SECOND WITNESS STATEMENT OF MR PETER MAYDON

I, PETER MAYDON, of HM Treasury, 1 Horse Guard's Road, London, SW1A 2HQ, say as follows: -

1. I am the head of HM Treasury's Sanctions and Counter-Terrorist Financing Unit ("the Unit"). The Unit is responsible for the implementation and administration of financial sanctions in the UK. I have held this post since the Unit's creation in September 2014, having previously headed branches dealing with international sanctions and countering terrorist financing since 2007.

2. I make this witness statement on behalf of the Second Respondent in these proceedings, HM Treasury.
HM Treasury’s process for dealing with requests for information under FOIA

3. Ms Feeney requested information held by HM Treasury on 22 May 2013 ("the Requested Information"), following a number of exchanges in correspondence with HM Treasury dating back to 6 July 2011. Ms Feeney argues that HM Treasury erred in not treating her 2011 and 2012 correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

4. At the time of Ms Feeney’s 2011 and 2012 correspondence, HM Treasury’s website contained clear and accessible information about how to make a FOIA request. The website made it clear that all FOIA requests should have been submitted to the Correspondence and Enquiries inbox (or sent by post to the Correspondence and Enquiries Unit). It was not obvious to HM Treasury officials that Ms Feeney, who had submitted information alleging that breaches of sanctions had occurred to HMT’s Asset Freezing Unit inbox, was making a request for information under the FOIA. Therefore, consistent with the approach that it would not be appropriate for HM Treasury to comment on individual sanctions cases due to issues of confidentiality, public policy – not least with regards to the effectiveness of sanctions – and, in many cases, international relations, HM Treasury did not treat the 2011 and 2012 correspondence as a FOI request.

5. When it became apparent that Ms Feeney was making a FOI request, HM Treasury dealt with the request in accordance with our FOIA procedures at the time.

6. HM Treasury now has a dedicated email address for FOI requests (foirequests@HMTreasury.gsi.gov.uk) and, in order to ensure absolute clarity to those making FOIA requests, the financial sanctions inbox now includes an automatic reply advising anyone making an FOI request to redirect their messages to the FOI inbox.

HM Treasury’s response to Ms Feeney’s request
7. HM Treasury responded to Ms Feeney's FOIA request on 25 July 2013. In its response, HM Treasury withheld information on the basis of the exemptions contained at sections 42(1) and 44(1)(b) FOIA. Following an internal review, HM Treasury wrote to Ms Feeney indicating that in addition, the exemptions contained in sections 27(1)(b), 36(2)(c) and 43(2) FOIA would also be relied on.

8. On 8 December 2014, the Information Commissioner ruled that all the Requested Information was covered by section 44(1)(b) FOIA. However, having re-reviewed all the Requested Information in preparation for the upcoming hearing, HM Treasury considers that some of the information is not covered in its entirety by Article 8 of the EU Regulation. Nevertheless, HM Treasury's view is that where Article 8 does not apply, such information remains covered by alternative exemptions, as set out below. Equally, where Article 8 applies, other exemptions may also apply in the alternative. This is clearly marked in the bundle that has been prepared for the appeal hearing ("the Bundle").

9. In light of the re-review, HM Treasury were, however, concerned that some of the Requested Information which had previously been treated as falling within the scope of section 44(1)(b) actually appeared to properly fall within the scope of section 36 FOIA. In particular, and for the reasons I set out below, HM Treasury reached the view that disclosing information in which government staff discussed sensitive sanctions issues may well inhibit the free and frank exchange of views or otherwise prejudice the effective conduct of public affairs.

10. Accordingly, on 19 June 2015, HM Treasury sought the opinion of Harriett Baldwin MP, Economic Secretary to the Treasury (City Minister) (who is the relevant "qualified person" for the purpose of section 36 FOIA) as to whether section 36(2)(b)(ii) and section 36(2)(c) FOIA applied to certain parts of the Requested Information (marked in green in the Bundle). Ms Baldwin MP was provided with relevant background information and a hard copy of the relevant
documents. On 22 June 2015, she reached the view that the information was covered by both section 36(2)(b)(ii) and section 36(2)(c) FOIA.

**Information provided or received in accordance with EU Regulation 314/2004 (Section 44(1)(b) FOIA)**

11. Much of the Requested Information was provided to HM Treasury by third parties in accordance with the EU sanctions regime. For the reasons set out below, HM Treasury takes the view that disclosing such information would put HM Treasury in breach of its EU obligations. HM Treasury has therefore treated this information as exempt information under section 44(1)(b) FOIA.

