

Transparency and Judicial Review: An Empirical Study of the Duty of Candour

Supplementary materials



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Introduction

In England and Wales, all parties to judicial review proceedings are under a general duty of candour and cooperation, requiring them to provide a full and accurate account of all the facts and information relevant to the issue under review. Though the duty of candour is central to the operation of public law litigation, it has received very little scholarly study. In the Nuffield Foundation-funded study '*Transparency and judicial review: an empirical study of the duty of candour*', a mixed-methods empirical study was designed to capture clear evidence on the law on the duty of candour, and how it operates in practice. The project delivered a case study of 322 judicial review cases on the duty of candour in judicial review, followed by 19 in-depth interviews with public law practitioners, and an in-depth focus group with practitioners on options for reform.

This document provides a detailed overview of the methodology for the project, and the underpinning data that support the findings outlined in the main report.

Work Package 1 Methodology: Mapping the Law

Introduction

The central aim of the project was to generate a robust evidence base to record the current parameters and perceptions of the operation of the duty of candour in judicial review. The first phase of the research (Work Package 1) correlated to the project's first research question: *what is the law on the duty of candour?*

Content Analysis Methodology

A team of three researchers¹ designed and employed a content analysis methodology to study judicial practice relating to the duty of candour. The content analysis study interrogated systematically what the law on the duty of candour is, as reflected in judicial review decisions. Content analyses are a form of discourse analysis which seeks to comprehensively capture relevant features of documents and have been called a 'distinctively legal form of empiricism' when used to interrogate judicial decisions.² This work package involved reading relevant court decisions and recording and coding aspects of the decision that relate to the research question. The content analysis method aims to offer a fuller picture of litigation patterns and the application of the duty of candour by the courts than current doctrinal accounts, which presently focus on precedent-setting cases.³ Content analyses have the benefit of recording both basic empirical data from the cases in the dataset, and finer detail in the substance of the judicial reasoning relating to the issue under study⁴. The method is therefore well-suited to this project, as the study was able to capture more comprehensively patterns in or changes to judicial doctrine on the duty of candour, such when the duty of candour applies to parties, and more empirical information, such as the most common types of public authority defendants in cases mentioning the duty of candour.

The main research question sought to be answered in this work package was: What is the law on the duty of candour? The study aimed to provide a full account of judicial practice relating to the duty of candour. A systematic study of judicial record on the duty of candour provided a window into claimant, defendant, and judicial understandings of the extent of the duty.

Case Selection

Content analyses work most effectively when the sample of decisions selected for analysis are easily repeatable, and the collection of decisions being analysed 'hold essentially equal value'.⁵ In this study, sampling was not required, as the full dataset was of a manageable size. A possible limitation in this study is that, to capture a comprehensive record of the judiciary's approach to the duty of candour, the case selection included decisions of different weighting, resolved at different levels of the court structure. Therefore, some decisions in the case sample

¹ The principle investigator - Dr Elizabeth A. O'Loughlin, along with Graduate Research Associates Gabriel Tan and Cassandra Somers-Joce.

² M. Hall and R. Wright, 'Systematic Content Analysis of Judicial Decisions' (2008) 96 (1) *California Law Review* 63, 64.

³ R. Kirkham and E.A. O'Loughlin, 'Judicial Review and Ombuds: A Systematic Analysis' (2020) Oct *Public Law* 680, 683.

⁴ Hall and Wright, 'Systematic Content Analysis of Judicial Decisions', 72-3.

⁵ Hall and Wright, 'Systematic Content Analysis of Judicial Decisions', 66.

will achieve a greater impact than others by virtue of the different levels of the court hierarchy. These variances were considered and explored when the data was analysed by taking account of the decision-type in subsequent qualitative analysis.⁶

Westlaw, Lexis Nexis, BAILII, and vLex Justis were identified by the researchers as possible databases to be used to build the dataset. Researchers decided against using BAILII, in light of prior research finding that BAILII only contains 55% of all published Administrative Court judgments.⁷ This was especially relevant to the research team's choice of database, given that a significant proportion of judicial reviews take place in the Administrative Court. As prior research has shown that vLex Justis is the most comprehensive dataset of court decisions available,⁸ the research team opted to use vLex Justis and the lead platform upon which to search for judicial review decisions mentioning the duty of candour.

Which Courts?

Claims for judicial review originate in the Upper Tribunal and High Court. In respect of those which originate in the High Court, particularly the Administrative Court, it was determined that judgments in appeals to the Court of Appeal and UK Supreme Court (and its predecessor, the House of Lords) would also have to be considered. As for claims for judicial review in the Tribunal, an initial difficulty regarding the possibility of collating a reliable dataset on tribunal decisions was first recognised. In particular, the less systematic nature of recording judgments of the tribunals, when compared with those in the High Court, means that our ability to get a full dataset was likely impeded. However, the research team nonetheless opted to include relevant tribunal judgments in the study, due to the volume of judicial reviews which occur in the tribunals.

Building the dataset of case law

The researchers used vLex Justis as the principal legal database from which the case law dataset was drawn. Westlaw was then used to collect decisions of the Upper Tribunal, as Upper Tribunal decisions are not searchable using relevant filters on vLex Justis.

The string "duty of candour" was entered in the 'the exact phrase' option on vLex Justis, with the following filters applied to them:

1. Document type: "law reports and judgments."
2. Jurisdiction: "England and Wales."
3. Courts: "Supreme Court," "Court of Appeal," "House of Lords," "Queen's Bench Division," "Queen's Bench Division (Administrative Court)," "Queen's Bench Division (Technology and Construction Court)," "Court of Appeal (Civil Division)," "High Court," "High Court (Administrative)."

