request.</p> <p>Do note that the Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. We are not in a position to provide legal advice and nor do we have particular expertise on court procedures. If you wish to consult some of our on-going and/or completed projects, please see <a href="http://www.lawcom.gov.uk/project/">http://www.lawcom.gov.uk/project/</a>.</p> <p>Following a request for internal review, the Review Officer sent the following response on 10/05/16:</p> <p>I write in response to your email of 8 April 2016 in which you requested an internal review into the handling of your request for information. Your request was set out in your email of 7 March 2016 and the Law Commission responded by email on 31 March 2016. You responded on the same date to clarify your response. The Law Commission replied on 12 April 2016, by which point you had (on 8 April 2016) already requested an internal review of the handling of your request for information.</p> <p>I have now concluded an internal review of the Law Commission's response to your request, both in its response of 31 March 2016 and its response of 12 April 2016. I have upheld the Law Commission's decision, and supplemented it. I explain my decision below.</p> <p>My interpretation of your two emails is that you are asking on what basis the Magistrates' Court can deal with council tax</p>

liability (which you say is a civil as opposed to a criminal matter).

As a preliminary point, it might help if I address a comment that you have made in various places in your correspondence. You have suggested that legislation cannot override the common law. Legislation enacted by Parliament is part of the law of England and Wales, in combination with the common law (which can also be described as judge-made law, deriving from cases). But not only is legislation part of the law, legislation is superior to the common law. So legislation can override the effect of the common law. By contrast, the common law (i.e. decisions of judges) cannot override the effect of legislation.

I have upheld the Law Commission's response for three alternative reasons.

First, in my opinion your request is not for "information" within the meaning of the Freedom of Information Act ("FOIA"). Rather, your request is for legal advice concerning the basis of the Magistrates' Court's jurisdiction to deal with council tax liability matters.

The Law Commission does not give legal advice. It is not required to do so by the Law Commissions Act 1965 nor by the FOIA.

Your request is not for information about points that were the subject of a Law Commission review, on which the Law Commission might hold unique information. Rather, you are asking the Law Commission to apply its general expertise in law, and use publically-available legal resources, to work out an answer to the question that you have raised. Your request is therefore for legal advice, not for disclosure of information that the Law Commission already holds.

Second and alternatively, in the event that I am wrong and your request is for "information", I have concluded that the information is not "held" by the Law Commission within the meaning of the FOIA. I would not expect the Law Commission to hold information about the powers of the Magistrates' Court to deal with council tax liability. Moreover, my searches of our records have not revealed any relevant material.

Third and alternatively, in the event that I am wrong and your request is for information that is held by the Law Commission (for example, in its limited collection of books), I have decided that it is exempt from disclosure under section 21 of the FOIA which states that "Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information". The same recourses that would be used by the Law Commission to answer your question are also available to you.

(1) Legislation can be accessed from [Legislation.gov.uk](http://legislation.gov.uk), and the legislation that appears to be particularly relevant is available via the direct hyperlink that the Law Commission provided in its first response of 31 March 2016;

(2) Legislation, case law and textbooks can be accessed via Westlaw, LexisNexis or other similar online databases, either by payment of the appropriate fee to those commercial organisations or via the British Library (again on payment of the appropriate fee; a temporary reader's card costs £5.00. Further details about the availability of these databases are available at [http://www.bl.uk/eresources/socsci/lawandlegalstudies/united\\_kingdom.html](http://www.bl.uk/eresources/socsci/lawandlegalstudies/united_kingdom.html), and details about obtaining a reader's card are available at <http://www.bl.uk/help/how-to-get-a-reader-pass>.

(3) Legislation, case law and textbooks are available from libraries with a legal section, including the British Library.

Finally, I have considered the content of the Law Commission's response, which provided comments on the jurisdiction of the Magistrates' Court, direct links to the legislation, and links to the Law Commission's current and completed project. I am satisfied that this assistance went beyond what was required by the FOIA.

For all of the reasons set out above, I am satisfied that the Law Commission provided an appropriate response to your

	<p>request. I have therefore decided to uphold the response, as supplemented by this letter.</p> <p>Following further correspondence from the requester, the Review Officer sent the following further response on 11/05/16:</p> <p>I am sorry that you are dissatisfied with the outcome of my internal review. I regret, however, that nothing that you say in your email has caused me to change my decision or the contents of my letter of 10 May. As I explained in my letter of 10 May, if you are not content with the outcome of my internal review, you have the right to apply directly to the Information Commissioner for a decision.</p> <p>I respond below to the additional comments that you make in your email.</p> <p>In response to paragraph 3 of your email, your request was treated as a request for information under the Freedom of Information Act (“FOIA”) because the subject line of your email included the words “Freedom of Information request”. After conducting my internal review, I concluded that your email was not, in fact, a request for “information” under the FOIA.</p> <p>In response to paragraph 5 of your email, the Law Commission conducts a public consultation from time to time inviting law reform suggestions for possible inclusion in our next programme of work (see <a href="http://www.lawcom.gov.uk/about/how-we-work/">http://www.lawcom.gov.uk/about/how-we-work/</a>). We will be consulting on our next programme of work this summer. If you would like to make a suggestion for a topic to be included in our next programme, you can respond to that consultation. Full details will be on our website from mid-July.</p>
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<b>Topic</b>	2) Breaches of the Data Protection Act
<b>Date of Response</b>	12/04/16
<b>Details of Request</b>	<p>I am writing under the Freedom of Information Act 2000 to request details of breaches of the Data Protection Act within in your organisation; specifically I am asking for:</p> <p>1a. Approximately how many members of staff do you have?</p> <p>1b. Approximately how many contractors have routine access to your information?</p> <p>2a. Do you have an information security incident/event reporting policy/guidance/management document(s) that includes categorisation/classification of such incidents?</p> <p>2b. Can you provide me with a copy of the latest version of these document(s)? (This can be an email attachment or a link to the document on your publicly facing web site)</p> <p>3a. Do you know how many data protection incidents your organisation has had since April 2011? (Incidents reported to the Information Commissioners Office (ICO) as a Data Protection Act (DPA) breach)</p> <p>Answer: Yes, No, Only since (date):</p> <p>3b. How many breaches occurred for each Financial Year the figures are available for?</p> <p>Answer FY11-12: FY12-13: FY13-14: FY14-15:</p> <p>4a. Do you know how many other information security incidents your organisation has had since April 2011? (A</p>

	<p>breach resulting in the loss of organisational information other than an incident reported to the ICO, eg compromise of sensitive contracts or encryption by malware. )</p> <p>Answer: Yes, No, Only since (date):</p> <p>4b. How many incidents occurred for each Financial Year the figures are available for?</p> <p>Answer FY11-12: FY12-13: FY13-14: FY14-15:</p> <p>5a. Do you know how many information security events/anomaly your organisation has had since April 2011? (Events where information loss did not occur but resources were assigned to investigate or recover, eg nuisance malware or locating misfiled documents.)</p> <p>Answer: Yes, No, Only since (date):</p> <p>5b. How many events occurred for each Financial Year the figures are available for?</p> <p>Answer FY11-12: FY12-13: FY13-14: FY14-15:</p> <p>6a. Do you know how many information security near misses your organisation has had since April 2011? (Problems reported to the information security teams that indicate a possible technical, administrative or procedural issue.)</p> <p>Answer: Yes, No, Only since (date):</p> <p>6b. How many near-misses occurred for each Financial Year the figures are available for?</p> <p>Answer FY11-12: FY12-13: FY13-14: FY14-15:</p> <p>If the specific answers to 4, 5 and 6 are not readily available, I am content for these questions to be modified/replaced with similar questions that are derived from your organisations categorisation/classification system within the documents requested in question 2. I would need to first make an Fol request for question 2 in order to frame suitable questions 4, 5 and 6, then make a second request. Similarly calendar year can replace financial year. Please state in the reply if this option has been implemented.</p>
<b>Answer</b>	<p>I do apologise that it has taken so long to reply to you. I was awaiting further guidance on a number of aspects of this request.</p> <p>The information you requested is enclosed, and the answers to the questions in your request are contained in the body of your original email (below).</p> <p>1a. Approximately how many members of staff do you have? We currently have 62 members of staff.</p> <p>1b. Approximately how many contractors have routine access to your information? We do not have any contractors with access to our information.</p> <p>2a. Do you have an information security incident/event reporting policy/guidance/management document(s) that includes categorisation/classification of such incidents? Yes, however it is an MoJ document.</p> <p>2b. Can you provide me with a copy of the latest version of these document(s)? (This can be an email attachment or a link to the document on your publicly facing web site) A copy of the document is attached.</p> <p>3a. Do you know how many data protection incidents your organisation has had since April 2011? (Incidents</p>

	<p>reported to the Information Commissioners Office (ICO) as a Data Protection Act (DPA) breach)</p> <p>Answer: Yes</p> <p>3b. How many breaches occurred for each Financial Year the figures are available for?  Answer FY11-12: FY12-13: FY13-14: FY14-15:  Answer: None</p> <p>4a. Do you know how many other information security incidents your organisation has had since April 2011? (A breach resulting in the loss of organisational information other than an incident reported to the ICO, e.g. compromise of sensitive contracts or encryption by malware. )  Answer: Yes</p> <p>4b. How many incidents occurred for each Financial Year the figures are available for?  Answer FY11-12: FY12-13: FY13-14: FY14-15:    Answer: None</p> <p>5a. Do you know how many information security events/anomaly your organisation has had since April 2011? (Events where information loss did not occur but resources were assigned to investigate or recover, e.g. nuisance malware or locating misfiled documents, loss of RSA/ BeCrypt tokens, Blackberry Phones etc.)  Answer: Yes</p> <p>5b. How many events occurred for each Financial Year the figures are available for?  Answer  FY11-12: 1  FY12-13: 3  FY13-14: 0  FY14-15: 2</p> <p>6a. Do you know how many information security near misses your organisation has had since April 2011? (Problems reported to the information security teams that indicate a possible technical, administrative or procedural issue.)  Answer: We do not hold this information. This is because the department does not record "near misses" as part of its Information Security processes.</p> <p>6b. How many near-misses occurred for each Financial Year the figures are available for?  Answer FY11-12: FY12-13: FY13-14: FY14-15:  Answer N/A</p>
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<b>Topic</b>	3) Matters relating to deceased mother's estate
<b>Date of Response</b>	20/04/16
<b>Details of Request</b>	Handwritten note.
<b>Answer</b>	<p>In your letter dated 18/04/16 you requested information from the Law Commission under the Freedom of Information Act 2000 and we received your request today. Your request relates to the minutes of a meeting on 04/10/12, other correspondence from a named individual and from a firm of solicitors and all correspondence between March 2008 and 4 October 2012 relating to your late mother.</p> <p>I am writing now to advise you that the Law Commission does not hold the information you are seeking. The Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. We do not deal with individual cases, or give advice on individual cases or points of law. Nor do we investigate complaints about the law or about lawyers.</p> <p>The following organisations may be able to help you:  The Law Society <a href="http://www.lawsociety.org.uk">www.lawsociety.org.uk</a> 020 7242 1222  Citizens Advice <a href="http://www.citizensadvice.org.uk">www.citizensadvice.org.uk</a>  Community Legal Advice <a href="mailto:memailhelp@communitylegaladvice.org.uk">mailto:memailhelp@communitylegaladvice.org.uk</a>  Legal Ombudsman <a href="http://www.legalombudsman.org.uk">www.legalombudsman.org.uk</a></p>

<b>Topic</b>	4) Misconduct in public office (several requests submitted at various times)
<b>Date of Response</b>	22/04/16 and subsequently (see 'Answer' below)
<b>Details of Request</b>	<p>a) I refer you the attached link; <a href="https://www.whatdotheyknow.com/request/misconduct_in_public_office_what">https://www.whatdotheyknow.com/request/misconduct_in_public_office_what</a> Suffolk Constabulary's response to an FOI about procedures relating to Misconduct In Public Office implies that the police do not seem to not be taking this legislation seriously enough and are not best protecting data relating to the legislation.</p> <p>A) Since 2010, what has the Law Commission done to help the police take the law of Misconduct In Public Office much more seriously?  B) Has the law Commission and The Ministry Of Defence organised any meetings, documents and guidelines that might "best" help organisations (like Suffolk Constabulary) take Misconduct In Public Office a little more seriously?  The Metropolitan Police;  C) Does the Law Commission have a main point of contact at The Metropolitan Police? If so, who?  D) Since 2010, has the Law Commission been contacted by The Metropolitan Police for guidelines and clarity in progressing Misconduct In Public Office on behalf of UK citizens? If so, when?</p> <p>b) Thank you for giving non lawyers the opportunity to be heard on the issues of Misconduct In Public Office. In the attached report the Law Commission asks this question; <a href="http://www.lawcom.gov.uk/wp-content/uploads/2016/01/misconduct_in_public_office_issues-1.pdf">http://www.lawcom.gov.uk/wp-content/uploads/2016/01/misconduct_in_public_office_issues-1.pdf</a></p>

"C) What types of duty bring a person within the scope of the offence?

2.105 The offence of misconduct requires the defendant to be in public office. That term requires not only that he or she is, as discussed, under a duty associated with a state function, but also that the individual's duty must be one that the public has a significant interest in seeing performed."

Question;

I refer you to the present Government's plans to privatise more of the healthcare services provided by the NHS;

In order that I can ascertain whether those I seek healthcare support have been proactive in their Duty of Care; please clarify what key communication the NHS, HM Courts & Tribunals Service, The Ministry Of Justice, Government or The Parliamentary Health Service Ombudsman has made in an effort to bring clarity on whether private sector employees working within the NHS would be termed as a "public servant"?

I seek your transparency and guidance in how to confirm whether the NHS are being proactive in helping the Law Commission make Misconduct In Public Office legislation much more clearer to NHS service users since 1st April 2010.

c) Firstly, I am extremely grateful to the Law Commission for the opportunity it has given to the public to contribute to the debate.

A discussion between those non lawyers who have already contributed to the Misconduct In Public Office (MIPO) project has made the following FOI's necessary.

Prior to 2016;

1) What data had been recorded/ logged/ protected by the Law Commission (in particular) the MIPO project team that confirmed which public sector agency had been the most pro-active in wishing to see the Law Commission conduct a review of the following public concerns?

a) The basic rights of the public when trying to progress this legislation as a Person In Litigation in the County Courts?

b) A review of the timescales and limitations attached to MIPO in respect of "Common Law" compared to that of "Criminal Law"?

c) The logged concern that a UK citizen's right to "justice in a timely fashion" is impeded by the fact that the progression of Misconduct In Public Office has a 3 month time limit whilst most waiting lists and queues for justice with organisations from the ICO to the PHSO do not seem to start being progressed for half a year to 11 months?

2) Please provide a copy of that data that allows MIPO to be progressed under Common Law AFTER the 3 month deadline due to "special circumstances"?

For example, an inability to access an unbiased healthcare or council service after engaging in every public sector complaints protocol? Another example would be the delayed progression of a report by a Public Sector Ombudsman or Regulator?

d) Please can you direct me to that published material that will be transparency to a response provided on this website on 17th March 2016.

[https://www.whatdotheyknow.com/request/the\\_protection\\_of\\_vulnerable\\_adu#incoming-784765](https://www.whatdotheyknow.com/request/the_protection_of_vulnerable_adu#incoming-784765)

I quote;

"The Ombudsman has a wide discretion to initiate, continue or discontinue an investigation under section 3(2) of the Health Service Commissioners Act 1993 (HSCA). The HSCA is available in the public domain and is online

at: [1][www.legislation.gov.uk](http://www.legislation.gov.uk)

	<p>The decision on whether or not to initiate, continue or discontinue an investigation, including investigations of complaints involving patients who are vulnerable or at risk, rests with the Ombudsman alone." The clarity and data I seek is as follows;</p> <p>A) Please clarify when did the Law Commission cross reference whether the "discretion" of The Ombudsman made an Ombudsman i)a law unto themselves and ii) possibly immune from civil or criminal prosecution under the Misconduct in Public Office Act?</p> <p>B) If an Ombudsman repeatedly identifies, side-lines and then ignores the same cycle of miscarriages of justice against thousands of UK citizens; should the Ombudsman be forced to cooperate with an investigation under the remit of Misconduct In Public Office?</p> <p>C) If an Ombudsman willfully ignores a significant history of malfeasance progressed by one department or a public servant, does the protection of a UK citizen from Misconduct in Public Office take precedence over The Health Service Commissioners Act?</p> <p>The confusing set of information provided by the Law Commission seems to have created a paradox and I seek your genuine cooperation and transparency. The remit of my FOI is to try to source that data from your department that would bring clarity to the data published by the Law Commission.</p> <p>D) Please point to that data would bring clarity to this paradox; In the eyes of the law, which legislation has priority over the other? Misconduct in Public Office or The Health Commissioner's Act?</p>
<p><b>Answer</b></p>	<p>1.1 We have dealt with your requests for information under the provisions of the Freedom of Information Act 2000.</p> <p>1.2 This response is to your emails sent to the Law Commission on:</p> <p>(1) 18 March 2016 at 12:30;</p> <p>(2) 18 March 2016 at 13:23;</p> <p>(3) 19 March 2016 at 08:33; and</p> <p>(4) 21 March 2015 at 02:28.</p> <p>These emails contained a total of 27 questions.</p> <p>1.3 This response begins with an explanation of the role of the Law Commission and the remit of its functions. It goes on to provide an explanation of the specific remit of the misconduct in public office project. These explanations are intended to provide answers to elements of many of the specific questions asked. Then each of the 27 questions asked are dealt with in the order in which they were received.</p> <p>1.4 Your email of the 21 March stated that the document attached contained your response to Issues Paper 1. Accordingly only specific questions in that document are dealt with here. Any statements you make within that document will be logged as your consultation response and analysed along with all other responses to the paper.</p> <p><b>THE ROLE OF THE LAW COMMISSION</b></p> <p>1.5 The Law Commission is a statutory body set up by the Law Commissions Act 1965. The Commission's function is to keep the law under review and to make recommendations for its reform so that it better reflects the society we live in and is more user friendly. Our functions are limited by statute.</p> <p>1.6 The Law Commission cannot provide any advice on individual cases or points of law. We also cannot investigate specific complaints or research questions that are not part of our specific reform agenda.</p>

1.7 One of the primary focusses of the Law Commission is consultation. We endeavour to consult with as many people and organisations we can, from as broad a spectrum of backgrounds as possible. This allows us to take account of various perspectives, expertise and experience when undertaking review of a particular area of law. As part of this consultative agenda, we welcome contributions through various media, including formal responses to consultation and ad hoc contributions via email. We ensure that all relevant and pertinent issues raised are accounted for in our work.

1.8 The work of the Law Commission at any particular time is limited to the specific projects we have undertaken. Under the protocol between the Law Commission and the Lord Chancellor there are two ways in which the Law Commission begins a law reform project:

(1) Firstly, every few years we consult on a new programme of law reform, which is laid before Parliament and sets out the majority of our work for the next few years. In deciding what is to be included in this programme we consult with the public as to areas that are identified as in need of reform. You will be able to contribute to this when the next consultation opens, probably in 2018. For a project to be included in the programme, it must be agreed upon by the Commissioners, and the relevant government minister must give an undertaking to seriously consider our proposals.

(2) Secondly, a government minister may refer a project to the Commission for consideration by the Commissioners as a piece of work outside the normal programme. This will normally be in an instance where the minister has decided that there is a pressing need for reform of an area of law which falls under their brief, and where they consider that the Commission has particular expertise that could be used.

1.9 The misconduct in public office project is part of the criminal law team's current programme of reform.

#### THE MISCONDUCT IN PUBLIC OFFICE PROJECT

1.10 The misconduct in public office project is limited to reviewing the criminal offence of misconduct in public office.

1.11 It is beyond the remit of this project to make any recommendations in relation to related civil or disciplinary law. The only reference we can make to such provisions are where they have a direct impact on the criminal law. For example, Chapter 5 of Issues Paper 1 contains analysis of alternative methods of redress for misconduct by public office holders in order to establish the legal landscape within which the criminal offence operates. Further, the associated law relating to the civil tort of misfeasance in public office is described in Appendix B to Issues Paper 1. Both this analysis and description is provided to establish the landscape of the criminal offence only, not as a precursor to making any reform recommendations to the tort or disciplinary law as that would be outside the remit of our review.

#### The current law

1.12 As explained in Issues Paper 1, the criminal offence of misconduct in public office is a common law offence. This means that it is not contained in any legislation or statute that has been passed by Parliament. Common law is created and developed in the courts on a case by case basis. The historical development of the offence is described in Appendix A to Issues Paper 1.