12. In order to implement and administer financial sanctions effectively, certain information must be reported to HM Treasury by third parties. In the case of the Zimbabwe EU sanctions regime, information which would facilitate compliance with that regime is required to be provided (in the case of the UK) to HM Treasury under Article 8 of EU Regulation 314/2004 ("the EU Regulation") and paragraph 2 of the Schedule to the Zimbabwe (Financial Sanctions) Regulations 2009 (SI 2009/847) ("the Regulations"). A failure to provide this information may be an offence under paragraph 2(4) of the Schedule to the Regulations. Information provided in this way is used to ensure the effective implementation of the sanctions measures and is necessary for ensuring that the law is enforced in line with the EU Council's 2008 Best Practice Guidance.

13. HM Treasury also has powers under the Schedule to the Regulations to request that any person (not just the regulated sector) provide information relevant to: (a) monitoring compliance with or detecting evasion of financial sanctions; (b) obtaining evidence of the commission of a financial sanctions offence, or (c) establishing the nature and amount of funds or economic resources owned, held or controlled by a designated person. HM Treasury relies on these powers, on a case by case basis, where it is necessary to do so. They are an important component of the effective implementation of sanctions.
14. The amount of information held by the Treasury varies between designated persons, depending on their financial circumstances and holdings in the UK. Across the various sanctions regimes, HM Treasury holds a considerable amount of information on designated individuals and entities, much of which is personal data or which is commercially sensitive. This information is integral to the enforcement of sanctions. Where necessary, it may be shared with our operational partners.

15. HM Treasury is therefore heavily reliant on third parties to provide information - which is often commercially sensitive, personal or confidential - in order to ensure that the sanctions regimes work effectively.

16. If HM Treasury were to disclose information provided in accordance with the EU Regulation to Ms Feeney (and thereby her campaigning group Rights & Accountability in Development), it would adversely affect HMT’s relationship with the organisations or individuals that originally provided the information (in particular those within the financial sector). Further, it would quickly become public knowledge that information provided to HM Treasury under the EU Regulation could be released in this manner.

17. In my view, it is clear that the practical consequence of disclosing this information could be a severe decline in cooperation with HM Treasury on sanctions matters in the future. If HM Treasury were not able to guarantee that such information would be kept private, third parties may simply stop providing the information to HM Treasury. As this information is vital to the continued effective operation of the sanctions regime, this is a serious concern.

18. It is not just the Zimbabwean sanctions regime system that I am concerned about. All the other sanctions regimes that are in place also rely on the provision of relevant information by third parties. My view is that once it becomes known that HM Treasury cannot preserve the confidentiality of information provided under the EU Regulation, there will be a serious decline
in the provision of information to HM Treasury across all of the sanctions regimes.

19. There is also a risk that disclosure of personal information provided under the EU Regulation could pose a threat to the safety of individuals who could be identified by this disclosure as it may link them to the controversial matters that often underpin sanctions issues.

20. Finally, and more broadly, HM Treasury’s view is that disclosure of information received from third parties in these circumstances would diminish the public’s trust in HM Treasury’s ability to administer EU sanctions effectively.

21. Accordingly, HM Treasury takes the view that onward disclosure of information received by HM Treasury under Article 8 of the EU Regulation and paragraph 2 of the Schedule to the Regulations, would be unlawful.

Other Applicable FOIA Exemptions

Sections 41 and 43 – confidence and commercial interests

22. HM Treasury considers that much of the information provided to it under the EU Regulation is also covered by the exemptions contained at section 41 FOIA (information provided in confidence) and, in certain cases, section 43 (commercial interests) FOIA.

Section 36 – prejudice to the conduct of public affairs

23. As above, on 22 June 2015 Ms Baldwin MP concluded that section 36(2)(b)(ii) and section 36(2)(c) FOIA were engaged in relation to the information marked in green in the Bundle. It is HM Treasury’s view that it would not be in the public interest to disclose this information.
The release of this information would be likely to inhibit the free and frank exchange of views at official level. Licencing issues are complicated and can be politically sensitive. The decisions usually involve extensive deliberation within HM Treasury, as well as with other government departments and sometimes foreign partners. Legal advice is often required. The free exchange of these views is integral to the licensing process. In my view, if this information was released it would lead to a chilling effect both in regard to discussions between HM Treasury and non-government, or foreign entities and on discussions within government.