The string "duty of candour" was then searched for in the 'free text' option on Westlaw. The results had the following filters applied to them

1. Document type: "law reports and judgments."

⁶ For an example of a similar content analysis study that included differently weighted judgments, see Kirkham and O'Loughlin, 'Judicial Review of Ombuds: A Systematic Analysis'.

⁷ D. Hoadley, J. Tomlinson, E. Nemsic and C. Somers-Joce, 'How Public is Public Law? The Current State of Open Access to Administrative Court Judgments' (2022) 27(2) *Judicial Review* 95.

⁸ Carrefax, 'Part 3: Open Access to English Case Law (the Raw Data)' (6 September 2018), cited in Hoadley, Tomlinson, Nemsic, and Somers-Joce, 'How Public is Public Law? The Current State of Open Access to Administrative Court Judgments', 96.

2. Courts: “Upper Tribunal.”

This resulted in a dataset of **568** cases mentioning the duty of candour up to and including 31 December 2023 (duplicates removed). These cases were downloaded and catalogued for ease of reference. The research team removed the following from the set:

- Cases that did not relate to a judicial review;
- Cases that did not refer to the duty of candour;
- References to the duty of candour in the context of *ex parte* applications, save for where the *ex parte* application related to a judicial review;⁹
- References to the duty of candour in the context of dealings with an immigration or entry clearance officer;
- References to the duty of candour owed by medical professionals.

This left **322** cases mentioning the duty of candour owed in judicial review eligible for analysis.

Case analysis

The three researchers read through the cases and recorded and coded targeted aspects of the decisions that related to the operation of the duty of candour in judicial review. A draft codebook was designed, and a pilot test was conducted by analysing a subset of the cases in the raw dataset (568 cases). Roughly 10% of the raw dataset were analysed in the pilot exercise, resulting in 20 cases per researcher. Once the pilot cases were coded, each researcher divided their individual case sample by two and gave half each to the other researchers (10 cases to each of the other researchers). The cases were then be checked to ensure a consistent application of the code across the three. The researchers discussed the application of the codebook to ensure that each code was applied consistently, where it was not, disagreements were either resolved by providing more coder guidance in the codebook, or by altering the code to simplify the data collected. This approach was taken to ensure there is consistency in the approach to coding amongst the three researchers.¹⁰

The codification scheme captured a mixture of basic empirical information about the cases in the dataset, alongside more qualitative information. This included:

1. Background information (Case name, date, defendant, intervener, interested party, type of claimant, type of defendant, court, litigant in person, divisional court judgment);
2. Details of the case (Decision type, target of review, type of reference to duty of candour, judicial review outcome, outcome on the duty of candour);
3. Details of elucidations on the law of the duty of candour (timing of the duty, extent of the duty – does the duty go beyond the scope of pleaded issues? search requirements, disclosure requirements, consequences);

⁹ There is a specific duty of candour owed in the context of *ex parte* applications which is distinct from the general duty of candour owed in judicial review proceedings, for example the duty of candour owed to crown court in *ex parte* applications to issue summons. Generally, these were excluded from the dataset, though references to the duty of candour owed in *ex parte* applications for judicial review to be heard on an expedited basis were retained, given the relevance to the evidence base in an expedited judicial review.

¹⁰ On the importance of intercoder reliability, see C.A. Johnson ‘Content-Analytic Techniques and Judicial Research’ (1987) 15(1) *American Politics Quarterly* 169.

4. Further qualitative information on the duty of candour (open text boxes for the researchers to provide extra detail regarding the coding selections, including relevant quotations and paragraph references).

Limitations

The primary limitation of the content analysis methodology is that value judgments, employed in this case by three researchers, cannot be avoided or eliminated entirely from the data collection.¹¹ In this instance, specific coding protocols were designed to reduce value judgments to a minimum. Inevitably, however, there may be slight variations in the approach of the researchers to the application of the code, as the more criteria that is applied, the more judgement calls are made by researchers, creating entry points for subjectivity. Given these methodological challenges, there was a need to blend the coding approach with more traditional doctrinal analysis.¹²

Furthermore, due to a lack of full harmonization in the way that cases are reported, it is not possible to ensure that the dataset of 322 judicial review judgments mentioning the duty of candour is capturing all relevant decisions. It is highly likely that there will be unreported decisions, particularly interlocutory decisions such as case management decisions, that were not captured by the databases used to build the dataset. Moreover, decisions directly mentioning the duty of candour are not the only way the operation of the duty of candour can be revealed. For example, there may well be judicial review decisions, particularly interlocutory decisions, which reveal how the evidence base is policed by the courts in judicial review without directly mentioning the duty. To attempt to capture such dynamics would, however, have been unmanageable, and the most direct way to understand and identify the application of the duty of candour by the courts is to focus upon court cases mentioning the duty of candour. It is envisaged, however, that the dataset is nonetheless the most comprehensive account of candour-related judicial review decisions to date.

¹¹ On this point, see A. Halpern, “The Methodology of Jurisprudence: Thirty Years Off the Point” (2006) 19(1) C.J.L.J. 67.

¹² For a discussion on this approach, see R. Kirkham and E.A. O’Loughlin, ‘A Content Analysis of Judicial Decision-Making’ in N. Creutzfeldt, M. Mason, and K. McConnachie (eds) *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge, 2020) 329-341, 338.