1.13 One of the questions for the Law Commission when we consider options for reforming the offence will be whether the common law should be replaced with a statutory offence, that is one contained in legislation. The Law Commission has not reached a conclusion on this at present. This will form part of our second publication later this year.

#### Publications

1.14 All publications and updates relating to the project can be found online at <http://www.lawcom.gov.uk/project/misconduct-in-public-office/>.

1.15 On 20 January 2016 we published Misconduct in Public Office - Issues Paper 1 - The current Law. This is a background paper containing our analysis of the current law relating to the criminal offence of misconduct in public office. We also identify the problems that arise in practice as a result of the current law.

1.16 Issues Paper 1 is a public consultation document containing a list of specific questions and we invited responses from any person or organisation who has a view on the analysis contained in the paper. We also invite consultees to provide any further evidence that they may have of problems with the current law, which may assist us in making reform recommendations. The public consultation exercise for this paper was open from 20 January 2016 to 20 March 2016.

1.17 We are currently developing our second publication in relation to the offence of misconduct in public office. This will also be a public consultation document to which we will invite responses from all those with an interest in, and knowledge of, the offence of misconduct in public office. This second paper will set out options for reforming the law. We are due to publish this paper later this year.

#### Public consultation

1.18 We consult with the public in a number of ways. The key consultative phases of the misconduct in public office project are as follows:

(1) Pre-publication of Issues Paper 1 – we conducted informal consultation with a number of persons and organisations in order to assist us in understanding how the current law operates in practice and any problems that arise. See our acknowledgements at paragraphs 1.28 and 1.29 of Issues Paper 1.

(2) Issues Paper 1 – a public consultation exercise opened from 20 January to 20 March 2016 welcoming responses, from all persons and organisations with an interest in/knowledge of the offence, to questions relating to the current law of the criminal offence and its problems.

(3) Symposium - we hosted a public symposium event at King's College London on 20 January 2016 to launch Issues Paper 1. There were just under 100 attendees from a variety of backgrounds including whistleblowing campaigners, regulators, government officials, academics, legal practitioners, the press, students and other members of the public, some of whom described themselves as having been involved in misconduct in public office prosecutions. This event was publicised by us on our website, social media and through the event online platform 'Eventbrite'. It was also publicised by Kings College London.

(4) Future publications – we will be publishing further papers, developing potential law reform proposals, in 2016 and 2017. These will be open for public consultation.

(5) Ad hoc consultation – as stated on our online project page, we have a dedicated project mailbox ([misconduct@lawcommission.gsi.gov.uk](mailto:misconduct@lawcommission.gsi.gov.uk)) and people are invited to get in touch with any questions relating to the offence.

1.19 When communicating with those with an interest in this offence we are not able to comment on any particular allegation of misconduct or provide any advice as to how the law would apply to a particular case. Any person with a particular complaint, or seeking advice, must obtain the appropriate legal advice from a suitably qualified person. Issues Paper 1 provides our analysis of the current law. If you are experiencing difficulty obtaining legal advice, we suggest that you contact either The Law Society or The Bar Council via their websites [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and [www.barcouncil.org.uk](http://www.barcouncil.org.uk).

IN ANSWER TO YOUR SPECIFIC QUESTIONS, WE RESPOND AS FOLLOWS:

Q1: "Since 2010, what has the Law Commission done to help the police take the law of Misconduct In Public Office much

more seriously?”

1.20 We cannot and do not provide advice to any police force as to the application or operation of the current law.

1.21 Our public consultation exercises are outlined above. As you will see from this we have spoken with a number of those with a relationship with the police, including the IPCC and the College of Policing.

Q2: “Has the Law Commission and The Ministry Of Defence organised any meetings, documents and guidelines that might “best” help organisations (like Suffolk Constabulary) take Misconduct In Public Office a little more seriously?”

1.22 The Law Commission is an independent arms-length public body and cannot answer on behalf of the Ministry of Defence. Policing is the responsibility of the Home Office, rather than the Ministry of Defence.

1.23 Our consultation process and role are outlined above. The Law Commission does not and cannot provide guidelines to organisations as to how they should operate. Issues Paper 1 contains our analysis of the current offence of misconduct in public office.

Q3: “Does the Law Commission have a main point of contact at The Metropolitan Police? If so, who?”

1.24 The Law Commission does not have any allocated points of contact at any of the individual police areas or forces within England and Wales.

1.25 During our consultation process a number of individual police officers, some who work with the Metropolitan Police, provided us with their own views as to the operation of the criminal offence of misconduct in public office.

Q4: “Since 2010, has the Law Commission been contacted by The Metropolitan Police for guidelines and clarity in progressing Misconduct In Public Office on behalf of UK citizens? If so, when?”

1.26 No. See the explanation above as to the role of the Law Commission. We do not and cannot provide such guidelines and the Metropolitan police have not contacted us for either guidelines or clarity in progressing misconduct in public office.

Q5: “Evidence that the Law Commission has made a best effort since 2010 to ensure that those who consider to be victims of Misconduct In Public Office can access justice in a timely fashion?”

1.27 The aim of the Law Commission is to ensure that the law is: fair, modern, simple, and effective. We are unable to assist individuals who consider themselves to be victims of any particular offence to progress their complaints, however, one of our objectives in reforming the law is to make it both more accessible and easier to use.

1.28 With regards to Misconduct in Public Office, Issues Paper 1 provides an analysis of the current law and its problems and asked consultees for examples of the problems caused in practice. Should delays in access to justice be an issue that is raised we will take account of this in our subsequent paper.

1.29 Further, the next paper published as part of this project will be accompanied by an impact assessment. Impact assessments aim to identify practical impacts of a particular law reform option. Where relevant, the speed of a particular legal process can be taken into account in this analysis. The impact assessment has not yet been completed for this project but should delays to access to justice be an issue it will be addressed here.

1.30 Finally, the question asks “...since 2010...”. However, work did not begin on the misconduct in public office project until late 2011. The project was included in our 11th programme of law reform, published in 2011. Due to the needs of other law reform projects work on the project was halted August 2012. Work began again in early 2015.

Q6: “What guidelines on Misconduct in Public Office has the Law Commission overseen in order that the legislation may be

used by a Person In Litigation?”

1.31 The Law Commission does not produce guidelines – see above for the explanation of the role of the Commission. Issues Paper 1 provides our analysis of the current law of the criminal offence of misconduct in public office.

1.32 There is no legislation relating to misconduct in public office. It is a common law offence and has therefore been developed by the courts.

Q7: “Does the Law Commission have any remit to assist those UK citizens who cannot access best legal advice in a timely fashion and instead look to the Law Commission for easy to access guidelines on how to resolve maladministration against them by the Public Servants?”

1.33 No. See above explanation of the role of the Law Commission.

Q8: “Misconduct In Public Office is being reviewed by the Law Commission again; except for the its website, where and how did this department advertise or promote the deadline of 20th March 2016?”

1.34 We seek to promote our public consultation exercises as widely as possible to ensure we gain the fullest engagement we can. The following promotion of our public consultation, and the deadline for responses, has taken place:

(1) The Law Commission website.

(2) Email from the Law Commission to all persons and organisations with whom the project team have had communication throughout the course of the project and others we have been able to identify as potentially having an interest in the law of misconduct in public.

(3) We hosted a public symposium event at King’s College London to launch the paper. This was free to attend and publicly advertised on our website, social media, Eventbrite, by email to all those with whom we have had contact with over the course of project and by King’s College London. All persons notified of the symposium were invited to forward the invitation on to others who might have been interested and we know that many did so.

(4) A press release, sent to national newspapers and other media news sources, the legal press and other organisations that publish newsworthy material concerning the law, selected by our external communications team.

(5) Social media.

(6) Criminal Law and Justice Weekly (6 February 2016).

(7) Various media sources also reported the publication of our Issues Paper 1, the holding of the symposium, and the closing date for consultation responses. These included:

(a) The Guardian - <http://www.theguardian.com/public-leaders-network/2016/feb/09/law-confuse-police-misconduct-criminal-offence>

(b) Lib dem voice - <http://www.libdemvoice.org/have-your-say-public-consultation-on-the-law-of-misconduct-in-public-office-49424.html>

(c) The Police Oracle - [http://www.policeoracle.com/news/criminal\\_justice/2016/Jan/29/misconduct-in-public-office-offence--ill-defined-and-unclear-\\_90768.html](http://www.policeoracle.com/news/criminal_justice/2016/Jan/29/misconduct-in-public-office-offence--ill-defined-and-unclear-_90768.html)

(d) The Institute of Race Relations calendar of racism and resistance - <http://www.irr.org.uk/news/calendar-of-racism-and-resistance-29-january-11-february-2016/>

(e) The Press Gazette - <http://www.pressgazette.co.uk/criminal-offence-which-was-used-prosecute-29-uk-journalist-should-be-scraped-law-commission-told>

(f) Politics Home - <https://www.politicshome.com/home-affairs/articles/opinion/law-commission/misconduct-public-office-law-%E2%80%98flawed%E2%80%99-and-must-be> (link no longer live)

(g) News Media UK – <http://www.newsmediauk.org/Latest/calls-toabolish-offence-of-misuse-in-public-office>

(h) Wired Gov - <http://www.wiredgov.net/wg/news.nsf/articles/LC+Reviewing+the+offence+of+misconduct+in+public+office+21012016160500?open>

(i) Police Professional - <http://www.policeprofessional.com/news.aspx?id=25258>

1.35 Further, Issues Paper 1 and the occurrence of our symposium has been promoted by commentators on social media.

Q9: “Please confirm any communications from The Parliamentary Health Service Ombudsman or elected MP’s who sought to see the term “maladministration” clarified in respect of “Misconduct In Public Office?”

1.36 We have had no such communication because “maladministration” is not a term used in the legal definition of the criminal offence misconduct in public office and so is not part of our review. Should anyone believe that the concept should, or should not, form part of a reformed offence they will be welcome to respond in those terms to our next publication.

Q10: “Please clarify when did the Law Commission cross reference whether the “discetion” of The Ombudsman made an Ombudsman i)a law unto themselves and ii) possibly immune from civil or criminal prosecution under the Misconduct in Public Office Act?”

1.37 We understand from other questions posed (see in particular Question 12 below) that this question raises the issue of whether the Health Service Commissioners Act provides immunity from civil or criminal prosecution. This is not an issue which was considered as part of this project. The Health Service Commissioners Act 1993 (as amended) has no direct relationship with the current criminal offence of misconduct in public office. We are carrying out a review into the criminal offence of misconduct in public office only. See also response to question 11 below.

Q11: “If an Ombudsman repeatedly identifies, side-lines and then ignores the same cycle of miscarriages of justice against thousands of UK citizens; should the Ombudsman be forced to cooperate with an investigation under the remit of Misconduct In Public Office?”

1.38 We cannot comment on any particular complaint or case or provide any legal advice. Investigations into allegations of the criminal offence of misconduct in public office will be carried out by the police and we cannot comment on how any particular investigations may, or may not, be conducted.

Q12: “If an Ombudsman willfully ignores a significant history of malfeasance progressed by one department or a public servant, does the protection of a UK citizen from Misconduct in Public Office take precedence over The Health Service Commissioners Act?”

1.39 The question of whether an individual will face prosecution for the offence of misconduct in public office will depend on whether there is evidence that the elements of the offence is satisfied. See also, answer to question 10 above.

1.40 See Issues Paper 1 for analysis of how the current offence of misconduct in public operates. The offence is currently defined by the case of AG’s Reference (No 3 of 2003) as:

(1) a public officer acting as such; (2) wilfully neglects to perform his duty and/or wilfully misconducts himself; (3) to such a degree as to amount to an abuse of the public’s trust in the office holder; (4) without reasonable excuse or justification.

1.41 The Health Service Commissioners Act 1993 (as amended) has no direct relationship with the current criminal offence of misconduct in public office and therefore neither law takes precedence over the other.

Q13: "The confusing set of information provided by the Law Commission seems to have created a paradox and I seek your genuine cooperation and transparency. The remit of my FOI is to try to source that data from your department that would bring clarity to the data published by the Law Commission. Please point to that data would bring clarity to this paradox; In the eyes of the law, which legislation has priority over the other? Misconduct in Public Office or The Health Commissioner's Act?"

1.42 See answer to question 12 above.

1.43 Further, the criminal offence of misconduct in public office is not part of any legislation – it is a common law offence. If you require assistance in understanding the offence further, or advice as to whether the offence would apply in a particular case, then we would advise you to obtain legal advice.

Q14: "Has The Parliamentary Health Service Ombudsman been invited to this consultation?!"

1.44 All Law Commission consultations are open to the public. We welcome responses from any person or organisation who wishes to answer questions posed in a particular consultation document.

1.45 We sent prior notification of the publication of Issues Paper 1 and the symposium to [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk). We have not received a consultation response from them.

Q15: "Will the panel look into and review the failure of the HMTTC and The Parliamentary Health Service Ombudsman to legally define "maladministration"?"

1.46 We are not aware of any relevant organisation called "HMTTC".

1.47 The remit of the misconduct in public office project is limited to the criminal offence of misconduct in public office, as explained above. Accordingly, anything outside this remit cannot be reviewed as part of this project.

1.48 "Maladministration" is not a concept which forms part of the current law definition of misconduct in public office. See Issues Paper 1 for our analysis of the current law.

Q16: "When a person acting in Public Office repeatedly refuses to review and repair their departments maladministration - would that be perceived as Misconduct In Public Office (MIPO)?"

1.49 See Issues Paper 1 for analysis of how the current offence of misconduct in public operates. The offence is currently defined by the case of AG's Reference (No 3 of 2003) as:

(1) a public officer acting as such; (2) wilfully neglects to perform his duty and/or wilfully misconducts himself; (3) to such a degree as to amount to an abuse of the public's trust in the office holder; (4) without reasonable excuse or justification.

Any conduct must satisfy this definition in order for the criminal offence to apply.

1.50 This is generally decided by the Crown Prosecution Service (CPS) when they are deciding whether to prosecute a person for the offence. In some cases an internal disciplinary process will also be undertaken and that process may decide whether a case should be referred to the CPS. In Issues Paper 1 we identify a number of significant problems with the current law. We also conclude that decisions by disciplinary panels and/or the CPS may not always be straightforward as a result of the lack of clarity as to the current law.

1.51 If you require assistance in understanding the offence further, or advice as to whether the offence would apply in a particular case, then we would advise you to obtain legal advice.

Q17: “Does the tactic of stating that MIPO can lead to lifetime imprisonment scare off non lawyers from progressing a claim of Misconduct In Public Office?”

1.52 We are not able to comment on any such alleged tactic. The phrase “claim” is a term to be used in reference to civil proceedings brought in a civil court or tribunal. As misconduct in public office is a criminal offence, no “claim” of misconduct in public office can be brought, the offence is instead prosecuted in the criminal courts.

1.53 There is, however, an associated tort, of misfeasance in public office, and this is a civil action. The law relating to this is set out in Appendix B to Issues Paper 1. As explained, it is beyond the remit of this project to make any recommendations in relation to related civil or law.

1.54 The criminal offence of misconduct in public office carries a maximum sentence of life imprisonment because it is a common law offence. All common law offences carry a maximum sentence of life imprisonment unless specifically limited by Parliament.

1.55 Appendix D to Issues Paper 1 provides numerous examples of the types of sentences that are given in practice for convictions of misconduct in public office. An impact assessment will be published later this year and that will also contain information relating to sentencing practice.

1.56 The question of sentencing will be an issue in our consideration of reforming the offence. If you have views on this you will be welcome to respond to any public consultation which addresses this issue in the future.

Q18: “Does the public require a legal definition for maladministration?!”

1.57 See answer to question 15 above. We cannot comment on the need for clarity in respect of any concepts used by the Parliamentary and Health Service Ombudsman as part of this review.

Q19: “Would the failure of a public servant to best review and repair maladministration be perceived as Misconduct In Public Office?!”

1.58 See answer to question 16 above. We are unable to provide advice on individual cases and allegations of misconduct in public office.

Q20: “Where does The Parliamentary Health Service Ombudsman or The Ministry of Justice define the legal term for “maladministration”.!”

1.59 The remit of the misconduct in public office project is limited to the criminal offence of misconduct in public office, as explained above. Accordingly, anything outside this remit cannot be reviewed as part of this project.

1.60 “Maladministration” is not a concept which forms part of the current law definition of misconduct in public office. See Issues Paper 1 for our analysis of the current law.

1.61 Further, the Law Commission is independent of both the Ministry of Justice and the PHSO so would be unable to answer this question in any case.

Q21: “Should the CPS statistics in the report be put into context?! 1.15) !”

1.62 The data was used in Issues Paper 1 to illustrate that the number of prosecutions for the offence has increased significantly in the last 10 years.

1.63 An impact assessment will be published alongside the second publication relating to misconduct in public office. This will contain further analysis of data in relation to prosecutions for the offence to establish the practical impact of potential law reform options.

Q22: "Is there an outline of how many cases of Misconduct in Public Office failed to reach court?!"

1.64 It would be impossible to establish how many allegations of misconduct in public office have arisen since the offence was substantively created in 1783 (see our Appendix A to Issue Papers 1, which sets out the historical origins of the offence). It would likewise be impossible to calculate how many criminal investigations have been undertaken into such offences within the same period as adequate records do not exist.

1.65 We have not been provided with statistics to this effect but we have consulted with a number of organisations that investigate allegations of misconduct who have provided us with information as to cases which do not reach court (including National Offender Management Service 'NOMS', CPS and the Independent Police Complaints Commission 'IPCC'. Some detail of this is included in Issues Paper 1 (see for example paragraphs 5.87 and following in relation to NOMS). Likewise Sheet 2 of Appendix D to Issues Paper 1 contains information about a number of cases that were investigated but did not reach court.

1.66 We are currently conducting further research with the CPS in relation to a number of specific cases where a decision was taken not to charge misconduct in public office so that we may understand better why those decisions were made. Our next publication on this project will take account of this research and use it to inform our thinking as to how the current offence may be reformed.

Q23: "Are there statistics for non lawyers who have failed to progress a review of Public Sector Misconduct in Public Office?!"

1.67 We are unclear as to what this question is asking, whether it relates to a non-lawyer failing to assist with an investigation or prosecution for the criminal offence; a non-lawyer failing to assist with a review (such as the one being carried out by the Law Commission) of the current offence, a non-lawyer failing to assist with a civil claim or disciplinary process where misconduct by a public office holder is alleged bringing a civil claim or something else.

1.68 Further, this review is only concerned with criminal investigations and prosecutions involving the criminal offence of misconduct in public office. We do not have, and are not aware of any available statistics in relation to any action taken in relation to criminal investigations and prosecutions involving the offence other than those we have referred to in our Issues Paper 1 and its Appendices.

Q24: "The statistics provided by the CPS seems to imply that very few cases reach the attention of the national media.!"

1.69 Sheet 2 of Appendix D to Issues Paper 1 contains a non-exhaustive list of cases either identified by our research, or provided to us by specific stakeholders. Many of these have been identified from, or confirmed using national media reports.

Q25: "A retired barrister and author on Council Tax Law explained to me that a member of the public had the right to use an N1 form and progress their Claim through a Small Claims Court. Is this a possibility if a non lawyer wished to make a private prosecution?!"

1.70 Bringing a civil claim is an entirely different process to a prosecution for a criminal offence. 'Small claim' cases are brought in the County Court and allocated to the 'small claims track', which is a legal process used specifically for a claim for money under a specified value. For more information please see <https://www.gov.uk/make-court-claim-for-money> or, alternatively, seek legal advice.

1.71 The forms used to begin a civil action bear no relation to, and cannot be used in, criminal proceedings.

1.72 Guidance in relation to private prosecutions is provided by the Crown Prosecution Service on its website -

[http://www.cps.gov.uk/legal/p\\_to\\_r/private\\_prosecutions/](http://www.cps.gov.uk/legal/p_to_r/private_prosecutions/).

Q26: "If a Public Servant refuses to engage in Mediation or Resolution; surely this refusal to engage in resolution confirms Misconduct In Public Office?!"

1.73 See answer to question 16 above. We are unable to provide advice on individual cases and allegations of misconduct in public office.

Q27: "If a person working in the Public Sector has had 18 months to acknowledge data, review it and best respond but fails to do so with no legitimate reason; surely that refusal to comply demonstrates an abuse of power and misconduct?!"

1.74 See answer to question 16 above. We are unable to provide advice on individual cases and allegations of misconduct in public office.

e) This is a response to your request for information made by emails sent on 2 April 2016 at 21:49. Please read this in conjunction with the information provided in our response to you on 31 March 2016.1

1.2 "A) Please could you confirm how many times "Misconduct In Public Office (MIPO) has been the focus of a review project by the Law Commission since 1965?"

