Information Tribunal Appeal Number: EA/2005/0023
FS0066313

FREEDOM OF INFORMATION ACT 2000

Heard at Procession House, London **Decision Promulgated**
On 27th March 2006
Prepared 4th April 2006 ……

Before

Mr. David Marks
INFORMATION TRIBUNAL DEPUTY CHAIRMAN

And

Mr. Ivan Wilson and Mrs. Jenni Thomson
LAY MEMBERS

Between

CHRISTOPHER BELLAMY

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

And

THE SECRETARY OF STATE FOR TRADE AND INDUSTRY

Additional Party

Representation:

For the Appellant: Mr. George Peretz of Counsel
For the Respondent: Mr. Timothy Pitt-Payne of Counsel
For the Additional Party Mr. Alan Maclean of Counsel

DECISION

Reasons for Decision

1. This is an appeal by the Appellant, Mr Christopher Bellamy, against the Decision Notice dated 24 October 2005 made by the Information Commissioner ("the Commissioner") which upheld a refusal by the Department of Trade & Industry ("the DTI") to provide Mr Bellamy with certain information requested by him under the Freedom Information Act 2000 ("the 2000 Act"). By an order made in the context of directions made on 22 February 2006, the Tribunal joined the DTI as an Additional Party to these proceedings.

2. The appeal raises a matter which is likely to be of increasing importance in the context of requests made under the 2000 Act, namely, the extent to which legal professional privilege can be relied on as a basis for claiming exemption from disclosure. This appeal has also raised a similar issue with regard to the ability on the part of a public authority to claim that the information sought is exempt on the ground that its disclosure would be likely to prejudice a person's commercial interests. This second ground was by common consent not at the forefront of the Submissions made to the Tribunal during the hearing.

3. Section 2(2) of the 2000 Act provides that:

"*In respect of any information which is exempt information by virtue of any provision of Part II Section 1(1)(b) does not apply if or to the extent that –*

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in admitting the exemption outweighs the public interest in disclosing the information."

Section 2(2)(a) does not apply in this case since neither of the sections addressing legal professional privilege and prejudice to commercial interests attract absolute exemption of a disclosure. The principal question which the Tribunal has to consider is whether in all the circumstances it is in the public interest for the public authority to disclose the information sought. In the present case, the DTI has freely admitted from the outset that the information sought is held by it.

4. Sections 42 and 43 of the 2000 Act which are contained in Part II of the Act deal with the exemptions which are relied on in the present appeal. The former provides that:

> "*(1) Information in respect of which a claim to legal professional privilege…could be maintained in legal proceedings exempt information.*"

Section 43 provides as follows, namely:

> "*(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).*
>
> *(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in sub-section (2).*"

Both exemptions which are in play in the present appeal constitute what are called qualified exemptions.

5. As section 2(2)(b) makes clear, the relevant exercise is to weigh the public interest in maintaining the exemption which is manifested by the relevant provisions against the public interest in disclosing the information. If the weighing process is in favour of the maintenance of the exemption, then any duty to communicate or disclose is disapplied. It necessarily follows that not all public interest considerations which might otherwise appear to be relevant to the subject matter of the disclosure should be taken into account. What

has to be concentrated upon is the particular public interest necessarily inherent in the exemption or exemptions relied upon.

6. Although further reference will be made to this below, the Tribunal finds that it is almost self-evident that the balancing exercise which has been referred to above has to be applied to the facts and circumstances which exist at the time the exercise could be undertaken. The non-applicability of a particular qualified exemption in one case will not, and indeed should not, be determinative in any subsequent set of circumstances.

7. There are, however, a number of general observations which are called for in relation to the two qualified exemption set out in sections 42 and 43.

8. With regard to legal professional privilege, there is no doubt that under English law the privilege is equated with, if not elevated to, a fundamental right at least insofar as the administration of justice is concerned.

9. In general, the notion of legal professional privilege can be described as a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communications or exchanges come into being for the purposes of preparing for litigation. A further distinction has grown up between legal advice privilege and litigation privilege. Again, in general terms, the former covers communications relating to the provision of legal advice, whereas the latter, as the term suggests, encompasses communications which might include exchanges between those parties, where the sole or dominant purpose of the communications is that they relate to any litigation which might be in contemplation, quite apart from where it is already in existence.