Work Package 1: Results

Claimant types

Claimant type	Count
Individual	239
Company/business entity	38
NGO/Campaigning group	23
Public body	11
Other	11
Grand Total	322

- The “other” category mostly comprises unions or staff associations (e.g. Police Federation for England and Wales).
- It is unclear whether the figures here are out of step with general trends in the judicial review jurisdiction, as the Civil Justice quarterly statistics do not break down claimant types, only defendant types. It is likely that there are campaign groups operating to support individual claimants that are not captured by this code, as we only coded the lead applicant. It would have overloaded the research exercise to code for further claimant types, and it is often difficult to accurately identify if an individual claimant is supported by an organisation.

Defendant types

Defendant type	Count
Central Government Department	185
Other Public Body	93
Local Authority	44
Grand Total	322

- “Other Public Body” included non-departmental public bodies, non-ministerial departments and executive agencies.
- Majority of cases were brought against central government departments, but other public bodies are not insignificant.
- Lead defendant only captured by coding, meaning that the prevalence of defendant types may be obscured in this data.

Central Department Breakdown

Central Defendant	Count
Home Office	116
Justice	10
SS Health and Social Care	11
Foreign Commonwealth and Development Office	9
Defence	9
Business, Energy and Industrial Strategy/ Energy Security and Net Zero/ Business and Trade	5
Treasury	3
Cabinet Office	3
Transport	3
Education	3
Security Service	2
Work and Pensions	2
Environment Food and Rural Affairs	2
Communities and Local Government	2
Digital, Culture, Media, and Sport	1
Civil Service M / PM	1
International Trade	1
Grand Total	183

- This data provides a general overview of the types of central government departments challenged in judicial review where the duty of candour in judicial review is mentioned or discussed. It does not present a perfectly accurate picture, as only primary defendant types were captured, or the first defendant noted in the case where there were concurrently heard judicial review claims.
- Significant figure: Home Office. Of 322 judicial review decisions mentioning the duty of candour, 116 were against the Home Office. This amounts to 36%, which on the face of it appears high. *However*, this reflects trends that exist in the judicial review jurisdiction generally.¹³

Court

Court type	Count
Administrative Court	248
Court of Appeal	33
Upper Tribunal	21
Planning Court	12
Technology and Construction Court	4
House of Lords / Supreme Court	3
Queen's Bench Division	1
Grand Total	322

¹³ In October to December 2023, Of the 670 judicial review applications received, 240 were civil immigration and asylum applications, amounting to 36%. See Civil Justice Statistics Quarterly: October to December 2023.

- Most judicial review cases mentioning or discussing the duty of candour are heard in the administrative court. A separate code was created for the Queen’s Bench Division to capture judicial review cases heard there prior to the establishment of the Administrative Court via the introduction of the Civil Procedure Rules which came into effect in 2000. Such cases would not fit under a code for one of the specialist courts within the King’s Bench Division, and so a separate code was provided.

Legal Representation

Legal Representation	Count
Represented	308
Litigant in Person	14
Grand Total	322

- This code was invoked to interrogate whether correlations exist between claimants in a judicial review appearing as litigants in person and issues of candour arising in the course of proceedings.
- There are no notable patterns in the 14 cases where the claimant self-represented. In most of these cases the mention of the duty of candour relates to the defendant’s duty (n=12). The claimant’s duty of candour is referred to in 2 cases, and in only one of these is the claimant’s approach to the duty of candour discussed or in issue.¹⁴

Divisional Court judgments

Divisional Court Judgments	Count
Non-divisional court	245
Divisional Court Judgment	40
Not applicable	37
Grand Total	322

- A Divisional Court consists of two or more judges sitting together. Divisional courts may be convened for any case in the High Court.¹⁵ They are generally convened for cases that ‘raise issues of general public importance... which are not straightforward or are likely to set a precedent’.¹⁶ The aim of this code was to elucidate the extent to which issues of candour are arising in cases of more ‘general importance’.
- A fair amount of divisional court decisions arise in the dataset (n=40).
- The divisional court cases include 8 judicial reviews involving a policy challenge,¹⁷ and 1 involving a challenge to the lawfulness of primary legislation.¹⁸

¹⁴ R (Wilmot) v Tauton Dene & West Somerset Magistrates Court [2013] EWHC 1399 (Admin).

¹⁵ Senior Courts Act 1981, s 66.

¹⁶ The Administrative Court Judicial Review Guide 2023, para 14.3.2

¹⁷ R (Evans) v Secretary of State for Defence [2010] EWHC 1445 (Admin); DVP v Secretary of State for the Home Department [2021] EWHC 606 (Admin); Safe Passage International v Secretary of State for the Home Department [2021] EWHC 1821 (Admin); Dr Cathy Gardner v Secretary of State for Health and Social Care [2022] EWHC 967 (Admin); R (All the Citizens and another) v Secretary of State for Digital, Culture, Media and Sport and others [2022] EWHC 960 (Admin); R (HM) v Secretary of State for the Home Department [2022] EWHC 695 (Admin); R (John McIntyre) v Parole Board [2013] EWHC 1969 (Admin); Solange Hoareau v Secretary of State for Foreign and Commonwealth Affairs [2018] EWHC 3825 (Admin).

¹⁸ R (Liberty) v Secretary of State for the Home Department and another [2019] EWHC 2057 (Admin).

