



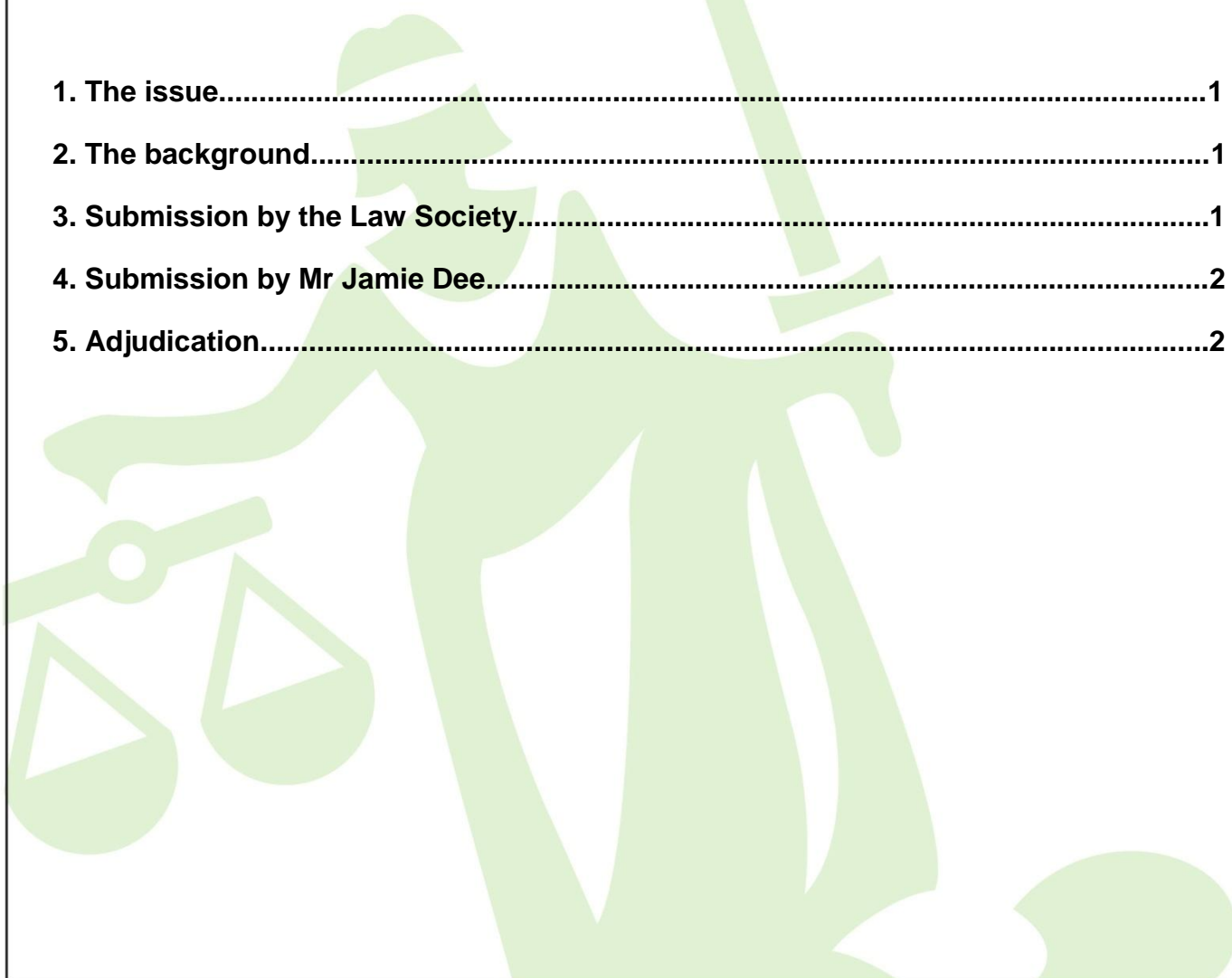
The Law Society

Adjudication in a matter raised by Jamie Dee

Law Society Freedom of Information Code

March 2012

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1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused to provide Jamie Dee with information concerning a constitutional question about the legitimacy of statute law.