10. Counsel for the DTI quite properly drew the Tribunal's attention to recent judicial pronouncements of the highest possible authority where these principles have been discussed. In *Reg v Derby Magistrates' Court ex parte*

P [1996] 1 AC 487, the questions of privilege arose in the starkest possible form. The question was whether exchanges between an individual who had previously been acquitted for murder and his lawyers could be admissible in a subsequent prosecution against another individual who was subsequently charged with the same offence, the latter individual being the former party's stepfather. The House of Lords in overruling of the Court of Appeal's decision ruled that there had been no waiver of the privilege. At page 507D, Lord Taylor of Gosforth stated:

"*The principle which runs through all these cases and the many other cases which were cited is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of the particular case. It is a fundamental condition on which the administration of justice as a whole rests.*"

In *In Re L (a minor)(Police Investigation: Privilege)* [1997] AC 16 at page 32E, Lord Nicholls of Birkenhead stated that:

"*The public interest in a party being able to obtain informed legal advice in confidence prevails over the public interest in all relevant material being available to courts when deciding cases."*

(See also Lord Jauncey of Tullichettle at page 24C-G).

11. In *Regina (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax & another* [2003] 1 AC 563 at 606H-607B, Lord Hoffmann stated:

"*…LPP [legal professional privilege] is a fundamental human right long established in the common law. It is a necessary corollary of the right of any person to obtain skilled advice about the law. Such advice cannot be effectively obtained unless the client is able to put all the facts before the adviser without fear that they may afterwards be disclosed and used to his prejudice.*"

There then followed a reference to Lord Taylor's speech in the *Derby Magistrates Court* decision. Lord Hoffmann continued as follows, namely:

"*It has been held by the European Court of Human Rights to be part of the right of privacy guaranteed by article 8 of the Convention (Campbell v United Kingdom* (1992) 15 EHRR 137; *Foxley v United Kingdom* (2000) 31 EHRR 637) *and held by the European Court of Justice to be a part of Community Law; AM&S Europe Limited v Commission of the European Communities* (Case 155/79) [1983] QB 878."

See also *B & others v Auckland District Law Society & another* [2003] 2 AC 736, especially at paragraphs 46-51 inclusive per Lord Millett and more recently *Three Rivers District Council & others v Governor & Company of the Bank of England (6)* [2005] 1 AC 610, especially at paragraphs 90-96 per Lord Carswell, paragraph 34 per Lord Scott and paragraph 120 per Lord Brown.

12. A number of possible situations were canvassed at the hearing of the present appeal in relation to which legal professional privilege might not be available in a freedom of information context, but the Tribunal is loathe to speculate, nor would it be right to do so, as to the varying circumstances in which the exemption might be disapplied. The question remains whether, on the facts of this case, the balance interest which has been referred to comes down in favour of maintaining the exemption or not.

13. Section 43(2) renders information exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority itself. Section 43(3) provides that the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in sub-section (2). Mr Bellamy, in his Notice of Appeal, appeared to take no issue with the Information Commissioner's finding that carpet cleaning was a "very competitive business". The DTI submitted that it was difficult to see why companies against which no enforcement action was taken, and whose

regulatory record therefore remained stainless, should be exposed to such prejudice.

The Facts

14. Mr Bellamy owned or ran a franchise operation involved in carpet cleaning. In a letter sent by him to the Information Commissioner's office dated 3 March 2005, he referred to the fact that he and persons he described as his fellow complainants believed that they were victims of criminal offences committed by their "two master franchisers in the UK". These latter entities were called Chem-Dry Midlands & London Limited and Chem-Dry Northern & Southern Limited. This belief, in turn, stemmed from a further belief that the two master franchisers in question were not, according to him, exempt from certain provisions of the Fair Trading Act 1973 Part XI.