- Several of the divisional court judgments in the dataset contain disputes over the approach taken to the duty of candour (n=18). Interestingly, there is more judicial critical commentary on claimant approaches to the duty of candour in the divisional court cases than defendant approaches. There are 2 cases where the court critiques the defendant public authority approach to the duty of candour,¹⁹ 4 cases where the court finds that the defendant public authority failed or breached their duty of candour,²⁰ and 4 cases in which the court endorses the defendant approach to discharging the duty.²¹ There are 5 cases where the court is critical of the claimant approach to the duty,²² and 2 cases where the claimant is found to have failed in their duty of candour owed to the court.²³
- 3 divisional court judgments in this set are Hamid hearings, arranged to scrutinise the conduct of legal representative in judicial reviews.²⁴ All of these cases involved a focus on the claimant legal teams' approach to the duty of candour,²⁵ and 2 gave rise to a referral of practitioners involved to the appropriate professional body.²⁶

Decision type

Decision type	Count
Judicial review first instance	122
Permission decision	70
Interim application in judicial review	69
Appeal of judicial review decision	23
Rolled up hearing: permission and merits	20
Consequential judgment	13
Appeal of permission decision	5
Grand Total	322

¹⁹ *R (Good Law Project) v Electoral Commission* [2018] EWHC 602 (Admin); *Safe Passage International v Secretary of State for the Home Department* [2021] EWHC 1821 (Admin)

²⁰ *Kouyoumjian and another v Hammersmith MC and another* [2014] EWHC 4028 (Admin); *R (Al-Sweady) and others v Secretary of State for Defence* [2009] EWHC 2387 (Admin); *R (Martin Brook) v Preston Crown Court* [2018] EWHC 2024 (Admin); *R (HM) v Secretary of State for the Home Department* [2022] EWHC 695 (Admin).

²¹ *R (Evans) v Secretary of State for Defence* [2010] EWHC 1445 (Admin); *Lee Qualter Commercial Reduction Services Ltd v Crown Court at Preston* [2019] EWHC 906 (Admin); *R (Charlotte Charles and Tim Dunn) v Secretary of State for Foreign and Commonwealth Affairs* [2020] EWHC 1620 (Admin); *Job Fodayemi Durojaiya v Crown Court at Croydon* [2022] EWHC 1736 (Admin).

²² *R (AB) v Secretary of State for Defence* [2013] EWHC 4479 (QB); *In the matter of the conduct of Sandbrook Solicitors* [2015] EWHC 2473 (Admin); *R (Wilmot) v Tauton Dene & West Somerset Magistrates Court* [2013] EWHC 1399 (Admin); *Solange Hoareau v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 3825 (Admin); *The King (on the application of British Gas Trading Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 737 (Admin).

²³ *R (Gopinath Sathivel) v Secretary of State for the Home Department* [2018] EWHC 913 (Admin); *DVP v Secretary of State for the Home Department* [2021] EWHC 606 (Admin).

²⁴ The Court has an inherent jurisdiction to govern its own procedure, including by ensuring lawyers conduct themselves according to appropriate standards of behaviour. See *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin).

²⁵ *R (Gopinath Sathivel) v Secretary of State for the Home Department* [2018] EWHC 913 (Admin); *DVP v Secretary of State for the Home Department* [2021] EWHC 606 (Admin); *In the matter of the conduct of Sandbrook Solicitors* [2015] EWHC 2473 (Admin).

²⁶ *In the matter of the conduct of Sandbrook Solicitors* [2015] EWHC 2473 (Admin); *R (Gopinath Sathivel) v Secretary of State for the Home Department* [2018] EWHC 913 (Admin).

- Most references to the duty of candour were made in fully heard judicial reviews, followed by permission decisions, followed by interim applications in judicial review. Interim applications included case management hearings, decisions on disclosure applications, interim applications to adduce further evidence.
- Of the 69 interlocutory decisions in the dataset, 33 related to applications or decisions on disclosure or the provision of information,²⁷ though applications for disclosure also arose in other decisions such as permission hearings.
- Consequential judgments are judgments dealing with consequential matters following a main judgment. This included 9 judgments related to the costs of a judicial review, 3 Hamid hearings on the conduct of legal professionals arising in judicial reviews, and 1 application seeking a declaration that the public authority respondent had not complied with tribunal orders arising from a successful judicial review claim.

Target of review

Target of review	Count
Administrative Decision	281
Policy	54
Secondary legislation	8
Primary legislation	4
Immigration rules	3
Grand Total	

- The coders recorded the target of review to identify whether any patterns or correlations existed between the type of judicial review challenge and the prevalence of candour discussions.
- This set of data included some blanks where, for example, the nature of the challenge isn't discussed in a costs judgment.
- If it was evident in the case that there was an initial challenge (e.g. a policy challenge) but that this was ultimately dropped by the time of the hearing, this was not recorded, to ensure consistency amongst coders.
- If it was unclear what the target of review was, the coders applied a 'constructive' method of interpretation in which the language of the court is adopted.²⁸ Therefore, if the judgment uses the language of a 'decision' researchers coded as an administrative decision.
- For the purposes of the coding, a policy was the target of a review where: a) there is a systemic review challenge, in which the courts are invited to review the operation of an entire decision-making system to identify a potential source of error giving rise to unlawful individual decisions; b) where the lawfulness of a particular policy (including as expressed in guidance) is under challenge, including for its compatibility with e.g. EU law, ECHR.
- The Immigration Rules have a peculiar status in public law in that they fall somewhere between being subordinate legislation or a statement of policy. The researchers chose to code separately for these rules because their status sits between two categories. It was expected that Immigration Rule challenges might arise commonly, given the prevalence of judicial review cases against the Secretary of State for the Home

²⁷ In this group, there are 20 applications for disclosure, 1 application for pre-action disclosure, 4 applications for pre-permission disclosure, 4 disclosure orders, 1 application for the publication of the refusal of a disclosure application, and 3 requests for further information.

²⁸ see Sarah Nason, *Reconstructing Judicial Review* (Hart Publishing 2016) 25.

Department in the initial dataset, and to code them elsewhere might inflate a particular category. Separating this category was thought to therefore be worthwhile, though it turns out not to appear statistically significant.