Response: Once.

1.3 "B) Please could you direct me to that data that best confirms which department of public servants or private sector staff campaigned for this organisation to instigate a review of MIPO?"

Response: The project was suggested to the Law Commission by an academic, Jonathan Rogers, and the House of Commons Committee on Issue of Privilege.2

1.4 "C) How many times has the Law Commission progressed a review of the Tort of Misfeasance in Public Office since 1965?"

Response: The tort of misfeasance in public office has never been the subject of a project by the Law Commission. Appendix B of Issues Paper 1 provides an outline of the tort for comparative purposes.

1.5 "D) Please could you share an outline of those procedures that would need to be progressed with the Law Commission in order for the UK public to request a best review of the usefulness and the application of Misfeasance in Public Office in the civil law courts?"

Response: As explained in our earlier response a member of the public can recommend a law reform project and this will be subject of consultation for our 13th programme. Details of this consultation will be published on <http://www.lawcom.gov.uk/> in due course.

Request

1.6 "E) Since March 2016, has the Cabinet Office, MP's, an Ombudsman or The Ministry Of Justice requested that the Law Commission progress a review of whether The Health Commissioner's Act contradicts the remit of Misconduct In Public Office?"

Response: No.

f) This is a response to your request for information made by emails sent on 2 April 2016 at 21:49. Please read this in conjunction with the information provided in our response to you on 31 March 2016.1

	<p>1.2 “A) Please could you confirm how many times "Misconduct In Public Office (MIPO) has been the focus of a review project by the Law Commission since 1965?”</p> <p>Response: Once.</p> <p>1.3 “B) Please could you direct me to that data that best confirms which department of public servants or private sector staff campaigned for this organisation to instigate a review of MIPO?”</p> <p>Response: The project was suggested to the Law Commission by an academic, Jonathan Rogers, and the House of Commons Committee on Issue of Privilege.<sup>2</sup></p> <p>1.4 “C) How many times has the Law Commission progressed a review of the Tort of Misfeasance in Public Office since 1965?”</p> <p>Response: The tort of misfeasance in public office has never been the subject of a project by the Law Commission. Appendix B of Issues Paper 1 provides an outline of the tort for comparative purposes.</p>
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<b>Topic</b>	5) Tribunals
<b>Date of Response</b>	28/04/16
<b>Details of Request</b>	<p>HMCTS and the Judicial Appointments Office are being indecisive as to who is responsible so this FOI request has also been directed to you.</p> <p>Under the freedom of information act please provide the qualifications that entitle [                      ] Qualified Care Person date of appointment to sit on a childrens disability tribunal.</p> <p>And provide the section of the tribunal legislation to clarify the definition of ' qualified care person' and the title of the positions allowed by law to sit on a tribunal especially childrens disability tribunals and whether these positions are required to be protected titles.</p>
<b>Answer</b>	<p>First, you requested for us to:</p> <p>“Under the freedom of information act please provide the qualifications that entitle Mrs K E Ponte Qualified Care Person date of appointment to sit on a childrens disability tribunal.”</p> <p>We are unable to provide the particular qualifications that entitle Mrs K E Ponte to sit on a childrens disability tribunal. We do not hold information on the particular qualifications which an individual has entitling them to sit on a tribunal. As you noted in your email, it may be that HMCTS are the best people to contact in this respect.</p> <p>Second, you asked us to:</p> <p>“Provide the section of the tribunal legislation to clarify the definition of ' qualified care person' and the title of the positions allowed by law to sit on a tribunal especially childrens disability tribunals and whether these positions are required to be protected titles.”</p> <p>I am working on the assumption that by ‘childrens disability tribunal’, you mean the Special Educational Needs and Disability Tribunal. Please do send clarification if I have misunderstood your request. Within tribunals there are three general categories of member: legal members (the judge), medical members, and lay persons. In your request you appear to be writing about the medical member. Again please correct me if I have misunderstood.</p>

In the legislation there does not appear, as far as we can find, to be a definition of “qualified care persons”. People are eligible to be medical members of the tribunal if they are the following:

- registered medical practitioner
- registered nurse
- registered dentist
- registered optometrist
- clinical psychologist
- educational psychologist
- pharmacologist
- veterinary surgeon
- members of the Royal Institution of Chartered Surveyors
- accountants which are members of the relevant Institutes

All of the above titles would have to be registered with the relevant regulator, whether the Health and Care Professions Council, General Pharmaceutical Council, General Medical Council, or other body. The titles within this which are “protected titles” are those required to be registered with the Health and Care Professions Council: clinical psychologist and educational psychologist. The above list can be found at article 2 of the Qualifications for Appointment of Members of the First-tier Tribunal and Upper Tribunal Order 2008/2692.

Further detail on the composition of the Special Educational Needs and Disability Tribunal can be found in the Practice Direction of the Senior President of Tribunals. It is stated that in addition to the qualification requirements, the practice direction makes clear that for special educational needs cases the non-legal members must have “substantial experience of educational, child care, health or social care matters”. This guidance can be found here: <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/amended-practice-statement-by-spt-composition-of-tribunals.pdf>

Please feel free to send clarification if I have misunderstood your request.

Do note that the Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. We are not in a position to provide legal advice and nor do we have particular expertise on court procedures. If you wish to consult some of our on-going and/or completed projects, please see <http://www.lawcom.gov.uk/project/>.

<b>Topic</b>	6) (a) Court of Appeal; (b) Immunity of Councils
<b>Date of Response</b>	28/04/16
<b>Details of Request</b>	<p>(a) How many appeals to the Chancery Appeals Division from the county court have been rejected by the clerks after they have been received in time for an appeal by special delivery with the correct fee as listed on their website but nevertheless date stamped as out of time on 29th July 2015, so that the Chancery Division can reject the appeal application as out of time; and insist on an out of time application having to be completed before they will process the application.</p> <p>Provide the date that the appeal from the county court that was date stamped as if received a day late, was apparently placed before the Chancery court in January 2016 and rejected for sending the increased fee demanded too late, when no increase is showing on their website. Please list the name of the judge who made this decision.</p> <p>The link at the bottom of the page shows no increase in fee's.  <a href="http://www.justice.gov.uk/courts/rcj-rolls-building/chancery-division/appeals">http://www.justice.gov.uk/courts/rcj-rolls-building/chancery-division/appeals</a></p> <p>Please also provide a copy of the code of conduct that prevents such unfairness and lack of due process and stops collusion with the lower courts and councils avoiding justice.</p> <p>(b) Are Councils immune from Legal Services Act 2007?</p> <p>Can you please give me all recorded information as to whether or not council officers are immune from the Legal Services Act 2007 when carrying out legal activities before the courts including rights of audience.</p> <p>Is there a requirement that such council officers carrying out legal activities in the courts have to have a solicitors practicing certificate as defined within the Legal Services Act 2007.</p> <p>Under what circumstances can a judge ignore the Legal Services Act 2007 and grant rights of audience to people who are not certificated to carry on legal activities including rights of audience.</p>
<b>Answer</b>	<p>In answering your questions, we would like you to be aware of the role of the Law Commission and the extent to which we are limited in providing specific legal advice. The Law Commission is a statutory body set up by the Law Commissions Act 1965 whose function is to keep the law under review and to make recommendations for its reform. Our functions are limited by statute. The Law Commission cannot provide any advice on individual cases or points of law. The work undertaken at the Law Commission at any particular time is limited to the specific projects we are working on.</p> <p>You asked:</p> <p>“How many appeals to the Chancery Appeals Division from the county court have been rejected by the clerks after they have been received in time for an appeal by special delivery with the correct fee as listed on their website but nevertheless date stamped as out of time on 29th July 2015, so that the Chancery Division can reject the appeal application as out of time; and insist on an out of time application having to be completed before they will process the application.</p> <p>Provide the date that the appeal from the county court that was date stamped as if received a day late, was apparently placed before the Chancery court in January 2016 and rejected for sending the increased fee demanded too late, when no increase is showing on their website. Please list the name of the judge who made this decision.”</p>

I regret to say that we do not hold any of the information you have requested. You may find it helpful to contact the Chancery Appeals Office, London, for advice:

Chancery Appeals Office

The Rolls Building, 7 Rolls Buildings, London EC4A 1NL

You also asked:

“Can you please give me all recorded information as to whether or not council officers are immune from the Legal Services Act 2007 when carrying out legal activities before the courts including rights of audience.

Is there a requirement that such council officers carrying out legal activities in the courts have to have a solicitors practicing certificate as defined within the Legal Services Act 2007.

Under what circumstances can a judge ignore the Legal Services Act 2007 and grant rights of audience to people who are not certificated to carry on legal activities including rights of audience.”

We do not have access to ‘all recorded information as to whether or not council officers are immune from the Legal Services Act 2007’ and therefore we cannot answer your questions relating to council officers.

In relation to your last question, in certain circumstances persons can carry on a reserved legal activity without needing to be authorised. They are considered ‘exempt’ for the purposes of the Legal Services Act 2007.

Schedule 3 of the Legal Services Act 2007 (<http://www.legislation.gov.uk/ukpga/2007/29/schedule/3>) sets out a list of exempt persons who may carry out legal activities, including when a person will have a right of audience in circumstances where they are not authorised for the purposes of this Act. A person may, for example, have a right of audience granted by the Court, a right of audience granted by or under any enactment, have a right of audience when they are assisting in the conduct of the litigation or have a right of audience when they are a party to the proceedings. Schedule 3 also sets out when a non-authorised individual for the purposes of the Act may conduct litigation and when employers may act through an exempt person.

You may find it helpful to contact the Legal Services Board for further advice at [contactus@legalservicesboard.org.uk](mailto:contactus@legalservicesboard.org.uk) or:

One Kemble Street, London WC2B 4AN

<b>Topic</b>	7) Solicitors signing documents
<b>Date of Response</b>	28/04/16
<b>Details of Request</b>	<p>Can a court petition or document be signed in the name of solicitors firms not the name of the individual. Please list your guidelines, practice and procedures for how solicitors firms are required to sign documents and which documents can be signed in the name of the firm rather than the individual solicitor signing the letter or document. Please be so good as to list all variations of signing and for which type of document or letter.</p>
<b>Answer</b>	<p>The Law Commission is a statutory body whose function it is to keep the law under review and make recommendations for its reform. The Commission does not give advice on individual cases or points of law. It may be, however, that the information you seek is held by the Solicitors Regulation Authority, which regulates Solicitors in England and Wales. Their contact details are: Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN. They can also be contacted by telephone on 0370 606 2555.</p> <p>The Commission does not hold the information which you are seeking. In relation to the signature of documents used in court proceedings, rule 2.1 of Practice Direction 5A of the Civil Procedure Rules provides that statements of case and other documents drafted by a legal representative should bear his/her signature and if they are drafted by a legal representative as a member or employee of a firm they should be signed in the name of the firm. Further information can be found here: <a href="https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part05/pd_part05a">https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part05/pd_part05a</a>.</p>

<b>Topic</b>	8) Law applicable to Contractual Obligations
<b>Date of Response</b>	05/05/16
<b>Details of Request</b>	<p>I am looking to locate any papers that the Law Commission holds in relation to the negotiations that led to the 1980 Rome Convention on the law applicable to contractual obligations. I understand that the Commission produced a detailed consultation paper in the mid-1970s, that a Committee based in the Commission was involved in the preparatory work and that one of the Law Commissioners, (Sir) Peter North, represented the UK in international negotiations. I would be grateful for any assistance that you may be able to offer in locating and in providing copies of and/or access to these papers.</p>
<b>Answer</b>	<p>In response to your request for papers relating to the 1980 Rome Convention, please see the attached files, though I note that some are focused on insurance law. Due to the size of the files I have sent a Brussels Working Party paper in a separate email. Many of the Law Commission's records of this project have been destroyed, however I hope that these few reports prove useful. Please let me know if there is anything else you would like me to attempt to find.</p>

<b>Topic</b>	9) Debt or liability
<b>Date of Response</b>	06/05/16
<b>Details of Request</b>	<p>This was initially sent to HMCTS on the 9th September 2015 and HMCTS have refused to acknowledge it and have continued to ignore a request for an internal review for their failure to answer?</p> <p>What is the difference between a debt and a liability ?</p> <p>What is the difference between the two different orders ?</p> <p>What orders are required to be signed and who by ?</p> <p>What orders are required to be sealed with a court stamp and by which level of courts ?</p>
<b>Answer</b>	<p>In answering your questions, we would like you to be aware of the role of the Law Commission and the extent to which we are limited in providing specific legal advice. The Law Commission is a statutory body set up by the Law Commissions Act 1965. The Commission's function is to keep the law under review and to make recommendations for its reform so that it better reflects the society we live in and is more user friendly. Our functions are limited by statute. The Law Commission cannot provide any advice on individual cases or points of law. The work undertaken at the Law Commission at any particular time is limited to the specific projects we are working on.</p> <p>In relation to the distinction between a 'debt' and 'liability', the Law Commission has no particular expertise and has not produced a report dealing with the matter. Some general research suggests that one way of understanding the distinction is that a 'debt' is a sum of money that is owed or due, and a 'liability' is where a legal obligation arises to pay a sum of money owed or due.</p> <p>With regard to your questions about different orders, and the formalities each requires I'm afraid I am not sure which orders you are referring to. It may be that you are referring to debt relief orders and liability orders, but please feel free to clarify if I'm mistaken. We are not, in any event, in a position to offer you advice on procedural matters in relation to any particular court order.</p> <p>The following organisations may be better placed to help:</p> <p>Citizens Advice <a href="http://www.citizensadvice.org.uk">www.citizensadvice.org.uk</a></p> <p>Community Legal Advice <a href="mailto:emailhelp@communitylegaladvice.org.uk">emailhelp@communitylegaladvice.org.uk</a></p> <p>You may also find it helpful to contact a solicitor for advice on your problem. If you have difficulty in finding a solicitor, we suggest that you contact The Law Society via their website <a href="http://www.lawsociety.org.uk">www.lawsociety.org.uk</a>. They can also be contacted by telephone on 020-7242 1222.</p>

<b>Topic</b>	10) GOV.UK
<b>Date of Response</b>	20/05/16
<b>Details of Request</b>	GOV.UK – who can use this in their email address/headings etc. Please can you clarify which government departments can use this in their emails, can any other body not being a government department use .gov.uk in their email address and letter heads etc.
<b>Answer</b>	<p>Thank you for your email below, the contents of which are noted.</p> <p>We have considered your queries concerning who can use the “gov.uk” term in email addresses and letterheads, which Government departments can use “gov.uk” in their emails, and whether or not a non-governmental department can use “gov.uk”.</p> <p>I regret that we are unable to provide you with the information you have requested, as we do not hold the information you have asked for. The Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform.</p> <p>We suggest that you direct your queries to the Government Digital Service (<a href="https://www.gov.uk/government/organisations/government-digital-service">https://www.gov.uk/government/organisations/government-digital-service</a>). This service is concerned with the delivery of the Government’s digital services and information technology systems. You can contact them via <a href="mailto:foi-team@cabinetoffice.gov.uk">foi-team@cabinetoffice.gov.uk</a>.</p> <p>I regret that the Law Commission is unable to assist you further on this matter.</p>

<b>Topic</b>	11) Council Tax
<b>Date of Response</b>	31/05/16
<b>Details of Request</b>	<p>Council Tax - An unjust law is a code that is out of harmony with the moral law.</p> <p>Please provide under the FOIA the law, custom or policy that states tha a council "Customer " must inform the council ahead of time that they will will be paying a sum to reduce the council tax bill to below the old Bankrutpcy level of £750 or the new level of £5000 in advance of the payment ?</p> <p>Please also provide the precise section of the law, custom or policy that states unless a customer informs the council in advance, (even though they have been given no advance knowledge of this requirement by the council ) the council will take it upon themselves to keep any money the customer pays and will apply it to an earlier council tax liability order already secured on their home by a county court charging order .</p> <p>Please provide your definition of "Customer" and what they can expect to receive in the way of transparent services .</p>
<b>Answer</b>	<p>The Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. I regret that we cannot provide legal assistance or advice with individual cases.</p> <p>You may find the Local Government Finance Act 1992 to be of interest. It outlines obligations of occupants and owners of properties in the United Kingdom to pay council tax. The Act is accessible online (see</p>

	<p><a href="http://www.legislation.gov.uk/ukpga/1992/14/contents">http://www.legislation.gov.uk/ukpga/1992/14/contents</a>).</p> <p>The following organisations may be able to help you to find help, at limited cost or in some cases free of charge:</p> <p>Citizens Advice at <a href="https://www.citizensadvice.org.uk/tax/council-tax/council-tax/">https://www.citizensadvice.org.uk/tax/council-tax/council-tax/</a></p> <p>Community Legal Advice at <a href="mailto:emailhelp@communitylegaladvice.org.uk">emailhelp@communitylegaladvice.org.uk</a></p> <p>Legal Ombudsman at <a href="http://www.legalombudsman.org.uk">http://www.legalombudsman.org.uk</a></p> <p>National Debt Line at <a href="https://www.nationaldebtline.org/">https://www.nationaldebtline.org/</a></p> <p>England Shelter at <a href="http://england.shelter.org.uk/">http://england.shelter.org.uk/</a></p> <p>If you wish to make a complaint about council taxation or associated repayment, I suggest you contact your local government authority directly in order to determine what complaints procedure is available. A list of local authorities with associated contact details is available on the Local Government Association website <a href="http://www.idea.gov.uk/idk/org/la-data.do">http://www.idea.gov.uk/idk/org/la-data.do</a>.</p> <p>I regret that the Law Commission is unable to assist you further on this matter.</p>
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<b>Topic</b>	12) Council tax statutory demands and bankruptcy petitions
<b>Date of Response</b>	02/06/16
<b>Details of Request</b>	<p>Why are councils filing bankruptcy petitions into the county courts when they are government departments?</p> <p>Do they have a choice of where to file either in the county court or high court, please provide all information you hold.</p>
<b>Answer</b>	<p>The Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. The Commission does not provide any advice on individual cases or points of law. The work undertaken at the Law Commission at any particular time is limited to the specific projects we are working on.</p> <p>You may find it helpful to contact a solicitor. If you have difficulty in finding a solicitor, we suggest that you contact The Law Society via their website <a href="http://www.lawsociety.org.uk">www.lawsociety.org.uk</a>. They can also be contacted by telephone on 020-7242 1222.</p> <p>The following organisations may also be able to help:</p> <p>Citizens Advice at <a href="https://www.citizensadvice.org.uk/tax/council-tax/council-tax/">https://www.citizensadvice.org.uk/tax/council-tax/council-tax/</a></p> <p>Community Legal Advice at <a href="mailto:emailhelp@communitylegaladvice.org.uk">emailhelp@communitylegaladvice.org.uk</a></p> <p>National Debt Line at <a href="https://www.nationaldebtline.org/">https://www.nationaldebtline.org/</a></p> <p>I regret that the Law Commission is not able to be of more assistance.</p>

<b>Topic</b>	13) IT structure
<b>Date of Response</b>	07/06/16
<b>Details of Request</b>	In line with freedom of information, please provide me with the structure of your IT department for the Law Commission.
<b>Answer</b>	<p>The Law Commission is part of the Ministry of Justice which currently has an IT contract with Atos Origin Ltd. We therefore have no input into any high end decisions regarding the procurement of IT Systems or regulation software etc which MoJ decides to operate and distribute to its staff.</p> <p>In terms of our own setup we have one member of staff who procures basic IT consumables (e.g. mice) required by our staff via submission of IT requests using an online IT catalogue and one member of staff who authorises them.</p> <p>I hope this answers your enquiry. However should you need further information about the IT contract may I suggest you email their Service Desk at <a href="mailto:itservicedesk@justice.gsi.gov.uk">itservicedesk@justice.gsi.gov.uk</a>.</p>

<b>Topic</b>	14) Local authorities
<b>Date of Response</b>	10/06/16
<b>Details of Request</b>	Would you be so kind as to provide all recorded information that confirms the definition of Local Authority. Are they all councils and billing authorities, etc. Are they classed as Government Departments or are they separate entities, such as private companies or anything else?
<b>Answer</b>	<p>Thank you for your email below, the contents of which are noted. I apologise that this response has taken a few weeks to arrive. The Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. I regret that we cannot provide legal assistance or advice with individual cases. We are not currently conducting a project on local government and do not hold the information you are looking for.</p> <p>The following organisations may be able to help you to find help, at limited cost or in some cases free of charge:</p> <p>Citizens Advice at <a href="https://www.citizensadvice.org.uk/tax/council-tax/council-tax/">https://www.citizensadvice.org.uk/tax/council-tax/council-tax/</a></p> <p>Community Legal Advice at <a href="mailto:emailhelp@communitylegaladvice.org.uk">emailhelp@communitylegaladvice.org.uk</a></p> <p>Legal Ombudsman at <a href="http://www.legalombudsman.org.uk">http://www.legalombudsman.org.uk</a></p>