15. In his correspondence to the DTI he had formally taken the view that the scheme operated by the master franchisers did not fall within the description prescribed and provided by Regulation 3(a) of the Trading Schemes (Exclusion) Regulations 1997 enacted under the principal 1973 Act referred to above to the effect that the scheme, which was operated by both Chem-Dry companies, was not what was called a "single-tier trading scheme" and therefore was a scheme to which Part XI of the 1973 Act, or the underlying Trading Schemes Regulations 1997 applied. The term "single-tier trading scheme" is defined in those Regulations as:

"*…a trading scheme the only members of which are the promoter or promoters and one or more participants and under which, in the United Kingdom, either a single promoter or a single participant operates one level and any other participant or participants of the trading scheme operate at the same level below such promoter or participant aforesaid.*"

The Tribunal finds that it is not necessary for present purposes to attempt to articulate precisely why Mr Bellamy, and those acting formally or otherwise on his behalf, felt that the franchise arrangements under which he operated did not fall within the exemption set out in the quoted Regulation above. It is

enough to say that he and others have contended that the corporate and commercial structure which he said applied did not fit within or otherwise qualify for the application of the definition prescribed by the Regulation cited above.

16. Much more significantly, however, for present purposes is the fact that in Mr Bellamy's opinion, the view expressed by the DTI in formal exchanges with him in late October and early November 1999, particularly to the effect that the master franchise arrangements constitute a single-tier operation were, according to him, contradicted by certain Parliamentary questions in 2002, to the effect that the single-tier exclusion did not apply when there was more than one master franchisee, or more than a single UK participant at one level with other participants below that level, as well as the view taken in the DTI's own Trading Schemes Guide applicable at the time and, it seems, still applicable today.

17. It is, however, important for present purposes to revisit the particular letters which emanated from the DTI and which were sent to Mr Bellamy and his associates. The first letter is one dated 29 October 1999 in which Ms Janice Munday, Director of Consumer Policy at the DTI wrote to a Mr Arnold in relation to the consideration that the DTI has then embarked on as to whether Part XI of the Fair Trading legislation applied to the scheme operated by Chem-Dry. In that letter, she stated that the Department's "view" was that the scheme had been considered to have fallen within the relevant exclusion. In a subsequent letter of 1 November 1999, again addressed to Mr Arnold, Ms Munday in effect repeated the same view. The third material letter in this series is one dated 11 February 2000 sent to Mr Martin Mendelson who had, in effect, taken up the matter on behalf of Mr Bellamy and his colleagues, Mr Mendelson being a partner of Messrs Eversheds in London in which letter of 11 February 2000, a Mr Paul Rigby, on behalf of the Department stated:

"*The Department has come to this view on the basis of the opinion of Treasury Counsel. I am sure that you would not expect the Department to disclose its legal advice to you.*"

18. The upshot of the above exchanges is that by letter dated 1 January 2005, Mr Bellamy made a formal written request of the DTI for sight of the following information under the 2000 Act, namely:

"*(a) The Brief and evidence provided to Treasury Counsel.*

(b) The opinion of Treasury Counsel, including any notice of meetings or telephone conversations, emails and letters, both before and after the opinion was given."

19. By a formal response dated 31 January 2005, the DTI informed Mr Bellamy not only that Treasury Counsel "was briefed in relation to this case and that he advised" but also that "much of the information which you have requested in your letter is subject to [legal professional privilege]", the latter term being described as LPP. The latter was said to include no more and no less than the information which Mr Bellamy had himself requested.

20. Although these exchanges might on their face seem addressed to the legal materials which the DTI accepted had been created, it is clear that what Mr Bellamy was seeking was an explanation of the "view" which had been taken, see e.g. the letter of 29 October 1999. Perhaps not unnaturally, he himself thought that the answer lay in Treasury Counsel's instructions and opinion. At the hearing, his Counsel took a similar approach, namely that what was sought was a reasoned explanation as to why the DTI had taken the "view" objected to, particularly in the light of the apparent inconsistencies which had been highlighted. The fact remains, however, that the sole focus of the request was the legal exchanges which are referred to in the formal request.