- Out of 54 cases involving a policy challenge, 13 included judicial discussion on the duty of candour that amounted to either criticism of the public authority’s approach to the duty, or a finding that the duty had been breached or violated. This amounts to 25%, or one quarter. In the total dataset, there are 68 cases out of 322 in which the defendant’s approach to the duty of candour is either critiqued by the court or found to violate the duty (21%). This indicates that it is slightly more likely that issues of candour may arise in policy challenges.

Type of reference to duty of candour

Type of reference to duty of candour	Count
Applicability to defendant	263
No substantive discussion	110
Discussion of extent of duty	122
Applicability to claimant	49
Discussion of timing of duty	41
Applicability to third parties	9
Grand Total	

- In most cases in the dataset (82%), the reference made to the duty of candour related to the duty owed by the defendant public authority (n=263). This is not surprising, given that judicial review ‘is a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the authority’s hands’.²⁹ That being said, in around a third of these cases, the reference to the defendant’s duty of candour was a mere passing reference, coded also as “no substantive discussion” (n=84, 32%). This amounted to instances where there may have been brief reference to the defendant’s duty of candour by the judge by, for example, stating simply that as part of their duty of candour the defendant had provided certain documents or information; or where the references to the defendant’s duty of candour were raised by other parties but did not form part of a judicial determination.
- Overall, there were 110 cases (34%) containing no substantive discussion on the duty of candour, including brief references to the duty of candour owed by the parties by the judge, such as where the judge states that consistent with the duty of candour the party provided information.
- There are also references to the duty of candour’s application to claimants (n=49, 15%) and third parties (n=9, 3%), but far less.
- 122 cases discuss the extent of the duty owed by parties (38%). This may refer to several aspects of the duty: 1) whether the duty is limited to the requirement to disclose information relevant only to the grounds that a claimant has raised; or whether it extends to other matters, beyond the scope of the pleaded issues; 2) the extent of the duty’s search requirements; 3) whether the duty requires disclosure of information, documents, or further evidence beyond this.
- 41 cases referred to the timing of the duty in some form i.e. the question of when the duty of candour applies in proceedings (13%).

²⁹ *R. v Lancashire CC Ex p. Huddleston* [1986] 2 All E.R. 941, 945.

Judicial review outcome

JR outcome (c)	Count
N/A	160
Successful	77
Dismissed	62
Claimant appeal dismissed	9
Claimant appeal allowed	7
Defendant appeal allowed	6
Defendant appeal dismissed	1
Grand Total	322

- Researchers only recorded the outcome of the judicial review where it was evident from the document under review. This code was therefore not applicable where the judgment was interlocutory. We did not search for the overall outcome of every case, as this would overload the research exercise.
- There are 4 cases in which the judicial review outcome was not discernible from the file and were therefore coded as “not applicable”, which explains the discrepancy between the figure for successful/dismissed judicial reviews (n=139) and decision types that were coded as either a judicial review first instance decision or a rolled up hearing (n=143).³⁰

Outcome on Candour

Outcome on candour	Count
N/A	192
Criticism of defendant approach	34
Violation - defendant	34
No violation - defendant	32
Criticism of claimant approach	13
Violation - claimant	10
No violation - claimant	5
Criticism of third party approach	3
No violation - third party	1
Grand Total	324

³⁰ In *R (Raza) v Secretary of State for the Home Department* [2013] EWHC J1126-1, the outcome was not observable from this transcript of a judicial review hearing; in *R (Sean Ambrose McCarthy and others) v Secretary of State for the Home Department* [2012] EWHC 3368 (Admin), the proceedings were stayed and referred to the Court of Justice of the European Union; in both *Gerald Fitzgerald v Preston Crown Court* [2018] EWHC 804 (Admin), and *The King (on the application of British Gas Trading Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 737 (Admin), there was a rolled up hearing but permission for all grounds was refused and so the judicial review was not fully heard.

- There are two cases in which there was more than one outcome of the discussion on the duty, which explains the discrepancy between the overall dataset size (n=322), and the invocation of this code (n=324).³¹
- In many cases (n=192) the duty is referred to, but the court does not specifically comment, or has not been invited to comment, on the parties' approach to candour. There is therefore no 'outcome on candour' and the 'not applicable' code applies.
- In line with earlier findings on the volume of judicial commentary discussing the public authority defendant's duty of candour, there are 34 cases where the court is critical of the approach taken by defendant public authorities, but did not necessarily frame this in terms of a breach or violation of the duty of candour, and 34 cases where the court explicitly employs the language of failure, breach, or violation of the duty of candour. There are also, however, 32 decisions where the court was invited to scrutinise the defendant public authority's approach to candour in proceedings and goes as far as to specifically refute this criticism.
- There are 13 cases where the claimant approach to the duty of candour invites judicial criticism, and 10 cases where the claimant party were found to have failed in their duty of candour (n=23). Of these cases, 15 (65%) relate to judicial reviews in the immigration and asylum context, including age assessment decisions by local authorities.
- It is important to note that even where the court doesn't explicitly use the language of 'breach' or 'failure', they are still willing to use the tools at their disposal to enforce consequences for issues of compliance with the duty [see below 'Consequences'].