<b>Topic</b>	15) Common Law Jurisdiction
<b>Date of Response</b>	13/06/16
<b>Details of Request</b>	Please provide any recorded information that would state in law that a Council Tax Liability Hearing, held in a Magistrates Court is not under the jurisdiction of the Common Law.
<b>Answer</b>	<p>You requested information from the Law Commission under the Freedom of Information Act 2000.</p> <p>You asked us to: "please provide any recorded information that would state in law that a Council Tax Liability Hearing, held in a Magistrates Court is not under the jurisdiction of the Common Law".</p> <p>Do note that the Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. We are not in a position to provide legal advice and nor do we have particular expertise on court procedures. If you wish to consult some of our on-going and/or completed projects, please see <a href="http://www.lawcom.gov.uk/project/">http://www.lawcom.gov.uk/project/</a>.</p> <p>However, you may find it useful to know that Council tax liability hearings are held in magistrates' courts in accordance with regulation 34 of the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992 No 613. The regulations are made under the Local Government Finance Act 1992.</p> <p>Please feel free to send clarification if I have misunderstood your request.</p>

<b>Topic</b>	16) Withdrawal of the UK from the EU
<b>Date of Response</b>	05/07/16
<b>Details of Request</b>	Could you please tell me whether the EU could possibly use QMV to block an Article 50 withdrawal of the UK (or any other EU member state) from the EU, beyond 31st March 2017 (as per the Treaty of Lisbon)?
<b>Answer</b>	<p>The Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. I'm afraid we are not in a position to provide legal advice, nor, as I understand to be the case here, opinions on points of constitutional or EU law.</p> <p>We do not have any currently ongoing project which is directly relevant to your question. If you wish to consult some of our on-going and/or completed projects, please see <a href="http://www.lawcom.gov.uk/project/">http://www.lawcom.gov.uk/project/</a>.</p>

<b>Topic</b>	17) Earnings																																																		
<b>Date of Response</b>	18/07/16																																																		
<b>Details of Request</b>	<p>I write with a request for information under the FOIA. My request is as follows:</p> <ul style="list-style-type: none"> <li>* Please disclose the mean earnings for male employees and the mean earnings for female employees for the most recent year for which you have figures and please state which year;</li> <li>* Please disclose the median earnings for male employees and the median earnings for female employees for the most recent year for which you have figures and please state which year;</li> <li>* Please disclose the number of male employees by quartile salary bands and the number of female employees by quartile salary bands.</li> <li>* If within the limits allowable under the FOIA please also provide the respective figures for questions 1-3 for the preceding 12 month period.</li> </ul>																																																		
<b>Answer</b>	<p>The answers to your questions are contained in the template which you provided.</p> <p>FY15-16</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Male</th> <th style="text-align: center;">Female</th> <th style="text-align: center;">All Staff</th> </tr> </thead> <tbody> <tr> <td>Headcount @ 31.3.16</td> <td style="text-align: center;">19.1138</td> <td style="text-align: center;">33.4</td> <td style="text-align: center;">52.5138</td> </tr> <tr> <td>Mean</td> <td style="text-align: center;">34967.26</td> <td style="text-align: center;">36119.29</td> <td style="text-align: center;">35692.61</td> </tr> <tr> <td>Median</td> <td style="text-align: center;">24840.36</td> <td style="text-align: center;">28840.36</td> <td style="text-align: center;">28840.36</td> </tr> <tr> <td>1st Quartile</td> <td></td> <td></td> <td style="text-align: center;">16822.83</td> </tr> <tr> <td>Number of staff below 1st quartile</td> <td style="text-align: center;">6</td> <td style="text-align: center;">7</td> <td style="text-align: center;">13</td> </tr> <tr> <td>2nd quartile</td> <td></td> <td></td> <td style="text-align: center;">24840.36</td> </tr> <tr> <td>Number of staff above 1st quartile and at or below 2nd quartile</td> <td style="text-align: center;">4</td> <td style="text-align: center;">10</td> <td style="text-align: center;">14</td> </tr> <tr> <td>3rd quartile</td> <td></td> <td></td> <td style="text-align: center;">54743.66</td> </tr> <tr> <td>Number of staff above 2nd quartile and at or below 3rd quartile</td> <td style="text-align: center;">5</td> <td style="text-align: center;">8</td> <td style="text-align: center;">13</td> </tr> <tr> <td>4th quartile</td> <td></td> <td></td> <td style="text-align: center;">90399.96</td> </tr> <tr> <td>Number of staff above 3rd quartile</td> <td style="text-align: center;">5</td> <td style="text-align: center;">9</td> <td style="text-align: center;">14</td> </tr> </tbody> </table>				Male	Female	All Staff	Headcount @ 31.3.16	19.1138	33.4	52.5138	Mean	34967.26	36119.29	35692.61	Median	24840.36	28840.36	28840.36	1st Quartile			16822.83	Number of staff below 1st quartile	6	7	13	2nd quartile			24840.36	Number of staff above 1st quartile and at or below 2nd quartile	4	10	14	3rd quartile			54743.66	Number of staff above 2nd quartile and at or below 3rd quartile	5	8	13	4th quartile			90399.96	Number of staff above 3rd quartile	5	9	14
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<b>Topic</b>	18) Security and fire products and services
<b>Date of Response</b>	19/07/16
<b>Details of Request</b>	<p>Under the Freedom of Information Request Act 2000, can you please answer the following questions regarding your organisations current Security &amp; Fire products and services.</p> <ol style="list-style-type: none"> <li>1. Does your organisation currently have a contract for Security alarms, CCTV &amp; Fire detection?</li> <li>2. When this contract(s) is due to end?</li> <li>3. Who are these contract(s) with?</li> <li>4. How many devices are supplied and what manufacturer are they?</li> <li>5. Were these items purchased using procurement framework, if so which framework was used?</li> <li>6. When does your organisation intend to tender for these services?</li> </ol>
<b>Answer</b>	You requested information from the Commission under the Freedom of Information Act 2000 on the 12th July 2016. I am now writing to advise you that the Commission does not hold the information which you are seeking. All of the Commissions Security & Fire Safety products are provided for by the Ministry of Justice.

<b>Topic</b>	19) Electoral law
<b>Date of Response</b>	29/07/16
<b>Details of Request</b>	<p>Is it possible for you to send me a copy of all the responses you received to your consultation to which reference was made in the body of your interim report? As in, for every response to which reference was made in the body of the interim report (eg. in para 9.51 there is a reference made to the response of Cllr °°°°) please provide me with an electronic copy of the whole response. Please could you also provide me with information on future timing of the project: when is the government's response due, what will the next steps be etc.</p>
<b>Answer</b>	<p>In response to your freedom of information request, please find attached all responses to our public consultation. Most are in two zip files. I would be grateful if you would confirm that you can open the zip files. An additional response, which was received late but mentioned in our report, is separately attached.</p> <p>Please note that we have a consultation analysis document on our website. You can see what responses were on each of our proposals or questions – sometimes in summary form. You can use that document to “hone in” on responses that are of particular interest on particular questions.</p> <p>Our interim report, published in February this year, remains under review by Government. We await to hear from them whether to go ahead to the next stage of the reform – a draft Bill and final report. Please check our website for progress, or get in touch.</p>

<b>Topic</b>	20) Contracts
<b>Date of Response</b>	29/07/16
<b>Details of Request</b>	<p>I am writing to make a Freedom of Information request for the following information, under the Freedom of Information Act (2000).</p> <p>To assist you, I believe this may best be sourced from your Category Manager for Professional Services within your Procurement section, or Procurement/ Purchasing/ Finance and HR/ Personnel/ Recruitment sections, depending on the organisational structure of the Law Commission of England and Wales.</p> <ol style="list-style-type: none"> <li>1. Please advise the total staff headcount that are employed directly by the Law Commission of England and Wales, with each part-time employee counted as one employee. Please exclude all temporary agency workers from this figure.</li> <li>2. Please identify each supplier that the Law Commission of England and Wales has a contract with to supply temporary agency workers.</li> <li>3. Please identify: a. the type of contract that the Law Commission of England and Wales has with each of these suppliers (preferred supplier list/ framework/ etc. If framework, please indicate b. which - e.g. MSTAR/ YPO/ Panel London/ Pan London/ NPS All Wales/ Crown Commercial Services/ etc; and c. whether this is on a neutral/ master/ hybrid vender model, or the lot number.</li> <li>4. Please advise for each contract identified within (2) above of: a. the current end date of the contract; b. the date(s) that any break clause(s) can be enabled; and c. the length of time of any extension that can be enabled.</li> <li>5. Please advise of the a. full name of the main contact at the Law Commission of England and Wales who is responsible for the main (or majority of the) contract(s) identified within (2) above, together with their: <ul style="list-style-type: none"> <li>b. job title;</li> <li>c. group (either team, division or department, whichever is the smallest identifiable group);</li> <li>d. telephone number;</li> <li>e. email; and</li> <li>f. full postal address, inc postcode.</li> </ul> </li> <li>6. Please identify all suppliers that the Law Commission of England and Wales has sourced a temporary agency worker from - but does not have a contract with - from 1 April 2015 to 31 March 2016.</li> <li>7. For each temporary agency supplier (either a. contracted as identified within (2) above; b. non-contracted as identified within (6) above; and c. all temporary workers the Law Commission of England and Wales has sourced directly), how much has been spent on each supplier (or directly), from 1 April 2015 to 31 March 2016?</li> </ol> <p>I would like the above information to be provided in electronic copy, sent by reply of this request.</p> <p>If you believe this request is too wide or unclear, I would be grateful if you could contact me for clarification, as I understand that under the Act, you are required to advise and assist requesters. If any of this information is already in the public domain, please would you direct me to it, with page references and URLs, as appropriate.</p> <p>If you believe the release of any of this information is prohibited on the grounds of breach of confidence, I ask that you supply me with copies of the confidentiality agreement and remind you that information should not be treated as</p>

	confidential if such an agreement has not been signed.
<b>Answer</b>	<p>I am now supplying the information in the order that it was requested.</p> <ol style="list-style-type: none"> <li>1) As at 31.7.16 we will have 59 people on payroll</li> <li>2) Our last agency staff member departed August 2015. There is currently a recruitment freeze in operation but should we require one, as we are part of the Ministry we would have to use their contract with Brook Street (UK) Ltd.</li> <li>3) We do not have separate contracts with anyone. The details of the contract mentioned at 2) are unknown.</li> <li>4) Details of the contract are unknown to us.</li> <li>5) No-one person is responsible. If a team requires an agency staff member they would complete the appropriate recruitment business case and submit to the Ministry of Justice's Director General for consideration. If agreed, then a pro-forma form is completed and submitted to Brook Street (UK) Ltd.</li> <li>6) We have only used Brook Street (UK) Ltd via the contract with the Ministry of Justice</li> <li>7) The total spend for the period with Brook Street (UK) Ltd was £12,949.73.</li> </ol>

<b>Topic</b>	21) ICT expenditure
<b>Date of Response</b>	29/07/16
<b>Details of Request</b>	<p>Please could you provide me with information about your ICT expenditure, as broken down in the attached template? I have included this template in order to make it easier for you to understand my requirements and provide answers. I appreciate that you may publish contracts and transparency data, but I was unable to find the information to the level of detail I require in publish sources.</p> <p>Within the response, please include:</p> <ul style="list-style-type: none"> <li>* Expenditure from all parts of your organisation (central services and business units);</li> <li>* As well as your own organisation, expenditure for any subsidiary organisations that fall within the scope of your accounts; and</li> <li>* Both revenue (or operating) expenditure and capital expenditure</li> </ul> <p>If you could input the answers in this template and return to me by email as an attachment, this would be much appreciated.</p>
<b>Answer</b>	<p>You requested information under the Freedom of Information Act 2000 on the 7th July 2016. I am now replying to your request. I have filled in your template as requested – available as a separate document on request.</p> <p>I have only answered for the Law Commission and not for any other body within the Ministry of Justice.</p>

<b>Topic</b>	22) Common law jurisdiction (internal review)
<b>Date of Response</b>	03/08/16
<b>Details of Request</b>	Please provide any recorded information that would state in law that a Council Tax Liability Hearing, held in a Magistrates Court is not under the jurisdiction of the Common Law
<b>Answer</b>	<p>I write in response to your email of 5 July 2016 in which you requested an internal review into the handling of your request for information. Your initial request was set out in your email of 6 June 2016 and the Law Commission responded by email on 13 June 2016. You responded on the same date saying that the Law Commission had misunderstood your request. The Law Commission replied on 5 July 2016.</p> <p>The Law Commission responded to your request (a) by saying that it does not provide legal advice, and (b) by referring you to the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992. I have now concluded an internal review of the Law Commission's response to your request.</p> <p>I have decided to overturn the Law Commission's decision in part and to uphold it in part. I explain my decision below.</p> <p>The Law Commission's response suggested that your request was for legal advice. I have decided that your request was for information, and not for legal advice. I have therefore decided to overturn that part of the Law Commission's decision.</p> <p>In order to respond to your request for information, I have carried out searches of the Law Commission's records which have not revealed any information that is relevant to your request. The Law Commission does not hold any information that states that a council tax liability hearing in a Magistrates' Court is not under the jurisdiction of the common law.</p> <p>Alternatively, if your request should be interpreted more broadly as a request for the legal basis for council tax liability hearings in the Magistrates' Court (and assuming that that is "information" within the meaning of the Freedom of Information Act ("FOIA")), then the Law Commission does hold some relevant information, namely a copy of the Local Government Finance Act 1992 ("the 1992 Act"). Schedule 4 to the 1992 Act allows the Secretary of State to make regulations about the recovery of council tax, and paragraph 3 says that those regulations may make provision for an application to be made to the Magistrates' Court for a liability order. The Law Commission's original response to your request referred you to the 1992 Act, and to the Council Tax (Administration and Enforcement) Regulations 1992 that have been made under the powers conferred by the 1992 Act.</p> <p>If your request is for that information, I have decided that it is exempt from disclosure under section 21 of the FOIA which states that "Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information". The information is exempt from disclosure since the 1992 Act is available to you.</p> <p>(1) Legislation can be accessed from <a href="http://www.legislation.gov.uk">Legislation.gov.uk</a>; the 1992 Act is available at: <a href="http://www.legislation.gov.uk/ukpga/1992/14/contents">http://www.legislation.gov.uk/ukpga/1992/14/contents</a>.</p> <p>(2) Legislation, case law and textbooks can be accessed via Westlaw, LexisNexis or other similar online databases, either by payment of the appropriate fee to those commercial organisations or via the British Library (again on payment of the appropriate fee; a temporary reader's card costs £5.00). Further details about the availability of these databases are available at <a href="http://www.bl.uk/eresources/socsci/lawandlegalstudies/united_kingdom.html">http://www.bl.uk/eresources/socsci/lawandlegalstudies/united_kingdom.html</a>, and details about obtaining a reader's card are available at <a href="http://www.bl.uk/help/how-to-get-a-reader-pass">http://www.bl.uk/help/how-to-get-a-reader-pass</a>.</p>

(3) Legislation, case law and textbooks are available from libraries with a legal section, including the British Library. Finally, I have considered the part of the Law Commission's response that provided references to the legislation relating to council tax liability hearings, as well as links to the Law Commission's current and completed projects. I am satisfied that this assistance satisfied the requirements of the FOIA. I therefore uphold this part of the Law Commission's response.

In summary, for all of the reasons set out above, I have:

(1) overturned the Law Commission's response in part, and substituted for it:

(a) a response that the Law Commission does not hold the information requested;

(b) alternatively (in the event that the request was for the legal basis for council tax liability hearings in the Magistrates' Court) a refusal to provide you with a copy of the 1992 Act in reliance on the exception in section 21 of the FOIA; and

(2) upheld the Law Commission's decision in part, in so far as it provided you with references to the 1992 Act and the relevant regulations made under the 1992 Act.

<b>Topic</b>	23) Can a regulation (secondary legislation) change primary legislation?
<b>Date of Response</b>	03/08/16
<b>Details of Request</b>	<p>What evidence does the Law Commission hold:</p> <ol style="list-style-type: none"> <li>1. That a Regulation (Secondary Legislation) can Change Primary Legislation?</li> <li>2. Including when there is no provision for such in the Primary Legislation?</li> <li>3. And can the Regulation (Secondary Legislation) create an offence not specified in the Primary Legislation?</li> <li>4. Or can a Regulation (Secondary Legislation) expand the scope of an offence that is not as specified in the Primary Legislation?</li> </ol>
<b>Answer</b>	<p>In answering your questions, we would like you to be aware that the Law Commission of England and Wales is a statutory body set up by the Law Commissions Act 1965. The Commission's function is to keep the law under review and to make recommendations for its reform. Our functions are limited by statute. The Law Commission cannot provide any advice on individual cases or points of law. The work undertaken at the Law Commission at any particular time is limited to the specific projects we are working on. Your questions do not fall within one of our ongoing law reform projects.</p> <p>In our view your questions are not requests for information within the terms of the Freedom of Information Act. They are rather requests for academic research or analysis of the law. However, to assist you, one of our research assistants has undertaken some research into these questions on your behalf. The majority of this information is taken from Craies on Legislation, Daniel Greenberg (10th Edition). You may prefer to refer directly to Craies or similar text books dealing with legislation, which should be available at any law library. We note also the very full reply you have received to similar questions directed to the House of Commons</p> <p>(<a href="https://www.whatdotheyknow.com/request/can_a_regulation_secondary_legis_2#incoming-843174">https://www.whatdotheyknow.com/request/can_a_regulation_secondary_legis_2#incoming-843174</a> ).</p> <p>1. Yes, a regulation made under an appropriate enabling power can change primary legislation. This is sometimes called a "Henry VIII power". According to the House of Lords Select Committee on Delegated Powers and Deregulation</p>

	<p>(Session 1997 - 1998), a Henry VIII Power is "a provision in a bill which enables primary legislation to be amended or repealed by subordinate legislation with or without further parliamentary scrutiny" (Craies on Legislation Part 1.3.9; and see <a href="http://www.publications.parliament.uk/pa/ld199798/ldselect/lddelder.htm">http://www.publications.parliament.uk/pa/ld199798/ldselect/lddelder.htm</a> ).</p> <p>2 - 4. The power to make secondary legislation which makes changes to primary legislation must be enabled by primary legislation, and exercised within the terms set out by it. Any proposed exercise or change arising from secondary legislation must be tested by reference to whether or not it is "within the class of action that Parliament must have contemplated when delegating" (Craies on Legislation Part 1.3.11). The creation of an offence or the expansion of the scope of an offence would need to fall within the class of action that Parliament contemplated when delegating power to change primary legislation.</p>
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<b>Topic</b>	24) Council Tax (internal review)
<b>Date of Response</b>	10/08/16
<b>Details of Request</b>	<p>I am writing to request an internal review of Law Commission's handling of my FOI request 'Council Tax - An unjust law is a code that is out of harmony with the moral law'.</p> <p>There is no law that states a council allocate money to a debt that has been secured without consent.</p> <p>Customers are not required by law to make payments that match the Council Tax software system nor are they required to write in to the in advance of a payment nor are they expected to understand how their IT system is set up.</p> <p>The Customers presumption is always to the current unsecured debt or they would have told the council otherwise.</p> <p>The councils have no right to allocate the payment to anything other than the current/oldest Unsecured debt.</p>
<b>Answer</b>	<p>I write in response to your email of 13 July 2016 in which you requested an internal review into the handling of your request for information. Your initial request was set out in your email of 30 May 2016. The Law Commission responded by email on 31 May 2016 and you responded on 8 June essentially repeating your original request.</p> <p>I have now concluded an internal review of the Law Commission's response to your request. I have decided to uphold the Law Commission's decision and to supplement it. I explain my decision below.</p> <p>My interpretation of your request is that you are asking three questions:</p> <p>(1) Where is there an obligation on taxpayers to inform a council, in advance, that they are making a payment to reduce the debt below the bankruptcy threshold?</p> <p>(2) On what basis is a council entitled to appropriate a payment from a taxpayer to an earlier debt (which is already the subject of a charging order) rather than to the current debt?</p> <p>(3) What is the definition of "customer" in the council tax legislation, and what can customers expect to receive in the way of transparent services?</p> <p>I address Questions 1 and 2 together, then Question 3.</p> <p>Questions 1 and 2</p> <p>I have upheld the Law Commission's response for three alternative reasons.</p> <p>First, in my opinion your request is not for "information" within the meaning of the Freedom of Information Act ("FOIA").</p>

Rather, your request is for legal advice concerning (1) obligations on taxpayers to give advance information to a council about payments, and (2) the appropriation of payments to different debts.