21. Mr Bellamy's request and the subsequent refusal were then reviewed in various written exchanges in March 2005. By letter dated 1 March 2005, the DTI confirmed that it had applied:

"*(a) A public interest test…in making the decision to rely on the Section 42 Exemption and it was concluded that the balance of the interest came down in favour of not providing information*"

adding:

"*It is in the public interest that the public authorities be able to take decisions in the light of legal advice based on full disclosure to their legal advisers of relevant facts. In this case, having balanced the public interest in disclosure of the information with the public interest in protecting the decision-making process, I have concluded that the balance comes down in favour of withholding the legal privileged material you requested.*"

22. The same letter then dealt with the section 43 qualified exemption and revisited the fact that the DTI had previously neither confirmed or denied it held "the remainder of the information you requested" because the duty to do so did not apply by virtue of section 43 of the 2000 Act. That decision was also therefore endorsed.

Pausing here, the Tribunal finds it somewhat puzzling that both this letter and the letter which had been endorsed, namely the initial letter to Mr Bellamy of 31 January 2005 rejecting his request for information, makes some form of distinction between the information otherwise caught by section 43 being the requested information and what both letters call "the remainder of the information requested". It is not at all clear what the remainder of the information consisted of but for reasons which underline the Tribunal's findings, this point is perhaps not relevant for present purposes.

23. The Commissioner's Decision Notice was dated 24 October 2005. Although Mr Bellamy had in the interim complained about delay on the result at the hearing of the appeal before the Tribunal, no point was taken on that aspect of his appeal. The Decision Notice was copied to the then Permanent Secretary to the DTI under cover of a letter of even date, the letter stating:

"*You will see that the Information Commissioner does not require your department to take any specific steps. However, he considers that it would be helpful if the Department were to consider writing to Mr Bellamy with an explanation, in broad terms, as to the reasons why it was decided not to pursue the complaints received against Chem-Dry, the company involved in*

this case. I should emphasise that this is a suggestion, rather than a requirement under the Act."

The Permanent Secretary in a letter of 30 November 2005 rejected the suggestion in the following terms, namely:

"*In my view it would not be in the public interest to reveal information about our internal decision-making process and what advice the Department sought. To summarise the Department's reasoning would amount to the disclosure of exempt information.*"

The Tribunal notes that although this exchange was referred to during argument, it is fair to say that no reliance was placed on it in terms of the substance of the appeal.

24. As to the applicability of section 42(1), the Commissioner acknowledged "the public interest" in being able "to receive disinterested and frank legal advice in order to assist [public bodies] in making appropriate decisions and there is less likelihood that they would receive such advice if those giving it knew it was to be made public." The Commissioner had seen the requested information and was able to comment that, what he called "the minutes" involved contained a number of "candid comments and a range of differing opinions" which were "aired". The Commissioner also noted that the particular issue raised by the legal advice and exchanges sought remained "live" which rendered it particularly sensitive, albeit that they affected "a relatively small number of individuals". That led to his further finding that it was therefore less likely in his view that disclosure of information affecting such a small group would "…serve the public interest than maintaining the exemption in order to allow legal advice to be provided unfettered by concerns about disclosure."

25. With regard to section 43, the Commissioner merely noted and accepted that "rightly or wrongly, the mere suggestion that such a company [i.e. the Chem-Dry companies or group of companies] had been under investigation could have an adverse effect on its commercial interests and that of its

franchisees." In those circumstances with regard to both qualified exemptions, the Commissioner upheld the prior decisions of the DTI.

Grounds of Appeal

26. The Notice of Appeal is dated 16 November 2005. In paragraph 24, five specific points said to have been the subject of inadequate consideration by the Commissioner in the exercise of what was said to be his discretion are set out. These five points relate to the section 42 aspect of the appeal. The first is that the Commissioner failed to give sufficient account to the fact that the DTI's interpretation of the single-tier exclusion was a matter of wide public interest and commercial importance, particularly in the context where the issue remained a live one. Secondly, it is contended that the Commissioner failed to take into account, properly or at all, the public interest in understanding why the DTI took a view as to the applicability of the single-tier exclusion when that view was at first sight inconsistent with the terms of the exclusion and with the DTI's own guidance. Thirdly, issue is taken with the fact that the Commissioner failed to take into account the DTI's own statement that it had taken advice from Treasury Counsel and its "view" was based on that advice. Fourthly, the Commissioner was said not to have taken into account, properly or at all, "the possibility of excluding from the information required…any particular material that would reveal the so-called candid comments and range of different opinions…save insofar as they formed the factual and legal basis of the DTI's decision". Fifthly, the Commissioner was said not to have taken into account, properly or at all, the possibility of requiring disclosure simply of the essential factual and legal basis of Treasury Counsel's reasoning. With regard to the last and it might be said the penultimate point, this was what Counsel for the Commissioner described as in effect a request for a "sub-set" of the advice which was the formal subject of the request.