Timing of the duty

Timing of duty	Count
Not applicable	279
Late disclosure	16
Continuing duty	11
Pre-permission	9
Post-permission	7
Pre-issue	3
Grand Total	325

- There are 3 cases where statements are made which invoked two codes here, hence the discrepancy between the overall dataset size (n=322) and the number of entries here (n=325).³²

³¹ In *R (Al) v Milton Keynes Council* [2021] EWHC 1395 (Admin), there was some criticism of the claimant approach to the duty of candour, but the judge specifically outlined that the discrepancies did not amount to a breach; in *The King (on the application of) THM and NHM (Minors, by their litigation friend, KHM) v Secretary of State for the Home Department*, Upper Tribunal (Immigration and asylum chamber), JR-2022-LON-001274 (UR), there was judicial critical commentary on the defendant approach to complying with the duty, and a clear finding by the judge that the claimants had complied with the duty of candour, contrary to defendant assertions, at para 98.

³² In *K, A and B v Secretary of State for Defence* [2014] EWHC 4343 (Admin), it was reaffirmed, citing the Treasury Solicitor Guidance with approval that the duty of candour 'applies at every stage of the proceedings including letters of response under the pre-action protocol, summary grounds of resistance' at [11]. This invoked both the code for 'continuing duty' and the code for 'pre-issue'. In *R (on the application of Mahmood) v Secretary of State for the Home Department* [2014] UKUT 439 (IAC) [17], there is reference to the duty continuing to apply at all stages of judicial review proceedings, and at Acknowledgement of

- The case law generally appears to accord with the position that the duty of candour is owed to the court, and therefore cannot technically bite until the court is engaged. There are, however, 3 cases indicating or endorsing the position that the duty also applies at the pre-action stage.

Cases on duty applying pre-issue

1. *K, A and B v Secretary of State for Defence* [2014] EWHC 4343 (Admin);
2. *R (National Association of Probation Officers) v Secretary of State for Justice* [2014] EWHC 4349 (Admin);
3. *R (Abdul Aziz Jalil) v Secretary of State for Justice* [2020] EWHC 1151 (Admin)

Cases on duty applying post-issue but pre-permission

1. *Maya Evans v Secretary of State for Defence* [2010] EWHC J0127-1
2. *R (Chadha) v HM Senior Coroner for West London* [2015] EWHC J1126-3
3. *DVP v Secretary of State for the Home Department* [2021] EWHC 606 (Admin)
4. *R (on the application of M (A Child)) v Secretary of State for the Home Department (Unaccompanied Children: Art.17 Dublin Regulation: Remedies)* [2017] UKUT 124 (IAC)
5. *R (on the application of Mahmood) v Secretary of State for the Home Department* [2014] UKUT 439 (IAC)
6. *R (Terra Services Limited) v National Crime Agency and others* [2019] EWHC 1933 (Admin)
7. *Scott Newson v The Secretary of State for Justice* [2022] EWHC 2836 (Admin)
8. *Camila Batmanghelidjh v Charity Commission for England and Wales* [2022] EWHC 3261 (Admin)
9. *The King (on the application of Police Superintendents' Association) v The Police Remuneration Review Body* [2023] EWHC 1838 (Admin)

Cases on duty applying post-permission

1. *JM (Zimbabwe) v Secretary of State for the Home Department* [2016] EWHC 1773 (Admin)
2. *R (Prakash and another) v Asylum and Immigration Tribunal and others* [2008] EWHC J0715-1
3. *R (Public and Commercial Services Union and others) v Minister for the Civil Service* [2011] EWHC 2556 (Admin)
4. *R (Buav) v Secretary of State for the Home Department* [2012] EWHC 2696 (Admin)
5. *R (Yunus Bakhsh) v Northumberland Tyne & Wear NHS Foundation Trust* [2012] EWHC 1445 (Admin)
6. *R (Kumar) v Secretary of State for the Home Department* [2023] EWHC 1741 (Admin)
7. *The King (on the application of British Gas Trading Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 737 (Admin)

Late disclosure

There are 15 cases where the judge underlined that disclosure of further evidence or information had been provided too late:

Service stage, invoking the code for 'continuing duty' and for 'pre-permission'. See also *R (Kumar) v Secretary of State for the Home Department* [2023] EWHC 1741 (Admin).

1. *Bokrosova v London Borough of Lambeth* [2015] EWHC 3386 (Admin)
2. *David Pearl v Maldon District Council* [2018] EWHC 212 (Admin)
3. *R (EL) v Essex County Council* [2017] EWHC 1041 (Admin)
4. *R (M by her Litigation Friend the Official Solicitor) v Chief Constable of Sussex Police* [2019] EWHC 975 (Admin)
5. *JM v Secretary of State for the Home Department* [2021] EWHC 2514 (Admin)
6. *R (NB and others) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin)
7. *R (Police Superintendents' Association) v Her Majesty's Treasury* [2021] EWHC 3389 (Admin)
8. *R (on the application of Saha and Another) v Secretary of State for the Home Department (Secretary of State's duty of candour)* [2017] UKUT 00017(IAC)
9. *R (LXD and Others) v Chief Constable of Merseyside Police* [2019] EWHC 1821 (Admin)
10. *R (on the Application of BG) v London Borough of Hackney (Social Media; Candour; Disclosure)* [2017] UKUT 338 (IAC)
11. *CXI v Secretary of State for Defence* [2023] EWHC 284 (Admin)
12. *The King on the application of PM v Secretary of State for the Home Department* [2023] EWHC 1551 (Admin)
13. *R (Medical Justice) v Secretary of State for the Home Department* [2019] EWHC 2391 (Admin)
14. *The King on the application of Ecpat UK (Every Child Protected Against Trafficking) v Kent County Council* [2023] EWHC 1953 (Admin)
15. *R (on the application of SWP) v Secretary of State for the Home Department* [2023] EWCA Civ 439
16. *R (Kumar) v Secretary of State for the Home Department* [2023] EWHC 1741 (Admin)

Extent of the duty (beyond pleaded issues)

Extent of duty	Count
Not applicable	302
Other	8
Grounds of challenge	8
Information that could support other grounds beyond those pleaded	4
Grand Total	322

- In 2016, the UKSC confirmed that the scope of the duty as including disclosure of relevant material or information ‘including on some as yet unpleaded ground’.³³ Such a position reflects the Treasury Solicitor Guidance, which states that the duty ‘extends to documents/information which will assist the claimant’s case and/or give rise to additional (and otherwise unknown) grounds of challenge’.³⁴ The Independent Review of Administrative Law Panel questioned whether this was excessively onerous.³⁵

³³ *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2016] UKSC 35, [183].