The Law Commission does not give legal advice. It is not required to do so by the Law Commissions Act 1965 nor by the FOIA.

Your request is not for information about points that were the subject of a Law Commission review, on which the Law Commission might hold unique information. Rather, you are asking the Law Commission to apply its general expertise in law, and use publically-available legal resources, to work out an answer to the questions that you have raised. Your request is therefore for legal advice, not for disclosure of information that the Law Commission already holds.

Second and alternatively, in the event that I am wrong and your request is for “information”, I have concluded that the information is not “held” by the Law Commission within the meaning of the FOIA. I would not expect the Law Commission to hold information about obligations on taxpayers to give advance information to a council about payments, nor about the appropriation of payments to different debts. Moreover, my searches of our records have not revealed any relevant material.

Third and alternatively, in the event that I am wrong and your request is for information that is held by the Law Commission (for example, in its limited collection of books), I have decided that it is exempt from disclosure under section 21 of the FOIA which states that “Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information”. The same resources that would be used by the Law Commission to answer your question are also available to you.

(1) Legislation can be accessed from [Legislation.gov.uk](http://legislation.gov.uk); and the legislation that might be of particular relevance is available via the direct hyperlink that the Law Commission provided in its email of 31 May.

(2) Legislation, case law and textbooks can be accessed via Westlaw, LexisNexis or other similar online databases, either by payment of the appropriate fee to those commercial organisations or via the British Library (again on payment of the appropriate fee; a temporary reader’s card costs £5.00). Further details about the availability of these databases are available at [http://www.bl.uk/eresources/socsci/lawandlegalstudies/united\\_kingdom.html](http://www.bl.uk/eresources/socsci/lawandlegalstudies/united_kingdom.html), and details about obtaining a reader’s card are available at <http://www.bl.uk/help/how-to-get-a-reader-pass>.

(3) Legislation, case law and textbooks are also available from libraries with a legal section, including the British Library.

Finally, I have considered the content of the Law Commission’s response, which provided a direct link to legislation governing council tax, and links to various organisations that might be able to assist you. I am satisfied that this assistance went beyond what was required by the FOIA.

My understanding from your correspondence is that you have a grievance about the way in which a council has collected council tax from you and administered your payments. The Law Commission’s response of 31 May suggested that you consider making a complaint direct to the council concerned, and also gave the details of other organisations that might be able to help you. In addition, I would refer you to the Local Government Ombudsman, which might be able to assist you. The Ombudsman’s website suggests that it can provide assistance in some cases involving complaints about the payment of council tax (see <http://www.lgo.org.uk/make-a-complaint/fact-sheets/benefits-and-tax/council-tax>).

If you do not want to obtain assistance from these organisations, then you could speak to a solicitor (the Law Society will be able to assist; see the “Find a Solicitor” function on their website at <http://solicitors.lawsociety.org.uk/>) or a direct-access barrister (the Bar Council will be able to assist; see <http://www.directaccessportal.co.uk/>).

	<p>Question 3</p> <p>I interpret your question as a request for the definition of “customer” in the legislation governing the collection of council tax and an explanation of what customers can expect to receive. For the reasons given above, in my opinion your request is not for “information” within the meaning of the FOIA but rather a request for legal advice. I therefore uphold the Law Commission’s response.</p> <p>If, instead, your request is for the Law Commission’s definition of “customer”, and what customers of the Law Commission can expect to receive, then I provide an answer to that request in this letter.</p> <p>I have carried out various searches and can confirm that the Law Commission does not have its own definition of a “customer”.</p> <p>As for what customers can “expect to receive in the way of transparent services”, the following information appears to relate to your question:</p> <p>(1) Information about what can be expected from the Law Commission in accordance with its obligations under the FOIA is available at <a href="http://www.lawcom.gov.uk/about/freedom-of-information/">http://www.lawcom.gov.uk/about/freedom-of-information/</a>, which sets out information that is published in accordance with our publication scheme.</p> <p>(2) Information about what our consultees can expect from us in our consultations is set out at the start of every consultation paper, and refers to the Cabinet Office principles for consultation (available at <a href="https://www.gov.uk/government/publications/consultation-principles-guidance">https://www.gov.uk/government/publications/consultation-principles-guidance</a>). See, for example, page iii of our most recent consultation paper, Planning Law in Wales, available at <a href="http://www.lawcom.gov.uk/wp-content/uploads/2016/06/cp228_Planning_Wales_version-for-printer.pdf">http://www.lawcom.gov.uk/wp-content/uploads/2016/06/cp228_Planning_Wales_version-for-printer.pdf</a>.</p> <p>(3) A publication called “The work of the Law Commission” (available at <a href="http://www.lawcom.gov.uk/wp-content/uploads/2016/06/Work_of_the_Law_Com_English_June_2016_for_website.pdf">http://www.lawcom.gov.uk/wp-content/uploads/2016/06/Work_of_the_Law_Com_English_June_2016_for_website.pdf</a>), which sets out our current work, timetables, and what our stakeholders can expect from us.</p> <p>Conclusion</p> <p>For all of the reasons set out above, I am satisfied that the Law Commission provided an appropriate response to your request. I have therefore decided to uphold that response, as supplemented by this letter.</p>
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<b>Topic</b>	25) Categories of person registered by the Law Society
<b>Date of Response</b>	18/08/16
<b>Details of Request</b>	<p>1. Please supply the recorded information from your database or archives that confirms that prior to 2010, (but after the Civil Procedure Rules 1998,) before a person was permitted to be registered by and with the Law Society, and given a numerical registration number, a person had to be;</p> <p>a) a solicitor;</p> <p>b) a trainee solicitor or</p> <p>c) a registered foreign lawyer</p> <p>2. Please supply the recorded information from your database or archives that confirms that the category of the persons who are today in August 2016, permitted to be registered with the Law Society, if they are employed by i) a solicitors LLP</p>

	or firm and or ii) a not for profit organisation, has been expanded to include a) a practice manager
<b>Answer</b>	This information is not held by the Law Commission for the purposes of our work. I refer to our website at <a href="http://www.lawcom.gov.uk">www.lawcom.gov.uk</a> which explains that the Law Commission's role is to keep the law under review and to recommend reform where it is needed. We are an advisory body, not a regulatory body. We conduct law reform projects and the information we hold is related to that work. The professional body for solicitors is the Law Society – <a href="http://www.lawsociety.org.uk/">http://www.lawsociety.org.uk/</a> – and I think the information you are seeking is more likely to come within their remit.

<b>Topic</b>	26) Common law jurisdiction
<b>Date of Response</b>	25/08/16
<b>Details of Request</b>	Please provide or direct me to any recorded information that would state in law that a Council Tax Liability Hearing, held in a Magistrates Court is under the jurisdiction of the Common Law.
<b>Answer</b>	On 6 June 2016 you asked us to "provide any recorded information that would state in law that a Council Tax Liability Hearing, held in a Magistrates Court is not under the jurisdiction of the Common Law". Following internal review we replied to that request on 3 August 2016. In my judgment the two requests are substantially similar and a reasonable interval has not elapsed; under section 14(2) of the Freedom of Information Act we are therefore not obliged to comply with your request. Please note that we will not provide a written response to any further identical or similar requests made before a reasonable interval has elapsed.

<b>Topic</b>	27) Easements
<b>Date of Response</b>	20/09/16
<b>Details of Request</b>	Release of all submissions received by the Law Commission on the "Easements, Covenants and Profits à Prendre" project to review recommended revisions to the Property Law.
<b>Answer</b>	Please find attached the consultation responses to the Easements, Covenants and Profits à Prendre Consultation Paper. These are attached in 7 emails due to file attachment size limits

<b>Topic</b>	28) Publication policy
<b>Date of Response</b>	28/09/16
<b>Details of Request</b>	Does the Commission still publish its publications in hard copy form and, if so, does it have any plans to follow the SLC's decision to go 'digital only' (SLC Press Release, 6 July 2016)?
<b>Answer</b>	We do still publish hard copy papers, although of course we also publish digitally online. Part of the reason for this is that we are obliged to lay our papers in hard copy in the House library which therefore necessitates a print run. There is a

	<p>different process in Scotland where I understand they are entirely digital.</p> <p>I would be very keen to explore options for being digital only, although this always needs to be balanced with accessibility and outreach. At this stage, however, I have no firm proposals.</p>
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<b>Topic</b>	29) Magna Carta / lawful rebellion
<b>Date of Response</b>	30/09/16
<b>Details of Request</b>	<p>After watching various links and hearing several rants and tangents on the internet's streaming conduits, it was brought to my attention that there might be a right reserved for British people in keeping with Article 61 of Magna Carta. I would like to make a freedom of information request to assess the validity of these claims. Please can you provide me with all the information that you currently hold that deals with the subject of 'Lawful Rebellion Against Parliament' and also provide evidence of the active existence of Magna Carta article 61 and specifically to the successful invocation of this right in 1688.</p>
<b>Answer</b>	<p>The Law Commission is a statutory body whose function it is to keep the law under review and to make recommendations for its reform. The Commission does not give advice on individual cases or points of law. As such, we are unable to advise, assess or express any opinion about whether Article 61 of Magna Carta has the effect that you suggest.</p> <p>I can confirm that the Law Commission has not conducted a law reform project on Lawful Rebellion Against Parliament or Article 61 of Magna Carta. If you wish to consult some of our on-going or completed projects, please see <a href="http://www.lawcom.gov.uk/project/">http://www.lawcom.gov.uk/project/</a>. We have also made a search of our other records and have concluded that the Commission does not hold the information which you are seeking. It may be, however, that the information you seek is held by a public library (or specialist law library). In that regard it may be helpful to contact the British Library using the following details: Customer Services: +44 (0)1937 546060 / Email: Customer-Services@bl.uk</p> <p>I am sorry that we are not able to be of greater assistance.</p>

<b>Topic</b>	30) Electoral law
<b>Date of Response</b>	11/10/16
<b>Details of Request</b>	<p><i>Original request</i> – The UK Law Commissions' consultation paper on Electoral Law published in 2014 includes at 6.133 "Our provisional view is that the postal voting process should be governed by legislation directed to the returning officer, setting down the outcomes which are required, for example the verification of postal voting statements and the concern not to reject votes unless and until there is shown to be no matching postal voting statement containing personal identifiers which match those on record. Rules stressing the need for transparency, maintaining secrecy, and an audit trail should be retained. For the rest, we provisionally consider, returning officers should be left to decide how best to manage the postal voting process according to guidance and best practice."</p> <p>This paragraph leads to the Provisional Proposal 6-9: "These rules should set out the powers and responsibilities of returning officers regarding issuing, receiving, reissuing and cancelling postal votes generally rather than seeking to</p>

	<p>prescribe the process in detail."</p> <p>I would like to see copies of the information that led the Law Commissions to this "provisional view". Specifically I would like to see copies or notes of any representations, whether by letter, email, telephone or in person, from Electoral Commission staff, Returning Officers and their staff, political party officials, police officers, professional associations or staff of companies providing election management software and services arguing that the prescription of the postal ballot opening process in the Representation of the People (England and Wales) Regulations 2001 (and corresponding Scottish and Northern Ireland legislation) should be replaced with less prescriptive rules setting out the powers and responsibilities of returning officers.</p> <p>Note, I am not interested in the responses to the consultation, but rather am seeking to understand the process that led to proposal 6-9 being included in the consultation.</p> <p><i>Supplementary request</i> – Thank you again for phoning me and for putting the supplied documents in context. I found reading through the documents very interesting and helpful.</p> <p>With regard to the particular questions I have regarding the process for opening postal votes and checking PVI's, the section in the notes from the AEA scoping consultation event, that you kindly pointed out, seems relevant.</p> <p>The notes at 1.15.2 argue for a review of "the regulations for postal voting, which were thought to be out of context and not properly representative of what was done in practice." The second part (highlighted) does seem to be implying that non-compliance with RPR 2001 was discussed and suggests that this non-compliance may have laid in part behind provisional proposal 6-9. Is this not a reasonable interpretation?</p> <p>Does the Commission have a list of the attendees at this AEA scoping consultation? I assume that there are not more detailed notes stating who raised the point summarised at 1.15.2?</p>
<p><b>Answer</b></p>	<p><i>First response</i> – We spoke last week about your FOI request. I explained that I do not think there is a direct link between provisional proposal 6-9 and external stakeholder submissions; rather the proposal is based upon our own normative judgement about the detail and volume in the 2001 Regulations. I have now conducted a search of our records concerning the level of detail in secondary legislation concerning the issue and receipt of postal votes. I attach documents which are related to your query about how we came to make our proposal.</p> <p>The first document is a very detailed minute concerning the law on polling. The first part concerns in-person polling but judgements made there remain relevant (see paragraph 1.311). The postal vote issuing section starts next at para. 1.313 (at page 77). At paragraph 1.357 we note the volume of the regulations in this area. At paragraph 1.389 to 1.391 we note the level of complexity in amending the regulations once the policy decision to have 100% verification of postal voting statement identifiers is made. Some of the detail in this research minute was cut from chapter 8 of our Consultation Paper as we strive to make our documents as short as possible, and this is a big project.</p> <p>I also attach "EL team meeting 240913" which is a succinct note of an internal meeting discussing the minute. There is a reference to detail of legislation and a point made by Timothy Straker QC, an experienced election law practitioner, about the detail and volume of the regulations emanating from a style of copying the approach to in-person polling. I could not find a record of that conversation – I believe it may have been a telephone conversation.</p> <p>As far as external communications are concerned, the most relevant I found was the Electoral Commission's preliminary views as to the scope of the project (EC views as to scope 8 Nov 2011). See paragraph 7.2.3 at page 15. Later on, as we were reviewing the law and writing research minutes, we received detailed points about the legislation from the</p>

Commission: see Area 1 conduct of the Poll – Voting mechanisms etc – at page 6. The document was received on 9 September 2013.

Similarly, please see the AEA Note – 10 Sep 2012 document at paragraph para 1.15(2). This is a note of a scoping consultation event (we consulted about the scope of the reform project). The Association of Electoral Administrators response EL065 at para 4.11 p 6, also comments on reducing the detail in legislation and focusing on outcomes – albeit not in the context of the postal voting process, but polling generally.

Throughout this project the problem of volume and complexity of the legislation has been prevalent. Our view in the consultation paper was that the detailed, step by step guidance in the 2001 regulations should be replaced by a simpler statement of the duties and powers of returning officers on issuing, receiving, reissuing and cancelling postal votes, written to reflect the current policy background of 100% verification, and in keeping with our general impression that the legislation on polling was unnecessarily prescriptive. I should note that, for presentation reasons, chapter 8 of our consultation paper was confined to in-person polling, while chapter 6 covered absent voting generally (both entitlements to an absent vote and the postal voting process). But you will see from the research note that we considered polling together – both in-person and postal voting, and over-prescription causing complexity and volume were a recurring theme in our review of the current law.

I trust that this satisfies your query. Please do not hesitate to call if you have any further questions.

*Supplementary response (12/10/16)* – I'm afraid the note of the AEA event is all that we have, so we do not have more detail. It appears in my diary as an 'AEA Focus Day' event held at Camden Town Hall on 10 September 2012. It was well attended by AEA members, perhaps some 40 to 60. We will have presented on our proposed scope in our Scoping Consultation Paper, and paused for questions and comments. While I was checking for more information I noticed two documents which may be within the scope of your request – they are attached. See Meeting with SOLAR EWG – at para 1.49 (N's comment); and the meeting with the Electoral Commission – at para 1.17 (my comment). Apologies for not including these in my previous emails. That, I hope, deals with the formal FOI issue.

As to your interpretation about the AEA focus day comment playing a role in formulating our proposal, that isn't my recollection. Even if the issue was discussed in detail at the AEA event, which was about the scope of the project not substantive reform, a lot of time had passed by the time we got around to formulating proposals. The provisional proposal sought to deal with our view, as lawyers, that the detailed (almost descriptive) prescription in the 2001 Regs is in our view sub-optimal, and could be redrafted to set out the duties and powers of returning officers in issuing, receiving, cancelling and reissuing postal votes. A step-by-step description of postal vote issuing sessions could be contained in Electoral Commission guidance. We did not mean by that to leave the process to officials' discretion – rather we proposed that the current laws should be more simply and efficiently expressed. The messy set of amendments required by the change in policy to 100% verification were a significant factor. That remains my firm recollection, as I explained over the telephone.

By contrast to proposal 6-9, provisional proposal 6-2 is an example of our seeking to address a mismatch between the law and the practice of some registration officers. (see paragraph 6.19 to 6.24 and 6.32 of our Consultation Paper) Many officers use the Electoral Commission model form for applications for a postal vote, which doesn't give voters the choice to apply at a parliamentary, local election, or both – an example is appended to our research minute which we sent you, if I recall correctly. If our view as law reformers is that the law is at fault for the mismatch, we do not hesitate to propose a change in the law, as we did for proposal 6-2 (applications not to be made selectively for particular types of elections).

<b>Topic</b>	31) Legal definition
<b>Date of Response</b>	12/10/16
<b>Details of Request</b>	In legal terms, what does the word 'should' mean? For example, if it says in law of contract 'a person should not be allowed to be released early from prison if they are a danger'.
<b>Answer</b>	<p>You asked what in legal terms 'should' means. The Law Commission is a statutory body whose job is to keep the law of England and Wales under review, and to make recommendations for its reform. We are not able to offer legal interpretation or advice. If you are seeking legal advice, the following organisations may be able to provide more help:</p> <p>Citizens Advice (<a href="http://www.citizensadvice.org.uk">www.citizensadvice.org.uk</a>)</p> <p>Community Legal Advice (<a href="mailto:emailhelp@communitylegaladvice.org.uk">emailhelp@communitylegaladvice.org.uk</a>)</p> <p>However, it may be that you are looking for recorded information which sets out a legal definition for 'should'. I have searched in our files and can find no record of a standard legal definition of the term 'should'. I have also looked at the Interpretation Act 1978 which provides definitions which apply across legislation; the Act does not define 'should'. This tends to reinforce my sense that 'should' is not the sort of word that would be defined in law. Where it is not explicitly defined in a particular document or piece of legislation any word will have its ordinary English meaning, and should be understood in context.</p>

<b>Topic</b>	32) Software contracts
<b>Date of Response</b>	18/10/16
<b>Details of Request</b>	<p>Q1) Please provide details of expenditure on software for the years 2014/15 and 2015/16 broken down by software supplier.</p> <p>Q2) Please provide details of software contracts due to expire before 31 December 2017, broken down by supplier and date.</p> <p>Q3) Please provide details of expenditure on perpetual software licences for the years 2014/15 and 2015/16 broken down by software supplier.</p>
<b>Answer</b>	<p>Q1) The Law Commission is part of the Ministry of Justice (MoJ). MoJ ICT is outsourced to Atos Origin and Logica and therefore staff use an online IT catalogue to order goods and services (so we don't deal with individual software suppliers). MoJ recharged the following amounts from us:</p> <p>FY14-15: £11.62 for the provision of MS Visio software (plus licence) for one staff member</p> <p>FY15-16: £354.13 for the provision of Text Help Read and Write software (plus licence) for one staff member</p> <p>Q2) The Law Commission has no individual software contracts in operation with any suppliers.</p> <p>Q3) The only software licences which have been purchased by the Law Commission are noted in the answer to Q1 above.</p>

<b>Topic</b>	33) Implementation of Law Commission reports
<b>Date of Response</b>	19/10/16
<b>Details of Request</b>	Does the Commission have a record of how many of its reports have been implemented by Private Members' Bills?
<b>Answer</b>	Our only recollection was the report on Forfeiture and Law of Succession. It may well be that other provisions set out in our draft legislation have found its way into a PMB, but I am not sure we'd know that. In short, I don't think there's a clear record at our end which would give absolute certainty. One option might be for you to compare the list of Private Members' Bills from Parliament.uk (which is attached and goes back to 1945) with our list of implemented work in our annual reports. It would probably give a fairly accurate guide but I am not sure if that's sufficient for your purposes because the title given to a PMB might not exactly accord with the title of our report.