**External policy discussion**

25. Sanctions policy is a highly dynamic area. It is constantly developing as HM Treasury responds to, *inter alia*, changing political situations, legal challenges and fresh information.

26. In order properly to respond to this changing situation, HM Treasury regularly seeks the views of, and works closely with, third parties. For instance, we regularly speak to officials in other territories who may have information that we require and which they may be willing to share with us.

27. It is vital for the effective conduct of public affairs that HM Treasury maintains positive relations with these third parties. However, in my view, disclosing via the FOIA regime discussions between these third parties and HM Treasury would have a substantial chilling effect on this vital discourse. Third parties will become aware that these conversations may be disclosed to the public in the future, with the result that cooperation with HM Treasury would cease and/or be seriously affected. This would be detrimental to HM Treasury’s role in ensuring the effective implementation of sanctions.
Internal policy discussions

28. It is vitally important that internal correspondence between officials is not disclosed in order to protect the integrity of free internal debate around the application of sanctions. As above, this is a highly complicated and sensitive area in which officials need to have a safe space to consider how to resolve difficult issues. If HM Treasury staff were aware that internal policy discussions would be released to campaign groups, in my view this would lead to a substantial chilling effect as officials no longer felt free to express themselves openly. Accordingly, my view is that releasing such correspondence would impede the effective conduct of public affairs. It may even assist those intent on circumventing the prohibitions.

29. This is particularly important where we may have limited information about a certain target. In such circumstances there may be a range of internal views around a policy, for example, officials may disagree over whether a particular activity should be considered a breach of sanctions rules or not. It is important that these views are aired internally so that HM Treasury can settle on an agreed policy position. I am not suggesting that this is the case in relation to the information Ms Feeney is seeking; I simply use this as an illustration of why it is important that information around the formulation of government policy in relation to sanctions should not be disclosed.

30. In my view, it is also important for the sanctions regime as a whole that internal government deliberations are not released to the public. Sanctions decisions have serious consequences for those involved and it is important that the public (and those individuals who are actually affected by any decisions) have faith in the final decisions that are reached. It would not be appropriate, in these circumstances, for the internal deliberations of HM Treasury to be released, particularly where the decisions that HM Treasury actually reach may still be operational.

Section 40—Personal information
31. There is a range of personal information contained within the Requested Information. This includes names and email addresses of government staff, as well as the personal details of third parties engaging with HM Treasury and the personal details of individuals actually linked to the underlying sanctions issues.

32. HM Treasury takes the view that releasing any of this personal information would amount to a breach of the Data Protection Act 1998.

33. Because of the risks to staff working on sanctions issues, it is HM Treasury policy not to publicly release the names of staff dealing with financial sanctions cases, with the exception of a few senior staff who have signed witness statements or speak publicly about financial sanctions issues (e.g. at conferences with the financial/legal sector). Accordingly, Sanctions Unit staff use only first names or initials in communications outside of government. Releasing the personal details of government staff would undermine this general policy. Further, publically linking government staff to sanctions matters may well expose those individuals to a risk of harm and/or unwarranted attention.

34. Considering the sensitivity of sanctions issues, HM Treasury also takes the view that releasing the personal information of non-government individuals identified in the Requested Information would also be unlawful. HM Treasury is concerned that disclosing such information could expose those identified individuals to some form of retribution or harm.

35. As set out above, HM Treasury also takes the view that releasing the personal data of any individuals actually linked to sanctions matters would be unlawful. Again, it could expose those individuals to harm or other unwarranted attention.
36. The exemption at section 27 FOIA (international relations) applies to parts of the Requested Information,
Section 42—legal privilege

43. Some of the withheld information is covered by legal privilege. The Unit works closely with HM Treasury’s legal advisers in its everyday business. These exchanges are clearly marked and would otherwise attract the protection of legal privilege in the context of proceedings.

Section 35—Formulation of government policy.

44. HM Treasury's view is that the Requested Information is properly covered by the provisions outlined above. However, if the information is held not to fall within these exemptions, HM Treasury also notes that parts of the Requested Information may be exempt under section 35 FOIA.
Statement of truth

The contents of this statement are true to the best of my knowledge and belief.

Signed: .... .................................

PETER MAYDON

Date: .................. 26/11/2015