27. As to section 43, a complaint was again made as to the wrong exercise of the Commissioner's discretion principally on the basis that it was "self-evident" that advice had been sought by the DTI about the specific applicability of the 1973 legislation to the Chem-Dry scheme or schemes.

28. Although the Commissioner lodged a formal reply dated 15 December 2005 to the Notice of Appeal, the effective responses to Mr Bellamy's appeal were articulated in the arguments put forward on the appeal itself, both by the Commissioner and by the DTI.

29. First, it was said that this was not a case in which any discretion was exercised by the Commissioner. The only question was whether the Decision Notice was in accordance with the law. Second, and with regard to what could be said to be the crux of the appeal, the public interest in maintaining the exemption was said to be a "strong one". Moreover, the public interest factors to be weighed against retention were said to include the fact that the matter remained "live" and that this was an element that weighed against disclosure. Even if it could be said that there was an inconsistency in the circumstances between the public authority's general guidance and its application to a particular case such as to justify some degree of explanation, that fact was not in itself sufficient to outweigh the public interest which underlies legal professional privilege. Third, the fact that the DTI told the world it had sought legal advice did not assist in the balancing exercise to be carried out in considering whether the content of the advice itself should be disclosed and finally even if in substance disclosure of what was called the "sub-set" was being sought, the privilege would still attach. It is fair to add that the DTI raised and relied upon a number of additional grounds, in particular, the fact that the constituency occupied by Mr Bellamy with his associates was a very small one, perhaps involving no more than three persons in total such as to diminish or perhaps even eradicate the degree of public interest involved.

30. With regard to the section 43 exemption, the relevant contentions which were not, as stated above, at the forefront of any party's arguments were met by the Commissioner in general terms to the effect that if the DTI had confirmed that an investigation had taken place in a case where there had been one, then there could be potential damage or actual damage to the interests of the company concerned. In particular, the DTI relied upon the failure by Mr Bellamy in his Notice of Appeal at least to take issue with the

finding of the Commissioner that carpet cleaning was a very competitive business relying to "a significant extent on reputation".

31. Without in any way being disrespectful to the eloquent contentions made on behalf of Mr Bellamy by his Counsel, the same grounds as set out in the Notice of Appeal were in effect revisited during the hearing of the appeal, but put on seven discrete bases. These issues went primarily, if not exclusively, to the applicability or otherwise of the section 42 qualified exemption. First it was said that the DTI was a regulator with powers to institute criminal proceeding and therefore that of itself raised a sufficient element of public interest. Secondly, and not unconnected with the first point, it was said that the DTI was relied on by those involved in franchising activities as a guardian of their interests. Thirdly, and reflecting the reality that the case involved a live issue, it was pointed out that the present guides and materials were the same as those which had applied at the relevant time when the request for information was made. Fourthly, if the same not be repetition of some, if not all, of the earlier points, the type of scheme with which Chem-Dry was involved raised a matter of public interest being as it was a form of pyramid selling. Fifthly, it was pointed out that as a practical matter, Mr Bellamy had decided not, at present at least, to pursue any civil proceedings, and the effect of the DTI's decision not to disclose the information rendered it even more difficult for him to litigate. Sixthly, reliance was placed on matters already outlined in the Notice of Appeal, namely that it was good practice for all prosecutors, of which the DTI was one, to look at how any victims were informed of things that might be important and, lastly, it was a matter of public interest for the public authority generally to inform the public of its decisions and to give reasons for any decisions taken.