<b>Topic</b>	34) Legal requirement to notify the Land Registry of bankruptcy
<b>Date of Response</b>	13/12/16
<b>Details of Request</b>	The Land Registry have stated that: ' There is no legal requirement to notify the Land Registry on the issue of a bankruptcy petition or order ' Please provide all recorded data that your department holds that supports their statement or all recorded data that confirms the opposite is true and that the court must by law inform the Land Registry when a bankruptcy petition is filed into the court and the Official Receiver must inform the Land Registry of a bankruptcy order.
<b>Answer</b>	The Law Commission is a statutory body whose function it is to keep the law under review and to make recommendations for its reform. In particular, we carry out our work in relation to specific projects. These projects are selected as a part of our programmes of law reform or referred to us by Government Departments. The Commission does not give advice on individual cases or points of law. An issue relating to the statement you queried, ' There is no legal requirement to notify the Land Registry on the issue of a bankruptcy petition or order ', was considered by us as a part of our project called Land Registration for the 21st Century, completed in 2001. For ease of reference, I attach links to both the final Report and Consultation Paper of that project. In our final Report, available at <a href="http://www.lawcom.gov.uk/wp-content/uploads/2015/04/Lc271.pdf">http://www.lawcom.gov.uk/wp-content/uploads/2015/04/Lc271.pdf</a> , we discussed notifications in relation to bankruptcy petitions and orders at paragraphs 6.46, 6.60, 11.39 to 11.41, 14.33, and within the draft land registration bill in relation to clause 86 (discussed in the explanatory notes on the draft land registration bill on pages 524 to 525). In our Consultation Paper, available at <a href="http://www.lawcom.gov.uk/wp-content/uploads/2015/04/lc254.pdf">http://www.lawcom.gov.uk/wp-content/uploads/2015/04/lc254.pdf</a> , we discussed it at paragraphs 6.21, 6.42, 6.59 and 12.41. We have not searched the archived paper records that lay behind that past project. We estimate that the costs of doing so would exceed the statutory prescribed limit of £450. Costs are calculated on the basis of the number of hours work involved multiplied by an hourly charge for staff time (set at £25 per hour). In our opinion the number of hours involved would exceed 18. We also doubt that they would add to our published conclusions. We are currently doing a project designed to update the Land Registration Act 2002 in light of the experience of its operation since it came into force in October 2003. Our project is not designed to fundamentally reformulate the Act but to improve specific aspects of its operation within the existing legal framework. We published a Consultation Paper on this

project in March 2016. Information about that project can be found here: <http://www.lawcom.gov.uk/project/updating-the-land-registration-act-2002/>.

Our current project does not include a consideration of bankruptcy. However, we can direct you to mentions of "bankruptcy" within the Consultation Paper of our current project, available at [http://www.lawcom.gov.uk/wp-content/uploads/2016/03/cp227\\_land\\_registration\\_web.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2016/03/cp227_land_registration_web.pdf), specifically paragraphs 7.80, 7.81, 9.134 and 22.32.

We nevertheless have searched the electronic files in relation to our current project on land registration for the statement you queried. I provide the information we hold most relevant to the statement.

We hold on record the following paragraph, which we had downloaded from an electronic copy of the text Ruoff & Roper: Registered Conveyancing:

...As soon as a bankruptcy petition has been presented, the bankrupt's powers of disposition of his property effectively cease. The Insolvency Act 1986 provides that any disposition of property made by the person after the petition is presented is void unless it is made with the consent of the court or was subsequently ratified by the court. Once appointed, the trustee in bankruptcy or the official receiver could recover the property from the disponee, unless he took it in good faith, for value and without notice that the bankruptcy petition had been presented. The 2002 Act provides against the risk that that the bankrupt may purport to exercise his apparent owner's powers over a registered estate or charge in this way. Once the bankruptcy petition has been registered as a pending action under the Land Charges Act 1972, the Registrar must as soon as practicable enter a notice in respect of the petition against any registered estate or charge which appears to him to be affected by it. The result is that the disponee from the bankrupt could not then claim to take the registered estate or charge without notice that the petition had been presented, and the trustee or official receiver could recover it from him.

Below I provide extracts from two consultees' responses to our Consultation Paper on our current project, which may be relevant to the issue you are asking about:

(1) ... There are other instances where the apparent owner, whose name is on the register of title, ought not to be able to make a disposition. Thus a person under incapacity cannot dispose of a legal estate. This includes a minor even if he or she happens to be registered and also a person who has become mentally disabled but may be able to sign his or her name. In such cases there may not be anyone else who is entitled to be registered. A bankrupt should not be able to dispose between becoming bankrupt and the entry by the trustee in bankruptcy of a notice of the bankruptcy. Likewise the directors of a company which has been struck off (this can happen without their knowledge) and been dissolved purport to execute documents but should not do so. To some extent these can be (and are) overcome by a suitable entry on the register but there may be period before any entry can be made. ...

(2) Section 86 deals with a particular situation where the registered proprietor has been adjudged bankrupt but there is no bankruptcy restriction on the register. This could be, for example, because the bankruptcy restriction has been removed under section 283A of the Insolvency Act 1986. The requirement for valuable consideration is not important – it does not require that the transaction should not be at an undervalue, and a nominal consideration in money would count as valuable consideration, in any event.

Where the property is jointly owned and only one of the joint proprietors has been adjudged bankrupt the legal estate is not vested in the trustee, so overreaching can occur.

<b>Topic</b>	35) Misconduct in public office
<b>Date of Response</b>	14/12/16
<b>Details of Request</b>	<p>1] First of all please give the legal definition of "Misconduct".</p> <p>2] Secondly please give the legal definition of "Public Office".</p> <p>3] Thirdly please give the legal definition of "Misconduct in Public Office".</p> <p>4] Are registered practising barristers agents of the Court and /or Public Servants?</p> <p>5] Are registered practising judges agents of the Court and / or Public Servants?</p> <p>6] Are registered practising solicitors agents of the Court and / or Public Servants?</p> <p>7] Is Dame Julie Mellor Ombudsman PHSO a Public Servant?</p> <p>8] Is Dr Jane Martin Ombudsman LGO a Public Servant?</p> <p>9] Is Ms Denham Information Commissioner a Public Servant?</p> <p>10] Is the Registrar of Companies House a Public Servant?</p> <p>11] Are the officers working for</p> <p>a] the ICO</p> <p>b] the PHSO</p> <p>c] the LGO</p> <p>d] Companies House</p> <p>deemed to be Public Servants?</p> <p>12] What is the definition of "Public Servant"?</p> <p>13] What material difference is there between a public servant found liable for "misconduct" and dismissed from office for misconduct, and "misconduct in public office"?</p>
<b>Answer</b>	<p>1.1 This is a response to your request for information concerning misconduct in public office under the Freedom of Information Act 2000. Your request was sent by email on 22 November 2016 and received by this office on 23 November 2016.</p> <p>1.2 This response begins with an explanation of the role of the Law Commission and the remit of its functions. It goes on to provide an explanation of the specific remit of the misconduct in public office project. These explanations are intended to provide important background to answers provided to the specific questions asked. Then each of the 13 questions asked are dealt with in the order in which they were received.</p> <p>The role of the law commission</p> <p>1.3 The Law Commission is a statutory body set up by the Law Commissions Act 1965. The Commission's function is to keep the law under review and to make recommendations for its reform so that it better reflects the society we live in and is more user friendly. Our functions are limited by statute.</p> <p>1.4 The Law Commission cannot provide any advice on individual cases or points of law. We also cannot investigate specific complaints or research questions that are not part of our specific reform agenda.</p>

1.5 One of the primary focusses of the Law Commission is consultation. We endeavour to consult with as many people and organisations we can, from as broad a spectrum of backgrounds as possible. This allows us to take account of various perspectives, expertise and experience when undertaking review of a particular area of law. As part of this consultative agenda, we welcome contributions through various media, including formal responses to consultation and ad hoc contributions via email. We ensure that all relevant and pertinent issues raised are accounted for in our work.

1.6 The work of the Law Commission at any particular time is limited to the specific projects we have undertaken. Under the protocol between the Law Commission and the Lord Chancellor there are two ways in which the Law Commission begins a law reform project:

(1) Firstly, every few years we consult on a new programme of law reform, which is laid before Parliament and sets out the majority of our work for the next few years. In deciding what is to be included in this programme we consult with the public as to areas that are identified as in need of reform. You will be able to contribute to this when the next consultation opens, probably in 2018. For a project to be included in the programme, it must be agreed upon by the Commissioners, and the relevant government minister must give an undertaking to seriously consider our proposals.

(2) Secondly, a government minister may refer a project to the Commission for consideration by the Commissioners as a piece of work outside the normal programme. This will normally be in an instance where the minister has decided that there is a pressing need for reform of an area of law which falls under their brief, and where they consider that the Commission has particular expertise that could be used.

1.7 The misconduct in public office project is part of the criminal law team's current programme of reform.

The misconduct in public office project

1.8 The misconduct in public office project is limited to reviewing the criminal offence of misconduct in public office.

1.9 It is beyond the remit of this project to make any recommendations in relation to related civil or disciplinary law concerning misconduct in public office. The only reference we can make to such provisions are where they have a direct impact on the criminal law. For example, Chapter 5 of Issues Paper 1 contains analysis of alternative methods of redress for misconduct by public office holders in order to establish the legal landscape within which the criminal offence operates. Further, the associated law relating to the civil tort of misfeasance in public office is described in Appendix B to Issues Paper 1. Both this analysis and description is provided to establish the landscape of the criminal offence only, not as a precursor to making any reform recommendations to the tort or disciplinary law as that would be outside the remit of our review.

Publications

1.10 All publications and updates relating to the project can be found online at <http://www.lawcom.gov.uk/project/misconduct-in-public-office/>.

1.11 On 20 January 2016 we published Misconduct in Public Office - Issues Paper 1 - The current Law. This was a background paper containing our analysis of the current law relating to the criminal offence of misconduct in public office. We also identified the problems that arise in practice as a result of the current law.

1.12 As explained in Issues Paper 1, the criminal offence of misconduct in public office is a common law offence. This means that it is not contained in any legislation or statute that has been passed by Parliament. Common law is created and developed in the courts on a case by case basis. The historical development of the offence is described in Appendix A to Issues Paper 1.

1.13 Issues Paper 1 was a public consultation document containing a list of specific questions and we invited responses from any person or organisation who had a view on the analysis contained in the paper. We also invited consultees to provide any further evidence that they may have of problems with the current law, which may assist us in making reform recommendations. The public consultation exercise for this paper was open from 20 January 2016 to 20 March 2016.

1.14 Our second publication, the Consultation paper Reforming Misconduct in Public Office, was published on 5 September. This is also a public consultation document to which inviting responses from all those with an interest in, and knowledge of, the offence of misconduct in public office. This second paper sets out options for reforming the law. The consultation period for this paper will close on 3 January 2017.

1.15 We aim to publish a final report on reforming the criminal offence of misconduct in public office in spring/summer 2017.

#### ANSWERS TO SPECIFIC QUESTIONS

1.16 You requested the following information:

(1) “First of all please give the legal definition of ‘Misconduct’”.

The word “misconduct” is not itself a technical legal term. In the context of the criminal offence of misconduct in public office, “misconduct” refers to the second and fourth elements of the offence. For ease of reference we set the elements of the offence out below in answer to your question number (3).

These elements are discussed in our background paper, Misconduct in Public Office, Issues Paper 1: the Current Law, at paragraphs 2.126 to 2.152 and 2.187 to 2.209 respectively. In addition, Chapter 6 sets out examples of the type of conduct that has been prosecuted as misconduct in public office.

(2) “Secondly please give the legal definition of ‘Public Office’”.

The case law pertaining to the definition of “public office” in the context of the criminal offence of misconduct in public office is discussed at paragraphs 2.8 to 2.115 of our background paper. As we conclude at paragraphs 4.4 to 4.17, “public office” is an element of the offence that lacks clear definition. However, in recent years, courts appear to have moved away from a definition based status and towards a functional definition (see paragraphs 4.9 to 4.17).

(3) “Thirdly please give the legal definition of “Misconduct in Public Office”.

The common law offence of misconduct in public office was most recently defined in Attorney General’s Reference (No 3 of 2003) [2004] EWCA Crim 868 at [61] as follows:

The elements of the offence of misconduct in public office are: (1) a public officer acting as such; (2) wilfully neglects to perform his duty and/or wilfully misconducts himself; (3) to such a degree as to amount to an abuse of the public’s trust in the office holder; (4) without reasonable excuse or justification.

This definition of the criminal offence of misconduct in public office is set out at paragraph 1.8 of our background paper. Additionally, each element of the offence is discussed under Chapter 2, at paragraphs 2.8 to 2.208.

(4) “Are registered practising barristers agents of the Court and/or Public Servants?”

Agents of the Court

Barristers are not agents of the Court. The legal definition of “agent” is: “a person who has received the power to act on behalf of another, binding that other person as if he or she were themselves making the decisions”

([www.duhime.org/LegalDictionary/A/Agent.aspx](http://www.duhime.org/LegalDictionary/A/Agent.aspx)).

Barristers have a right to appear in all courts as representatives of their clients but do not act on behalf of the court and their actions cannot bind any court.

An agent of the court would include, for example, a High Court Enforcement Officer, an individual who is authorised personally by the Lord Chancellor or his designated person pursuant to paragraph 2 (1) of Schedule 7 of the Courts Act 2003 and Regulation 6 of the High Court Enforcement Officers Regulations 2004 to execute judgments and orders of the High and County Court of England and Wales.

Further, barristers are not officers of the court as legally defined. Under section 50 of the Solicitors Act 1974 a solicitor is an officer of the court: an individual who is directly subject to the discipline of the court, either by way of punishment or by way of an order for compensation being made against him or her (*Myers v Elman* [1939] 4 All ER 484, [1940] AC 282).

In contrast, the disciplinary role of the courts in respect of the Bar was traditionally, "visitorial": judges acted as Visitors to the four Inns of Court (the professional societies for barristers) and determined appeals from decisions of the Inns disciplinary tribunals.

In practice, since the passage of the Legal Services Act 2007 (which established independent regulation of the legal professions), the discipline of solicitors is now undertaken by the Solicitor's Regulatory Authority (the independent regulator for the solicitor's profession) and the discipline of barristers is dealt with by the Bar Standards Board (the independent regulator for the barristers' profession).

For further information on the duties that barristers owe to the court in the course of practising as such please refer to the Bar Handbook issued by the Bar Standards Board. Rule C3 in particular refers to a barrister's duty to the court to act with independence in the interests of justice. The handbook can be found here: <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication/>.

#### Public servants

There is no single legal definition of public servant, it is not a specific legal term.

The ordinary dictionary definition of public servant is: a person who works for the state or for local government ([https://en.oxforddictionaries.com/definition/public\\_servant](https://en.oxforddictionaries.com/definition/public_servant)). We discuss the definition of public servant further in answer to your question (12) below.

The misconduct in public office project is concerned with the definition of public office not with the definition of public servant. In the context of the criminal offence public office is legally defined, as per our answer to your question (2) above.

There has been no instance of a barrister being prosecuted for and convicted of the offence of misconduct in public office and therefore there has been no decision taken by any court as to whether or not a barrister could be in public office. As explained earlier, the role of the Law Commission is to advise on law reform and as such we cannot provide legal advice on whether or not a person in a particular position could be considered to be in public office under the current law, where a court has not already decided that issue.

You may wish to seek legal advice from a barrister or solicitor on this issue. If you are experiencing difficulty in obtaining legal advice then you should contact either the Law Society (<https://www.lawsociety.org.uk/>) or the Bar Council ([www.barcouncil.org.uk/](http://www.barcouncil.org.uk/)), who can advise you further on instructing a solicitor or barrister.

(5) "Are registered practising judges agents of the Court and/or Public Servants?"

Agents of the court

The legal definition of “agent” is discussed above in answer to your question (4). Judges are not agents of the court as they are themselves judicial officers – they embody the court, they are not authorised by the court to act on its behalf.

Public servants

The definition of public servant is discussed above in answer to your question (4). The misconduct in public office project is concerned with the definition of public office not with the definition of public servant.

In our background paper we discuss a number of cases where Judges have been prosecuted and convicted for misconduct in public office. The most recent prosecution was that of Llewellyn-Jones [1968] 1 QB 429, [1967] 3 WLR 1298, discussed at paragraph 2.178 of our background paper.

(6) “Are registered practising solicitors agents of the Court and/or Public Servants?”

Agents of the court

The legal definition of “agent” is discussed above in answer to your question (4). Like barristers, solicitors represent their clients before the courts and are not agents of the court.

Under section 50 Solicitors Act 1974 solicitors are officers of the court. For further information on the duties that solicitors owe to the court in the course of practising as such please refer to the Solicitors Handbook as issued by the Solicitor’s Regulatory Authority, available here: <http://www.sra.org.uk/solicitors/handbook/code/content.page>.

Public servants

The definition of public servant is discussed above in answer to your question (4). The misconduct in public office project is concerned with the definition of public office not with the definition of public servant.

There has been no instance of a solicitor being prosecuted for and convicted of the offence of misconduct in public office and therefore there has been no decision taken by any court as to whether or not a solicitor could be in public office.

As explained in response to your question (4) we cannot provide legal advice on this issue.

(7) “Is Dame Julie Mellor Ombudsman PHSO a Public Servant?”

The definition of public servant is discussed above in answer to your question (4). The misconduct in public office project is concerned with the definition of public office not with the definition of public servant. There has been no instance of an Ombudsman being prosecuted for and convicted of the offence of misconduct in public office and therefore there has been no decision taken by any court as to whether or not an Ombudsman could be in public office.

As explained in response to your question (4) we cannot provide legal advice on this issue.

(8) “Is Dr Jane Martin Ombudsman LGO a Public Servant?”

The definition of public servant is discussed above in answer to your question (4). The misconduct in public office project is concerned with the definition of public office not with the definition of public servant.

There has been no instance of an Ombudsman being prosecuted for and convicted of the offence of misconduct in public office and therefore there has been no decision taken by any court as to whether or not an Ombudsman could be in public office.

As explained in response to your question (4) we cannot provide legal advice on this issue.

(9) “Is Ms Denham Information Commissioner a Public Servant?”

The definition of public servant is discussed above in answer to your question (4). The misconduct in public office project

is concerned with the definition of public office not with the definition of public servant. There has been no instance of an Information Commissioner being prosecuted for and convicted of the offence of misconduct in public office and therefore there has been no decision taken by any court as to whether or not an Information Commissioner could be in public office.

As explained in response to your question (4) we cannot provide legal advice on this issue.

(10) “Is the Registrar of Companies House a Public Servant?”

The definition of public servant is discussed above in answer to your question (4). The misconduct in public office project is concerned with the definition of public office not with the definition of public servant.

There has been no instance of the Registrar of Companies House being prosecuted for and convicted of the offence of misconduct in public office and therefore there has been no decision taken by any court as to whether or not an Information Commissioner could be in public office.

(11) As explained in response to your question (4) we cannot provide legal advice on this issue. “Are the officers working for (a) the ICO (b) the PHSO (c) the LGO (d) Companies House deemed to be Public Servants?”

The definition of public servant is discussed above in answer to your question (4). The misconduct in public office project is concerned with the definition of public office not with the definition of public servant.

We do not hold information in respect of the employment status of individual members of ICO, PHSO and LGO staff. Further information as to this would be required before any consideration could be given to whether or not those individuals could each be described as public office holders.

As explained in response to your question (4) we cannot provide legal advice on this issue.

(12) “What is the definition of “Public Servant”?”

As discussed above here is no single definition of public servant, it is not a specific legal term. The ordinary dictionary definition of public servant is: a person who works for the state or for local government ([https://en.oxforddictionaries.com/definition/public\\_servant](https://en.oxforddictionaries.com/definition/public_servant)).

Crown servants, however, are a distinct category of office holders who hold their positions at the pleasure of the Crown, and are defined in section 12(1) of the Official Secret Act 1989 as follows:

(1) In this Act “Crown servant” means—

(a) Minister of the Crown;

(aa) a member of the Scottish Executive or a junior Scottish Minister;

(ab) the First Minister for Wales, a Welsh Minister appointed under section 48 of the Government of Wales Act 2006, the Counsel General to the Welsh Assembly Government or a Deputy Welsh Minister;

(b) a person appointed under section 8 of the Northern Ireland Constitution Act 1973 (the Northern Ireland Executive etc.);

(c) any person employed in the civil service of the Crown, including Her Majesty’s Diplomatic Service, Her Majesty’s Overseas Civil Service, the civil service of Northern Ireland and the Northern Ireland Court Service;

(d) any member of the naval, military or air forces of the Crown, including any person employed by an association established for the purposes of [F4Part XI of the Reserve Forces Act 1996];

(e) any constable and any other person employed or appointed in or for the purposes of any police force [F5(including the

Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve)] [F6 or ] [F7 an NCA special (within the meaning of Part 1 of the Crime and Courts Act 2013) ] ;

(f) any person who is a member or employee of a prescribed body or a body of a prescribed class and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of members or employees of any such body;

(g) any person who is the holder of a prescribed office or who is an employee of such a holder and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of such employees.