³⁴ Treasury Solicitor’s Department, *Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings* (2010), para.1.2, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/285368/TsoL_discharging_1_.pdf.

³⁵ E. Faulks et al, *The Independent Review of Administrative Law* (2021), para.4.131.

- The question of how far the duty of candour extends to the provision of information beyond the grounds pleaded was not directly discussed in the dataset much.

Grounds of challenge

1. *R (Sean Ambrose Mccarthy and others) v Secretary of State for the Home Department* [2012] EWHC 3368 (Admin)
2. *Secretary of State for the Home Department v First-tier Tribunal (Social Entitlement Chamber)* [2021] EWHC 1690 (Admin)
3. *Gornovskiy v Secretary of State for the Home Department* [2021] UKUT 321 (IAC)
4. *R (JZ) v Secretary of State for the Home Department* [2022] EWHC 1708 (Admin)
5. *R (on the application of Refinitiv Ltd) v R & C Commissioners* [2023] UKUT 187 (TCC)
6. *R (Mcvey and others) v Secretary of State for Health* [2009] EWHC J1014-1
7. *R (Mcvey) v Secretary of State for Health* [2009] EWHC J1005-1
8. *Rowe and others v Commissioners for HM Revenue & Customs* [2015] EWHC 2293 (Admin)

Information that could support other grounds beyond those pleaded

1. *Abraha v Secretary of State for the Home Department* [2015] EWHC 1980 (Admin)
2. *K, A and B v Secretary of State for Defence* [2014] EWHC 4343 (Admin)
3. *The King (on the application of Police Superintendents' Association) v The Police Remuneration Review Body* [2023] EWHC 1838 (Admin)
4. *R (Bancoult (No.2) v Secretary of State for Foreign and Commonwealth Affairs* [2016] UKSC 35

Putting forward everything material or potentially relevant

1. *R (Carroll) v South Somerset District Council* [2008] EWHC 104 (Admin)
2. *R (London South Eastern Railway Ltd and another) v British Transport Police Authority* [2009] EWHC 1255 (Admin)
3. *R (D9) v Secretary of State for the Home Department* [2021] EWHC 2784 (Admin)

The relationship between legal professional privilege or litigation privilege and the duty

1. *R (on the application of Secretary of State for the Home Department) v First-tier Tribunal (Immigration and Asylum Chamber)* [2018] UKUT 243 (IAC)
2. *Abdel Hakim Belhaj v DPP* [2018] EWHC 513 (Admin)

Other

1. Onus is on C to request information not squarely addressed in grounds: *Livia Tossici-Bolt v Bournemouth, Christchurch and Poole Council* [2023] EWHC 3230 (Admin);
2. Disclosure cannot result in a breach of national security: *AHK & Others v Secretary of State for the Home Department* [2012] EWHC 1117 (Admin)
3. Scope of the duty does not extend to wide searches for policy documents that may not exist: *R (Alemayehu) v Secretary of State for the Home Department* [2013] EWHC 1458 (Admin)

Extent of the duty (search requirements)

Extent of duty (search)	Count
Not applicable	307
Documents and records (including emails)	12
Informal forms of communication	5
Grand Total	324

- This code was invoked where the court directed or made mention of what search exercises are required to meet the duty.

Documents and records (including emails)

1. *R (Evans) v Secretary of State for Defence* [2010] EWHC 1445 (Admin)
2. *R (Sharon Shoemith) v Ofsted and others* [2010] EWHC 852 (Admin)
3. *R (A G) v Secretary of State for the Home Department* [2015] EWHC 1309 (Admin)
4. *R (Al-Sweady) and others v Secretary of State for Defence* [2009] EWHC 2387 (Admin)
5. *R (National Association of Probation Officers) v Secretary of State for Justice* [2014] EWHC 4349 (Admin)
6. *R (Mr William Robert Legard) v Royal Borough of Kensington and Chelsea* [2018] EWHC 32 (Admin)
7. *R (Medical Justice) v Secretary of State for the Home Department* [2019] EWHC 2391 (Admin)
8. *R (Abdul Aziz Jalil) v Secretary of State for Justice* [2020] EWHC 1151 (Admin)
9. *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 1642 (Admin)
10. *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2021] EWHC 2595 (TCC)
11. *Camila Batmanghelidjh v Charity Commission for England and Wales* [2022] EWHC 3261 (Admin)
12. *R. (on the application of Riverside Park Ltd) v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2937 (Admin)

Search required of more informal means of communications

1. *R (on the Application of BG) v London Borough of Hackney (Social Media; Candour; Disclosure)* [2017] UKUT 338 (IAC)
2. *R Cathy Gardner and Fay Harris) v Secretary of State for Health and Social Care* [2021] EWHC 2422 (Admin)
3. *The King on the application of AY v Essex County Council*, Upper Tribunal (Immigration and asylum chamber), 2022-12-12, JR-2022-LON-000455 (UR)
4. *R (Mr William Robert Legard) v Royal Borough of Kensington and Chelsea* [2018] EWHC 32 (Admin)
5. *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2021] EWHC 2595 (TCC)

Extent of the duty (disclosure requirements)

Extent of duty (disclosure)	Count
Not applicable	216
Information	65
Documents (including emails)	55
Informal communication (whatsapp, texts, social media)	4
Grand Total	

- The research team coded where the court specifically ordered disclosure of certain forms of information, and where the court made reference to what kind of disclosure is required to meet the duty.
- In line with the prevailing position in the doctrine on the duty of candour, most cases invoking this set of codes in the dataset affirmed that the duty principally requires the disclosure of relevant facts and information,³⁶ though nearly as many cases required the disclosure of documents to support that information.