2. The background

On 13 January Jamie Dee sent a short email to the Law Society. It read simply: *“Could you please tell me in which law book and where within said book does it state that a statute is given the force of law by the consent of the governed?”*

The Law Society replied later that day saying that it did not provide legal advice and so could not assist him. On 11 February Jamie Dee wrote again, describing the Society’s answer as evasive and expressing incredulity at its unwillingness to give him the information.

Two days later the Society replied again, saying that Section 14.1 of the Society’s Freedom of Information Code (“the Code”) allowed it not to disclose information if an applicant could reasonably be expected to find the information by other means, for example in a publication in a library. The Society told Mr Dee that he could ask for adjudication if he wished.

On 24 February Mr Dee said that, as he was unable to find the information in another publication or at a library, he would like the matter to be referred for adjudication.

3. Submission by the Law Society

On 7 March the Society made its submission. It said that the information requested by Jamie Dee might be held (if indeed it were held anywhere) in the Law Society Library. It said the Library offers a service to members of the Society only.

The Society said its original response to Jamie Dee (that it does not provide legal advice) was correct. The Society represents solicitors in England and Wales but does not itself provide legal advice. But the Society said that it would perhaps have been helpful if it had explained to Jamie Dee that it was not known whether the information was held by the Society but that if it was it would be in the Law Society Library whose services are available only to members of the Society.

The Society said that, in response to Jamie Dee’s follow up email of 11 February, it had stated that the information was being withheld under section 14.1 of the Code. The Society said it now accepted that this response could have led to confusion by giving the impression that the Society held the requested information but was withholding it because it could be obtained elsewhere. The Society said it apologised for any confusion caused by its unnecessary reliance on the section 14.1 exception.

The Society said the fact was that it did not know whether the information requested was held, and this should have been made clear in the original response of 13 January. The Society said it had originally seen Mr Dee’s request as a request for legal advice but the Society’s position now was that the information requested was not ‘held’ by the Society in the sense that it could be accessed and made available to a person making a request under the Code.

The Society therefore withdrew its reliance upon section 14.1 of the Code and instead submitted that the information was not held in such a way that it could be made available under the Code.

4. Submission by Mr Jamie Dee

On 12 March, having been informed of the Society's submission, Mr Dee said that he could not find the information he had requested anywhere else. He said he had tried asking solicitors but they had not been able to answer his question. He said he thought at the very least that the Law Society would have been willing to help.

5. Adjudication

The Law Society is not subject to the Freedom of Information Act, but its own voluntary Code seeks to express, in simple terms, the principles enshrined in the Act and the Society is committed to behave as though the Act applied.

The answer to the question Jamie Dee asked may well be found by reference to books held within the Society's library. The Society points out that the library is for the use of its members only and that the information is therefore not 'held' in the sense that it could be accessed and made available to a person making a request under the Code.

In effect, though its submission does not quite say so, the Society argues that the Code is not intended to apply to information held in reference books that may happen to be on the Society's premises. I am therefore invited to rule that, although the Code does not provide an obvious exception under which the Society can decline to provide the information, it acted appropriately in doing so in this case.

It is clear that the Act intends to place upon public authorities a general obligation to disclose information concerning their activities or held in connection with their own activities. I cannot believe that Parliament intended the Act to oblige a public authority to offer a free research service to members of the public simply because the authority happened to have on its premises a store of third party reference material. If the Act, and therefore the Code, were to be interpreted in the wide sense that Mr Dee would prefer, the Law Society would in effect have to throw open its members-only reference library and provide a constant stream of legal and constitutional research to anyone who asked for it. That would place a wholly inappropriate burden upon the Society and costs upon its members.

I therefore find for the Society in this case. I also recommend that a future revision of the Code should make the distinction between freedom of information and the free provision of academic research explicitly clear.

For the avoidance of doubt, I also believe that the Society would have been acting within the Code had it continued to rely upon section 14.1 because it is reasonable to expect that the information could be found by other means. The fact that Jamie Dee says that that has not proved possible does not necessarily mean that it was an unreasonable expectation on the part of the Society.

Richard Ayre
Freedom of Information Adjudicator
14 March 2012