We discuss in paragraph 2.15 of our background paper that while most Crown servants are public officers for the purpose of misconduct in public office, not all public officers prosecuted and convicted under the offence are Crown servants.

(13) “What material difference is there between a public servant found liable for "misconduct" and dismissed from office for misconduct, and "misconduct in public office"?”

We understand this question to allude to the difference between disciplinary procedures for dealing with professional misconduct on the one hand, and the common law, criminal offence of misconduct in public office on the other. The overlap between the two is discussed under Chapter 5 of our background paper – “Overlap with Other Forms of Legal Accountability” – at paragraphs 5.60 to 5.108. At paragraph 5.107, we conclude that the line between instances of misconduct that should be addressed through disciplinary procedures and instances of misconduct that should be addressed through the criminal law is particularly difficult to draw.

Further, the element of the offence most relevant to this question is that the public officer’s misconduct must be so serious as to amount to an abuse of the public’s trust in him or her (the “seriousness threshold”). It is discussed at paragraphs: 2.153 to 2.186. Relevant factors in determining whether the seriousness threshold has been crossed, so as to justify criminal prosecution, involve whether the misconduct was so serious as to call for criminal condemnation and punishment. It is also important to distinguish between cases where the public’s trust in the public officer has been abused and those where it is an employer’s trust in him or her that has been flouted.

Additionally, Chapter 3 of our consultation paper Reforming Misconduct in Public Office provides an analysis of the harms and wrongs underlying the offence. In light of that analysis, we distinguish between examples types of conduct that should be criminalised and types of conduct that should be addressed through disciplinary procedures only (see paragraphs 3.151 to 3.305).

<b>Topic</b>	36) Prescribed creditor's insolvency forms for bankruptcy
<b>Date of Response</b>	16/01/17
<b>Details of Request</b>	<p>Under the FOIA I would like to know if prescribed Insolvency forms can be mixed and matched or if they have to be used in the following prescribed manner.</p> <p>Creditor's Statutory Demand form 6.1 must be used with Petition form 6.7  Creditor's Statutory Demand form 6.2 must be used with Petition form 6.9  Creditor's Statutory Demand form 6.3 must be used with Petition form 6.8  Please provide where this information can be found in your law reports along with a link to the precise sections.</p>
<b>Answer</b>	<p>I am writing to advise you that we have made a search of our records and have concluded that the Commission does not hold the information which you are seeking. The statutory demand notices you reference have not been the subject of a Law Commission report. The information you seek may be held by the Insolvency Service. The Insolvency Enquiry Line can be contacted at <a href="mailto:insolvency.enquiryline@insolvency.gsi.gov.uk">insolvency.enquiryline@insolvency.gsi.gov.uk</a>; telephone: 0300 678 0015. There is a general guide here: <a href="https://www.gov.uk/statutory-demands/challenge-a-statutory-demand">https://www.gov.uk/statutory-demands/challenge-a-statutory-demand</a>.</p> <p>The Law Commission is not able to give legal advice. You may find it helpful to contact a solicitor for advice on your problem. If you have difficulty in finding a solicitor, we suggest that you contact The Law Society via their website <a href="http://www.lawsociety.org.uk">www.lawsociety.org.uk</a>. They can also be contacted by telephone on 0207 242 1222.</p>

<b>Topic</b>	37) Accounts and IT questions (various)
<b>Date of Response</b>	20/01/17
<b>Details of Request</b>	<ul style="list-style-type: none"> <li>• Who provides the organisations BACS payments and Direct Debit collection software?</li> <li>• Please provide a list of your suppliers of the above software.</li> <li>• How you came to the decision to choose these companies?</li> <li>• Are these solution(s) hosted on premise or cloud hosted?</li> <li>• Please provide expenditure on computer software used for Bacs payment processing and Direct Debit collection. For financial years 2014/2015 and 2015/2016.</li> <li>• When does your current contract(s) with BACs payment and direct debit collection software expire?</li> <li>• Will this service(s) be tendered and if so where?</li> <li>• What is the total value of your current BACS payment and Direct Debit collection software contract(s) and over what period?</li> <li>• With whom does the organisation hold its primary bank account?</li> <li>• Does the organisation, acting as a Bureau, provide Bacs processing on behalf on any other organisation?</li> <li>• What payments types does the organisation use? (e.g Bacs (Direct Credit), Direct Debit, Faster Payments, etc.).</li> </ul>

	<ul style="list-style-type: none"> <li>• Who is the person responsible for BACS processing and Direct Debit collection software?</li> <li>o Name</li> <li>o Position</li> <li>o Telephone Number</li> <li>o Email</li> </ul> <p>Please provide the information below each question, signifying your response(s) by a change of font or highlighted text, spaced between other questions.</p> <p>If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under your Section 16 obligations, as to how I can refine my request to be included in the scope of the Act.</p>
<b>Answer</b>	<p>The Law Commission does not operate its own bank account. We request receipts are paid into the bank account of the Ministry of Justice (MoJ). We are therefore not in a position to be able to provide the answers to your questions. However, if you would like to email the MoJ Accounts Receivable Team MOJ-AR@noms.gsi.gov.uk they may be able to provide the details you require.</p>

<b>Topic</b>	38) County court hearing centres' specified cases
<b>Date of Response</b>	23/01/17
<b>Details of Request</b>	<p>Please provide under the FOIA what a specified hearing centre means and what type of specified civil cases are held in the hearing rooms?</p> <p>Please confirm if these specified hearing centre cases are held in public or private and whether this is required to be stated on the court orders?</p> <p>Please confirm the level of judge required and if they differ for non specified hearing centre cases or are all county court cases heard in hearing centre rooms or some heard in county courts that are not hearing centre rooms, as I am somewhat confused as to the status of the court?</p> <p>Can you lastly say if all county court orders made in the hearing centre rooms are prescribed court orders and on prescribed court forms; not on general court order forms.</p>
<b>Answer</b>	<p>I acknowledge receipt of your email which you have sent to us as a Freedom of Information request. The Law Commission is a statutory independent body set up to keep the law of England and Wales under review and to recommend reforms to the law where necessary. More information about our work is published on the internet at <a href="http://www.lawcom.gov.uk/">http://www.lawcom.gov.uk/</a>. We are not a regulatory body and we do not deal with individual cases or give legal advice, or deal with complaints. I am afraid therefore that we do not hold the information that you are requesting.</p>

<b>Topic</b>	39) Bankruptcy petitions
<b>Date of Response</b>	23/01/17
<b>Details of Request</b>	Please can you tell me under the FOIA and provide information on whether the court is required to put the date and time on the petition when they received a bankruptcy petition. Are they also required to put the name of the court as the venue and the time of the hearing? Why would they not state they have to follow these insolvency rules? And why would they not be following them?
<b>Answer</b>	I acknowledge receipt of your email which you have sent to us as a Freedom of Information request. The Law Commission is a statutory independent body set up to keep the law of England and Wales under review and to recommend reforms to the law where necessary. More information about our work is published on the internet at <a href="http://www.lawcom.gov.uk/">http://www.lawcom.gov.uk/</a> . We are not a regulatory body and we do not deal with individual cases or give legal advice, or deal with complaints. I am afraid therefore that we do not hold the information that you are requesting.

<b>Topic</b>	40) Nolan Principles for public office holders
<b>Date of Response</b>	26/01/17
<b>Details of Request</b>	Please provide all information held under the FOIA by the department that confirms that the Nolan Principles are integral to how your staff are required to conduct themselves and if these principles are still in force and effect as the basis of the ethical standards expected of public office holders. Please also confirm if they are contained within your Constitution etc.
<b>Answer</b>	All staff at the Law Commission are expected to adhere to the Civil Service Code at <a href="https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code">https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code</a> and the Ministry of Justice's code of conduct (attached), both of which embed the Nolan Principles. In addition, the Law Commission's framework document is attached and reflects aspects of the Nolan Principles.

<b>Topic</b>	41) Publication of local authority reports
<b>Date of Response</b>	01/02/17
<b>Details of Request</b>	In the Waterhouse Report conclusions and recommendations reported here <a href="http://archive.is/l1syg">http://archive.is/l1syg</a> it says The Cartrefle and Jillings reports (44) Clwyd County Council cannot fairly be blamed for failing to publish the Cartrefle and Jillings reports before it ceased to exist, having regard to the continuing police investigation at that time and its contractual duty to its insurers; but it is desirable that the Law Commission should consider the legal issues that arise in relation to the conduct of inquiries of a similar kind initiated by local authorities or other public bodies and publication of the reports of such inquiries. Did the Law Commission consider the legal issues?

	Can you send me the Report of the Law Commission having considered the legal issues?
<b>Answer</b>	Thank you for your Freedom of Information request. I attach a copy of the Law Commission report on 'Publication of Local Authority Reports', which deals with the Waterhouse inquiry. Further information about our work on this subject is available on our website at <a href="http://www.lawcom.gov.uk/project/publication-of-local-authority-reports/">http://www.lawcom.gov.uk/project/publication-of-local-authority-reports/</a> .

<b>Topic</b>	42) Use of Law Commission published content in legal research databases
<b>Date of Response</b>	13/02/17
<b>Details of Request</b>	I work for Thomson Reuters, Westlaw UK and we provide searchable databases of case law, legislation, news, legal journals, commentary, current awareness alerts and EU legal materials. We are currently in the process of expanding our legal database to include other materials that help to implement or interpret the Law and we would very much like to include some of your content. The document types we would like to include are consultation papers, reports and parliamentary papers and we would use this information to link through to other legal documents housed on Westlaw UK. Please would you be able to confirm that no special permission is required to use the Law Commission's content on Westlaw UK?
<b>Answer</b>	<p>Thank you for your enquiry, which we have dealt with under the Freedom of Information Act. The Law Commission's publications are publicly available on our own website at <a href="http://www.lawcom.gov.uk">www.lawcom.gov.uk</a> and our parliamentary publications are also available on <a href="http://www.gov.uk">www.gov.uk</a>. On our website, we have a copyright statement – at <a href="http://www.justice.gov.uk/copyright">http://www.justice.gov.uk/copyright</a> – which explains 'The material featured on this website ... is subject to Crown copyright protection and licensed for use under the Open Government Licence unless otherwise indicated'. This statement is shared with other bodies which have a link to the <a href="http://www.justice.gov.uk">justice.gov.uk</a> domain.</p> <p>We would have no objection to your using our published material, subject to the terms of the Open Government licence. Further information about this licence is available at <a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a>.</p> <p>I hope this has fully answered your question. If, however, I can be of any further assistance, please contact me again.</p>

<b>Topic</b>	43) Responses to 13th Programme consultation relating to marriages
<b>Date of Response</b>	16/02/17
<b>Details of Request</b>	I would like the Law Commission to disclose to me all responses to the above consultation mentioning humanist marriages/weddings and/or humanism.
<b>Answer</b>	We fully understand the BHA's position with regard to it being possible in law for BHA celebrants to solemnise marriages. We also remain very grateful for the BHA's time and assistance with our scoping review; your help was invaluable. We remain of the view, as set out in our scoping paper, that the best way to approach the reform of the law governing weddings, or the solemnisation of marriage, is for any recommendations to address reform as a complete package, and after full consultation, rather than for reform to be on a piecemeal basis. We think that taking the latter approach will only

	<p>lead to further complication of what is already an unsatisfactorily complex and outdated area of the law. But we appreciate that you disagree with that position.</p> <p>We very much hope that if we undertake further work on weddings that we can continue to engage with you as we develop our proposals.</p> <p>We enclose the information that you have requested.</p>
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<b>Topic</b>	44) Supreme Court ruling on Brexit
<b>Date of Response</b>	24/02/17
<b>Details of Request</b>	<p>If the recent Supreme Court ruling relating to Brexit is anything to go by then having referendums seem to be a futile exercise. If there is going to be referendums then it should be only after a Parliamentary vote and certainly not before for the simple reason that any subsequent Parliamentary vote may very well be compromised owing to the referendum result.</p> <p>The ruling, as far as I can gauge, demonstrates that the role of Parliament is sacrosanct and not a rubber stamping institution and their conduct must reflect this obligation.</p> <p>Taking matters as they are I believe Members of Parliament must be given a free vote similar to that of the referendum and it must also be secret whereby the MPs are not obliged to divulge the option they voted for to avoid any form of recrimination. There is also another important principle at stake here which is that Members of Parliament may have voted one way in the referendum but they may now be coerced to vote another way in Parliament.</p> <p>I understand a referendum had taken place in 1975 before the UK joined the currently evolved European Union but, it is not clear to me whether a</p> <p>vote was taken in Parliament following that referendum and if so, whether it was a free vote.</p> <p>If the legal requirements were not complied with at the time it is then seriously open to contention whether it would be necessary or appropriate to have a divorce settlement if there was no marriage in the first place.</p> <p>You may deliberate on these issues perhaps with all the key lawyers who have been involved with this case - and indeed Parliament - and determine what should be done.</p> <p>There may be compelling grounds for the above issues to be referred to the Supreme Court without delay for clarification.</p> <p>Additionally, this ruling appears to have other ramifications and if you or he Government have identified these, it would be interesting to know how they will be addressed.</p>
<b>Answer</b>	<p>The Law Commissions Act 1965 enables the Law Commission to review and recommend legislative reform. Following section 3 of the Act, the Law Commissions (1) receive and consider proposals for legislative reform, (2) prepare and submit programmes of law reform to the Minister, (3) undertake, pursuant to any such recommendations approved by the Minister, the examination of particular branches of the law and formulate reform proposals, (4) from time to time, prepare comprehensive programmes of consolidation and statute law revision at the request of the Minister (including associated draft bills), (5) at the request of Government, provide advice and information to Government departments and other authorities or bodies concerned with proposals for reform, and (6) obtain information on the legal systems of other countries in order to facilitate the performance of Commissioners' duties.</p>

	<p>The Law Commission is under no statutory obligation to ask the Government or Parliament to refer the matter you referenced to the Supreme Court. In addition, the Law Commission is under no statutory obligation to scrutinize the contents of the treaties you mention. If you would like to know more about the manner in which the Law Commission performs its duties, please follow this website link.</p> <p>I regret that the Law Commission is unable to assist you further on this matter.</p>
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<b>Topic</b>	45) Expert evidence in criminal proceedings						
<b>Date of Response</b>	07/03/17						
<b>Details of Request</b>	Please send me details of the costs associated with conducting the 2009 Law Commission Consultation (CP109) 'Expert Evidence in Criminal Proceedings in England and Wales@ and the generation and publication of the final report (LC325) in 2011.						
<b>Answer</b>	<p>The information you requested is as follows:</p> <table> <tr> <td>Staff Costs</td> <td>£185,945.00</td> </tr> <tr> <td>Other Costs</td> <td>£3,281.00</td> </tr> <tr> <td>Total</td> <td>£189,226.00</td> </tr> </table>	Staff Costs	£185,945.00	Other Costs	£3,281.00	Total	£189,226.00
Staff Costs	£185,945.00						
Other Costs	£3,281.00						
Total	£189,226.00						

<b>Topic</b>	46) Protection of official data
<b>Date of Response</b>	12/03/17
<b>Details of Request</b>	Please could you provide me with any information you hold – in emails or other records – relating to the two articles published in the Telegraph on 2 February regarding the Law Commission's review of the Official Secrets Acts. This should include, but not be limited to, internal discussions on the media strategy, the decision to pitch the story to the Telegraph rather than releasing it to all outlets, and correspondence with the journalist concerned.
<b>Answer</b>	<p>We are not prepared to disclose that information because, in the opinion of the Law Commission's qualified person, the information is exempt information by virtue of sections 2 and 36 of the Act. Section 36 applies where disclosure would prejudice, or would be likely to prejudice, the effective conduct of public affairs.</p> <p>The exemption applies because, in the opinion of the Commission's qualified person, disclosure would prejudice the effective conduct of public affairs within the meaning of section 36(2)(c) on the basis that it would have a 'chilling effect'. Of relevance to this is the fact the project is still 'live'.</p> <p>The Commission's qualified person also decided that this met the higher test of "would occur" rather than "would be likely to occur" in relation to prejudice. It was his strong opinion that we rely heavily on the ability to engage openly and frankly within the Commission and this must also relate to our communications strategies on any given project. The factors we must take into account will affect likely levels of public and stakeholder engagement over the course of the project and anything which minimises such debate is likely to lead to poorer decision making and potentially affect adversely the balance of responses to our proposals. Where that to occur, the quality of our law reform is likely to be weaker, which in turn, would prejudice the effective conduct of public affairs, given our statutory duties.</p> <p>The Commission believes that, in all the circumstances of the case, the public interest in maintaining the exemption</p>

	<p>outweighs the public interest in disclosing the information.</p> <p>In the opinion of the Commission’s qualified person, the public interest in maintaining the exemption outweighs the public interest in disclosure. It is important that: (1) there is ability for staff and Commissioners to express their views frankly; (2) Commissioners and staff are provided with space within which different opinions relating to publication can be tested; and, (3) the quality of decision making is not impaired.</p> <p>The fact that this is still a live project is also a relevant consideration given that communication issues will continue to be relevant given the final report is not due until later in 2017. Taken together, these reasons outweigh the short-term benefit in demonstrating the objective, principled and balanced approach the Commission took in relation to our communications strategy in this instance. The test of “would” and “would likely” is relevant in this regard. Because the Commission’s qualified person was of the view that disclosure would prejudice the effective conduct of public affairs, the bar is set higher in relation to public interest. In short, the effect on the Law Commission’s ability to fulfil our statutory functions would be so adversely affected by disclosure that it must outweigh any short-term benefit.</p> <p>This decision was taken considering the Law Commission’s work at its widest; at any one time we have up to 16 projects running, all of which rely on discussing and implementing supporting communications strategies at various stages up to and including final report. Releasing information about that process on this occasion would, in my view, adversely impact on all other projects, calling into question the entire process sitting behind the Law Commission’s consultative approach to producing recommendations.</p>
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<b>Topic</b>	47) Protection of official data
<b>Date of Response</b>	12/03/17
<b>Details of Request</b>	I would be grateful if you could provide me with copies of any working papers submitted by each of the Government departments, organisations and individuals listed out as having been consulted as part of the Law Commission's recently published review into the 'Protection of official data'.
<b>Answer</b>	<p>We interpreted the term “working paper” to mean any document sent to us by a department or individual listed in Appendix B that has suggested ways the legislation considered in the CP may be defective.</p> <p>The Law Commission holds such information that was submitted to us by a number of stakeholders listed in Appendix B.</p> <p>We are not prepared to disclose that information because the information is exempt information by virtue of sections 2 and 36 of the Act. Section 36 applies where disclosure would prejudice, or would be likely to prejudice, the effective conduct of public affairs. The exemption applies because the Law Commission’s qualified person is of the opinion that release of the relevant information would prejudice the effective conduct of public affairs, within the meaning of section 36(2)(c) of the Freedom of Information Act 2000.</p> <p>The Law Commission’s qualified person was of the opinion that this met the higher test of “would occur” rather than “would be likely to occur” in relation to prejudice. It was the strong opinion of the Commission’s qualified person that, because the Commission relies heavily on the ability to engage openly and frankly with multiple stakeholders as we form our views during the course of the project; to release information relating to this process would inhibit our ability in the future to receive such candour. That would, in turn, prejudice the effective conduct of public affairs, given our statutory duties.</p>

	<p>The Commission believes that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The reasons for this belief are that the ability of stakeholders to express their views frankly, together with the fact that this is still a live project, outweighs the short-term benefit in demonstrating the evidence base for the contents of the Consultation Paper, following adverse media comment.</p> <p>The test of “would” and “would likely” is relevant in this regard. Because the Commission’s qualified person was of the view that disclosure would prejudice the effective conduct of public affairs, the bar is set higher in relation to public interest. In short, the effect on the Law Commission’s ability to fulfil our statutory functions would be so adversely affected by disclosure that it must outweigh any short-term benefit.</p> <p>Our qualified person made this decision considering the Law Commission’s work at its widest; at any one time we have up to 16 projects running, all of which rely on testing ideas with multiple stakeholders. Releasing information about that process on this occasion would, in his view, adversely impact on all other projects, calling into question the entire process sitting behind the Law Commission’s consultative approach to producing recommendations.</p> <p>In addition, some of the Working Papers relate to bodies listed in section 23(3) of the Freedom of Information Act 2000. Given that this is the case, this information is exempt information by virtue of section 23(1) of the Freedom of Information Act 2000. This is an absolute exemption and there is therefore no need to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>Finally, we also hold a Working Paper that has been supplied to us by a security body listed in section 23(3) of the Freedom of Information Act 2000. Given that it has been supplied to us by such a security body, this information is exempt information by virtue of section 23(1) of the Freedom of Information Act 2000. This is an absolute exemption and there is therefore no need to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>
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<b>Topic</b>	48) Protection of official data
<b>Date of Response</b>	12/03/17
<b>Details of Request</b>	<p>I require the following information in regards to your consultation paper titled “Official Secrets Acts reviewed to meet the challenges of the 21st Century” and the procedure and consultations leading up to the publishing of that consultation paper:</p> <ol style="list-style-type: none"> <li>1. How many hours were taken in consultation, meetings or discussions with any governmental organisation (excluding NGOs), minister or body including MI5 and MI6?</li> <li>2. How many hours were taken in consultation, meetings or discussions with any NGO(non-governmental organisation)?</li> <li>3. How many hours were taken in consultation, meetings or discussions with any other bodies or organisations such as Liberty, newspapers, Open Rights Group, etc</li> </ol>
<b>Answer</b>	<p>We do not have a record of how many hours were spent in meetings with the stakeholders whose views we sought prior to the publication of our consultation paper entitled “Protection of Official Data”. These stakeholders were listed in Appendix B. In relation to your first question, information that relates to the Security Service and the Secret Intelligence Service is exempt information by virtue of section 23(1) of the Freedom of Information Act 2000. As this is an absolute exemption, there is no need to consider whether the public interest in disclosure outweighs the public interest in</p>

	<p>maintaining the exemption.</p> <p>In order to try and satisfy your request for information as best as I can, I have listed the dates when we met with the stakeholders listed in Appendix B of our consultation paper and attached the spreadsheet to this email (attached to this disclosure log at the end). This list is based upon entries in an Outlook calendar. There are two points to bear in mind in relation to this list. First, it may not be complete and absolutely accurate. Secondly, it was impossible to calculate accurately how much time was spent in meetings based upon these calendar entries, given that meetings can only be booked in blocks of 30 minutes. This would therefore overestimate or underestimate the time spent in meetings.</p>
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<b>Topic</b>	49) Procurement cards
<b>Date of Response</b>	13/03/17
<b>Details of Request</b>	<p>Under the Freedom of Information Act 2000, I'd be grateful if you could help me with the following about government procurement card spending.</p> <ol style="list-style-type: none"> <li>1. Please provide me with a breakdown of the department's spending via government procurement cards, in annual breakdown over the years 2015/2016/2017, listing how much was spent in each year.</li> <li>2. Please include in this breakdown the amount charged on each occasion over 2015/2016/2017, when it was charged, and what it was for. Please include detail like if any department trips, what the name of the hotel was, or any food – what the brand/restaurant was, as is feasible within cost/time limits.</li> </ol> <p>I should add that I am conscious of the government's programme of publishing GPC spending monthly when the transactions are above £500. However I should make clear as regards any overlap of my request with already publicly available information, that I would be interested in the information below £500.</p>
<b>Answer</b>	I attach a file containing the answer to your FOI request (included as an annex to this document).