Findings

32. At the directions hearing referred to above which occurred on 22 February 2006 the Tribunal expressed its wish to inspect the materials which had been the subject of the request, being an exercise which the Commissioner himself had undertaken. It is fair to state that at that directions hearing, no party

including Mr Bellamy, wished the Tribunal to embark on this course prior to the hearing of the appeal and no order for disclosure to the Tribunal was then made. At the conclusion of the appeal, however, having heard all the argument, the Tribunal unanimously took the view that it was appropriate to view the instructions to Treasury Counsel, the opinion and any other matters which had been considered by the Commissioner and this was duly done.

33. In the result, the Tribunal has found that consideration of these materials has not in any way altered the decision in principle that it needs to make with regard to the arguments put before it on the hearing of the appeal. The Tribunal notes that the materials which it has now seen, and which the Commissioner saw, endorse the submissions made during the Appeal that all the relevant exchanges emanating from the DTI referred to above were in fact based on the legal advice the DTI had received from Treasury Counsel.

34. Contrary to the contentions made by the Appellant, the Tribunal has the power under section 58(1) of the 2000 Act to conduct what could be called a merits review and can, in general terms, ask itself if the public interest in disclosure outweighs the public interest in non-disclosure in accordance with the balancing test set out above. With great respect to the Appellant, the Tribunal finds that it is not correct to say that in relation to the application of the public interest test the decision by the Commissioner on whether a qualified exemption is likely to apply and, if so, how the relative public interests should be balanced to constitutes an exercise of discretion. The core question is the application of the Act to the facts as found by the Commissioner being at the very most an issue of mixed law and fact. Here, where the questions of fact are not in dispute, the question is effectively one of law alone. If the Tribunal considers the Commissioner was wrong in his judgment of the public interest balance in accordance with section 2(2)(b), it will overrule him. It merely needs to come to the conclusion that it takes a different view.

35. The Tribunal has come to the unanimous view that the Appellant has failed to adduce sufficient considerations which would demonstrate that the public interest in maintaining the exemption is, in the present case, outweighed by

any public interest in justifying a disclosure. As can be seen from the citation of the legal authorities regarding legal professional privilege, there is a strong element of public interest inbuilt into the privilege itself. At least equally strong counter-vailing considerations would need to be adduced to override that inbuilt public interest. It may well be that in certain cases, of which this might have been one were the matter not still live, for example where the legal advice was stale, issues might arise as to whether or not the public interest favouring disclosure should be given particular weight. The Tribunal places no great, if any, store upon the fact that the constituency of which Mr Bellamy forms part may be small, since it may well be that in any given case there is a sufficient public interest even though the actual number of individuals are affected by an issue, may be numerically low. Nonetheless, it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case, of which this case is not one.

36. In particular, the Tribunal agrees with the Commissioner and the DTI that the fact that the DTI is a regulator is not of itself of particular note, since on the facts of this case at least Mr Bellamy has on his own admission always had the ability to pursue civil remedies but has chosen so far not to do so. Moreover, in his attempt to seek what was called the "sub-set" of the views of the DTI, it was a wholly artificial approach to suggest that the underlying view needed to be considered given the fact that at all times the request has been to see the legal exchanges between Treasury Counsel and the public authority here in question.

37. It is fair to add that the Tribunal was served after the oral hearing of the appeal with a written addendum submitted on behalf of Mr Bellamy referring to European case-law in the realm of competition law. The Tribunal did not find the references made in that Addendum to be relevant or helpful to the determination of the issues before it.

38. In the light of the above findings, the Tribunal confirms that it is not necessary to express any finding or view regarding the applicability or not of section 43.

39. For all the above reasons, the Tribunal dismisses the appeal.

40. Finally, as an addendum the Tribunal wishes formally to record the fact that it endorses the general desirability that requests for information be treated with as much practical assistance as possible and notes that the Commissioner appears to have taken a similar view in recommending in his letter of 24 October 2005 (which is referred to above in paragraph 23) to the Permanent Secretary of the DTI that the DTI should have considered giving Mr Bellamy an explanation as to why it was decided not to pursue the complaint against Chem-Dry.

Signed Date

[Type Chairman/Deputy Chairmans name]

Deputy Chairman

EA/2005/0023