<b>Topic</b>	50) Protection of official data
<b>Date of Response</b>	16/03/17
<b>Details of Request</b>	<p>Please provide me with:</p> <ol style="list-style-type: none"> <li>1) A copy of the 'referral' documentation from the Cabinet Office which initiated your 'Protection of Official Data' consultation;</li> <li>2) A list of all meetings held with all stakeholders, together with dates, prior to the publication of the consultation.</li> </ol>
<b>Answer</b>	<p>We interpreted the term, "referral documentation" to refer to the letter sent by the Secretary of State that initiated the Protection of Official Data project. Please find the relevant letter attached. The only information that has been redacted in this document is the name of those who individuals named in the document who I could not be confident were senior civil servants with a public-facing role.</p> <p>In response to your second request, I have attached a list of meetings the Law Commission has held with stakeholders prior to the publication of the consultation paper. No single document existed that listed these meetings. In order to comply with your request for information to the best of my ability, however, I have examined an Outlook calendar and compiled a list of meetings. It is necessary to bear two things in mind in relation to this document.</p>

	<p>First, it may not be complete and absolutely accurate. Secondly, it was impossible to calculate accurately how much time was spent in meetings based upon these calendar entries, given that meetings can only be booked in blocks of 30 minutes.</p> <p>In addition, information that relates to the Security Service, the Secret Intelligence Service and the Government Communications Headquarters is exempt information by virtue of section 23(1) of the Freedom of Information Act 2000. As this is an absolute exemption, there is no need to consider whether the public interest in disclosure outweighs the public interest in maintaining the exemption.</p>
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<b>Topic</b>	51) Protection of official data
<b>Date of Response</b>	23/03/16
<b>Details of Request</b>	<p>My request relates to the Law Commission's consultation paper which suggests ways to improve the law around the protection of official information. The paper was published on February 2 2017.  <a href="http://www.lawcom.gov.uk/official-secrets-acts-reviewed-to-meet-the-challenges-of-the-21st-century/">http://www.lawcom.gov.uk/official-secrets-acts-reviewed-to-meet-the-challenges-of-the-21st-century/</a>  In paragraph 1.5 of the paper, the Law Commission stated that "the Protection of Official Data project was referred to us by the Cabinet Office in late 2015."  <a href="http://www.lawcom.gov.uk/wp-content/uploads/2017/02/cp230_protection_of_official_data.pdf">http://www.lawcom.gov.uk/wp-content/uploads/2017/02/cp230_protection_of_official_data.pdf</a>  Under the act, I would like to ask :</p> <ol style="list-style-type: none"> <li>1) On how many occasions Cabinet Office a) ministers and/or b) staff have met the Law Commission to discuss this project;</li> <li>2) On what dates did each of these meetings occur between Cabinet Office a) ministers and/or b) staff and the Law Commission to discuss this project, identifying the Cabinet Office minister or staff member attending the meeting on each occasion.</li> </ol> <p>Under the Act, I would like to request copies of the minutes and agenda for each of these meetings. I would also like to request copies of all and any documents (such as briefing material, letters, memos, e-mails, memorandums of conversations) which were prepared for or connected with each of these meetings, either before or after the event.</p> <p>Under the act, I would also like to ask :</p> <ol style="list-style-type: none"> <li>1) On how many occasions Cabinet Office a) ministers and/or b) staff have corresponded with the Law Commission to discuss this project;</li> <li>2) On what dates did each of these Cabinet Office a) ministers and/or b) staff correspond with the Law Commission to discuss this project, identifying the recipient and sender of the correspondence on each occasion;</li> </ol> <p>Under the act, I would like to request complete copies of each of these pieces of correspondence.</p> <p>I would also like to ask the Law Commission, on answering this request, to provide a schedule of documents which are relevant to this request. I believe this should be a brief description of each relevant document, the date of the document, and whether the document is being released or not. I believe that providing such a schedule would clarify what documents are being released and what is being withheld, and would also represent best practice in open government.</p>
<b>Answer</b>	The team currently working on the Protection of Official Data project have conducted a search for any information that

relates to your request. This has primarily consisted of a search of the inboxes of the relevant team members. The Law Commission holds the following information:

(1) Whilst we do not have a comprehensive list of meetings that occurred prior to the publication of the consultation paper, one has been compiled based upon entries in my Outlook calendar. This therefore reflects meetings that I have attended since the commencement of the project and before publication of the CP. This list does not, however, identify the Cabinet Office employee met with, which reflects the fact that the calendar entries for the most part do not do so. On the rare occasion when there is a name, it is only a first name. None of the meetings with Cabinet Office staff involved a meeting with a Minister. It cannot be guaranteed that this list is completely accurate. This table is attached.

(2) There is the letter from the then Minister for the Cabinet Office, Matthew Hancock, to the then Chairman of the Law Commission, Sir David Lloyd Jones, referring the project to the Commission. We have included this letter on the basis that, since it initiated the project, all subsequent meetings and contact with the Cabinet Office are premised on this letter.

(3) There are agenda, minutes and other information associated with the meetings that have been held with Cabinet Office staff.

(4) There is a large volume of email correspondence between Law Commission staff and Cabinet Office staff that relates to the project.

We are prepared to disclose the information in (1) and (2), above. In relation to (1) this spreadsheet indicates the date when meetings were held with a number of the stakeholders listed in Appendix B of the CP. Please do bear in mind the caveats noted above, however.

In relation to (2), this information is enclosed. The only redaction that has taken place is the name of the person who is named as the contact for the Cabinet Office. Section 40(2) of the Freedom of Information Act 2000 provides an exemption in relation to requests for personal data. Personal data is exempt information by virtue of section 40(3)(a)(i) if disclosure would contravene any of the data protection principles. If disclosure of the personal data would not be fair then it would contravene the first data protection principle and would therefore be exempt by virtue of section 40(2). Of relevance in this instance is the fact that I do not know whether the person named is a senior civil servant with a public facing role. In fact, my assumption is that this person's role is not public facing given the position they held within the Cabinet Office at the time. This stands in contrast to the other individuals named in the letter whose personal data has not been redacted. It is also necessary to consider the legitimate interest in disclosure against the rights of employees. In this instance, I have taken the view that it would not be fair to disclose the personal data in question given my assumption that this individual does not have a public facing role and the uncertainty over whether they are a senior civil servant. Given my conclusion, this information is exempt information by virtue of section 40(2) of the Act.

We are not prepared to disclose the information in (3) and (4) because, in the opinion of the Law Commission's qualified person, the information is exempt information by virtue of sections 2 and 36 of the Act. Specifically, section 36(2)(c), which applies where disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

In the opinion of the Law Commission's qualified person, the exemption applies because in order to achieve the Law Commission's statutory function, we rely upon the willingness of stakeholders – which includes the sponsoring Department – to share with us their candid views on the nature of any project we may be considering, together with their views on how the law is defective. If stakeholders felt inhibited in sharing their views with us, then the ability of the Law Commission to fulfil its statutory function would be undermined. Disclosure could have a chilling effect and inhibit free and

frank discussions in future.

There is therefore the real possibility that disclosure of details of our discussions with the sponsoring Department would inhibit the willingness of Departments – and other stakeholders – to share with the Law Commission their frank views on the nature of a project and how they feel the current law to be defective.

The fact that the Protection of Official Data project is ongoing is an additional factor that was taken into consideration. The CP was published in February 2017 and we are not due to publish our final report until later in 2017. We are therefore still at the stage in the project where policy is being formulated.

Disclosing the information sought would be adversely to impact the way in which the Law Commission is able to develop its law reform ideas, which would have the potential for lasting damage to the quality of the legal analysis and the legal policy proposals we recommend. This is because disclosure would prevent the Law Commission from operating in a safe way, on the basis of mutual trust, in testing out and developing the terms of a project, together with its legal analysis and policy. This would prejudice the effective conduct of public affairs, as the Law Commission’s ability to fulfil its statutory function would be undermined.

The Law Commission’s qualified person also decided that this met the higher test of “would occur” rather than “would be likely to occur” in relation to prejudice. It is his strong opinion that we rely heavily on the ability to engage openly and frankly with multiple stakeholders as we form our views during the course of the project; to release information relating to this process would inhibit our ability in the future to receive such candour. That would, in turn, prejudice the effective conduct of public affairs, given our statutory duties.

The Law Commission’s qualified person also considered it is worth setting out some general context about how important it is to the Law Commission that a Commissioner or team member working on a law reform project is able to engage with experts in the field, which obviously includes the sponsoring Department, to test out ideas and proposals for reform over the life of a particular project. We rely on such input across the Commission as it improves the quality of our output considerably. We know from feedback that we have received that experts in the relevant field work with us in the knowledge that they can give their opinions trusting that they are shared in confidence. This mutual trust works both ways in that the Commissioner or team from the Law Commission also is able to share their thinking as it is developing. It allows the Commission to test out the practicality of its proposals, for example, in a safe way, with practitioners in advance of coming to a conclusion.

Where this thinking is at its most sensitive is when proposals are being worked through, opinions tested and a balance of views sought from multiple stakeholders – in other words prior to consultation, consultation itself and in the run up to the final report. It is also important that, when considering the project from the outset, the Commission is able to engage frankly with the sponsoring Department about the precise terms of the project. Those submitting their views on all stages of the project must be able to do so knowing that there will be multiple opportunities to submit opinions over the course of the entire project and that what might be suggested at the start can – and often is – shaped by the discussions which form part of any Law Commission project. Thus, to permit the release of discussions with the sponsoring Department taking place over many months would potentially dissuade Government Departments and other stakeholders from co-operating so freely in the future.

Although normally raised under section 36(2)(b)(ii), in the opinion of the Law Commission’s qualified person, the above also describes the chilling effect that disclosure would have on our ability in future to engage with candour and frankness towards our stakeholders, which includes a sponsoring Department, and would therefore damage the quality of advice

	<p>and deliberation, leading to poorer decision making. This is especially so given that the project is still “live”; the consultation paper was published in February 2017 and a final report is not due until later in 2017.</p> <p>Drawing this together, it is vitally important to our work and therefore to the benefit of society as a whole that we can work in the manner described above, not just on this project but on all our projects. If we were unable to do so, it the opinion of the Law Commission’s qualified person that it would prejudice the effective conduct of public affairs as the Commission’s ability to fulfil its statutory function would be undermined.</p> <p>The Commission believes that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The reasons for this belief are, in the opinion of the Law Commission’s qualified person, the ability of stakeholders to express their views frankly, together with the fact that this is still a live project, outweighs the short-term benefit in demonstrating the breadth of the discussions held with the Cabinet Office and their independent nature. The test of “would” and “would likely” is relevant in this regard. Because he is of the view that disclosure would prejudice the effective conduct of public affairs, the bar is set higher in relation to public interest.</p> <p>In short, the effect on the Law Commission’s ability to fulfil our statutory functions would be so adversely affected by disclosure that it must outweigh any short-term benefit. This decision was made considering the Law Commission’s work at its widest; at any one time we have up to 16 projects running, all of which rely on testing ideas with multiple stakeholders, which includes the sponsoring Government Department. Releasing information about that process on this occasion would, in the opinion of the Law Commission’s qualified person, adversely impact on all other projects, calling into question the entire process sitting behind the Law Commission’s consultative approach to producing recommendations.</p>
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<b>Topic</b>	52) Impact of Brexit on IT systems
<b>Date of Response</b>	23/03/17
<b>Details of Request</b>	<p>I would like to receive details of any planning work that has been carried out to understand the possible impact of Brexit on IT systems operated by or behalf of the Law Commission, including any relevant arms-length bodies. Planning work could include internal investigations, seeking advice from other government bodies, external consultancy, systems testing or development. By 'impact' I mean modifications to existing IT systems, and/or development of new systems, required to enact any changes to government policy that might result from Britain’s departure from the EU.</p> <p>Please could you let me have:</p> <ol style="list-style-type: none"> <li>1. Details of any such planning work carried out to date, and which IT system(s) it relates to</li> <li>2. Any advice the organisation has received, as a result of this planning work, about actions it may need to take to ensure its IT systems are ready for Brexit, including estimated costs if available</li> <li>3. An indication of whether the organisation has already undertaken these actions, is planning to undertake them, or is considering them pending further information.</li> </ol>
<b>Answer</b>	<p>All the Law Commission’s IT systems are provided by the Ministry of Justice (MoJ), which is our sponsoring department. This means that any planning work of the kind you describe would, if necessary, be the responsibility of MoJ. We therefore have no information in this area.</p>

Date	Meeting with
12/11/2015	Cabinet Office
26/11/2015	Cabinet Office
30/11/2015	Attorney General's Office
18/01/2016	Cabinet Office
04/02/2016	Cabinet Office
24/02/2016	Cabinet Office
03/03/2016	Attorney General's Office
04/03/2016	Alex Bailin QC
09/03/2016	Defence and Security Media Advisory Committee
18/03/2016	CPS
23/03/2016	Rupert McNeil
31/03/2016	Cabinet Office
05/04/2016	Cabinet Office
08/04/2016	Dr Ashley Savage
18/04/2016	HMRC
26/04/2016	Cabinet Office
27/04/2016	Treasury Counsel
28/04/2016	Chris Saad
04/05/2016	Home Office
09/05/2016	Public Concern at Work
10/05/2016	Open Rights Group (phone call)
16/05/2016	PSNI (phone call)
16/05/2016	Roundtable at Matrix Chambers (attended by barristers from Matrix and representative from Guardian, News Media Association and Times Newspapers)
17/05/2016	ICO (phone call)
19/05/2016	CPS
31/05/2016	Cabinet Office
01/06/2016	Sir Stephen Irwin
06/06/2016	Dean Armstrong QC and Dan Hyde
10/06/2016	Cabinet Office
16/06/2016	Cabinet Office
23/06/2010	MOD
30/06/2016	Dominic Grieve QC
07/07/2016	Multiple Govt Departments
20/07/2016	Liberty
25/07/2016	Cabinet Office
16/08/2016	Multiple Govt Departments
25/08/2016	Home Office
31/08/2016	Cabinet Office
20/09/2016	David Anderson QC
20/09/2016	Keir Starmer QC
06/10/2016	Cabinet Office
20/10/2016	Simon McKay
28/09/2016	Cabinet Office
06/10/2016	Tim Moloney QC and Joel Bennathan QC
09/10/2016	Old Bailey Judges
19/10/2016	Cabinet Office
09/01/2017	Cabinet Office

## GPC Expenditure

<b>2015</b>		
Jan-15	26.00	Times Newspapers (Times online sub)
	336.00	TCPA Web Internet (Conference attendance for Lawyer and RA)
Feb-15	26.00	Times Newspapers (Times online sub)
	30.00	Informa UK (Purchase of Planning Practice & Research article for Property Team re: Planning Law in Wales project)
	106.46	Uppermost Business Gifts (Six team awards re: Royal Assent of the Insurance Bill)
Mar-15	26.00	Times Newspapers (Times online sub)
Apr-15	26.00	Times Newspapers (Times online sub)
	20.00	RICS COM GBP CYBS (Service Charge Residential Management Code re: Transfer of Title project)
May-15	26.00	Times Newspapers (Times online sub)
	118.00	Crime Line Training Ltd (Subscription from May 2015 for Criminal Law Team's re: general updates on criminal law)
Jun-15	26.00	Times Newspapers (Times online sub)
Jul-15	26.00	Times Newspapers (Times online sub)
	24.00	Shop Emeralin (Purchase of article "Incoherence and Incompatibility in Planning Law" for Public Law Team re: Planning Law in Wales project)
	90.57	Badgemaster Ltd (18 staff name badges)
Aug-15	26.00	Times Newspapers (Times online sub)
	27.95	Uppermost Business Gifts (Award trophy for Chairman).
	174.99	WWW.Lawscot.org uk (Chief Executive to attend Law in Scotland: Leading Legal Excellence event 2 October 2015).
	216.00	Civil Society (Subscription to civilsociety.co.uk for Property Team re: Charity Law project).
	74.00	Bangor University (Accommodation for Public Lawyer, 9-11/09/15 - Administrative Justice in Wales & Comparative Perspectives Conference).
	108.00	Johnsons Picture Frame (Frame for Exiting Chairman's Photo)
	800.00	Victim Support (Funding for Victim Support training for Criminal Lawyer and RA)
Sep-15	26.00	Times Newspapers (Times online sub)
	178.80	www.PMGLTD.CO.UK (Criminal Justice Management event for Criminal Lawyer)
Oct-15	26.00	Times Newspapers (Times online sub)
Nov-15	26.00	Times Newspapers (Times online sub)
Dec-15	26.00	Times Newspapers (Times online sub)

**2616.77 TOTAL**

<b>2016</b>		
Jan-16	26.00	Times Newspapers (Times online sub)
Feb-16	26.00	Times Newspapers (Times online sub)
Mar-16	26.00	Times Newspapers (Times online sub)
	29.95	Uppermost Business Gifts (Award trophy for Chief Executive)
	630.00	www.clt.co.uk (Training course re: Wills for Property lawyer)
Apr-16	26.00	Times Newspapers (Times online sub)
May-16	26.00	Times Newspapers (Times online sub)
Jun-16	26.00	Times Newspapers (Times online sub)
Jul-16	26.00	Times Newspapers (Times online sub)
Aug-16	26.00	Times Newspapers (Times online sub)
Sep-16	26.00	Times Newspapers (Times online sub)
Oct-16	26.00	Times Newspapers (Times online sub)
Nov-16	26.00	Times Newspapers (Times online sub)
Dec-16	26.00	Times Newspapers (Times online sub)

**971.95 TOTAL**

<b>2017</b>	
Jan-17	0.00
Feb-17	0.00

**0.00 TOTAL**