DOC is a duty of information not duty to disclose documents

1. *Abraha v Secretary of State for the Home Department* [2015] EWHC 1980 (Admin);
2. *British Union for the Abolition of Vivisection v Secretary of State for the Home Department* [2014] EWHC 43 (Admin);
3. *JM v Secretary of State for the Home Department* [2021] EWHC 2514 (Admin);
4. *Gornovskiy v Secretary of State for the Home Department* [2021] UKUT 321 (IAC);
5. *The Police Federation for England and Wales v Secretary of State for the Home Department* [2019] EWHC 1308 (Admin);
6. *R (AAA and Others) v Secretary of State for the Home Department* [2022] EWHC 2191 (Admin);
7. *R (on the application of Refinitiv Ltd) v R & C Commissioners* [2023] UKUT 187 (TCC);
8. *R (Leyton Orient Football Club Ltd) v London Legacy Development Corporation* [2013] EWHC J0919-1;
9. *AR (Bail: Conditions: Variation: Article 9 ECHR)* [2016] UKUT 132 (IAC).

DOC requires explanation of documents

1. *R (Cooper) v Ashford Borough Council* [2016] EWHC 1525 (Admin);
2. *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin);
3. *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812;
4. *R (NB and others) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin);
5. *Solange Hoareau v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 3825 (Admin);
6. *R (on the Application of BG) v London Borough of Hackney (Social Media; Candour; Disclosure)* [2017] UKUT 338 (IAC);
7. *The King (on the application of Police Superintendents' Association) v The Police Remuneration Review Body* [2023] EWHC 1838 (Admin).

³⁶ *R. (on the application of Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs (No.1)* [2002] EWCA Civ 1409, [50]; *R. v Lancashire CC Ex p. Huddleston* [1986] 2 All E.R. 941 at 947 (Purchas LJ).

DOC requires documents and information

1. *R (Larkfleet Limited) v South Kesteven District Council* [2014] EWHC 3887 (Admin)
2. *The King on the application of Bembridge Harbour Trust v Bembridge Harbour Improvement Company Ltd* [2023] EWHC 1185 (Admin);
3. *R. (on the application of SA) v Secretary of State for the Home Department* [2023] EWHC 1787 (Admin);
4. *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812
5. *R (NB and others) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin)
6. *R (Abdul Aziz Jalil) v Secretary of State for Justice* [2020] EWHC 1151 (Admin);
7. *R. (on the application of Secretary of State for the Home Department) v First-tier Tribunal (Immigration and Asylum Chamber)* [2018] UKUT 243 (IAC);
8. *R (on the application of AM (a child by his litigation friend OA and OA) v Secretary of State for the Home Department (Dublin – Unaccompanied Children– Procedural Safeguards)* [2017] UKUT 00262 (IAC);
9. *R (on the application of AM and others) v Secretary of State for the Home Department (liberty to apply – scope – discharging mandatory orders)* [2017] UKUT 00372 (IAC);
10. *Solange Hoareau v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 3825 (Admin);
11. *Scott Newson v The Secretary of State for Justice* [2022] EWHC 2836 (Admin);
12. *The King on the application of IAB and Others v Secretary of State for the Home Department* [2023] EWHC 2930 (Admin);
13. *The King (on the application of Police Superintendents' Association) v The Police Remuneration Review Body* [2023] EWHC 1838 (Admin).
14. *R (on the application of Mahmood) v Secretary of State for the Home Department* [2014] UKUT 439 (IAC)
15. *R (on the application of SWP) v Secretary of State for the Home Department* [2023] EWCA Civ 439
16. *The King on the application of PM v Secretary of State for the Home Department* [2023] EWHC 1551 (Admin)

DOC requires disclosure of informal means of communication

1. *R (LS) v London Borough of Brent*, JR/1050/2021 (UTIAC)
2. *The King on the application of AY v Essex County Council* (Upper Tribunal (Immigration and asylum chamber), 2022-12-12, JR-2022-LON-000455 (UR)
3. *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2021] EWHC 2595 (TCC)
4. *R (on the Application of BG) v London Borough of Hackney (Social Media; Candour; Disclosure)* [2017] UKUT 338 (IAC)

Consequences of finding a breach/issue with duty of candour

Consequences of finding a breach/issue with duty of candour	Count
Not applicable	274
Drawing of adverse evidential inferences	13
Adverse costs order	12
Formal order for disclosure	10
Reputational damage	6
Allegations of deliberate concealment affecting the outcome of the litigation	5
Material subsequently produced may not be relied on without permission of the court	2
Referral of practitioners to appropriate professional body	2
Grand Total	324

- There are two cases in this set that invoked two different codes, explaining the discrepancy between the overall dataset size (n=322), and the amount coded here (n=324).³⁷

Link between adverse inferences and successful ground of review

1. *R (Cooper) v Ashford Borough Council* [2016] EWHC 1525 (Admin)
2. *R (Teclé) v Secretary of State for the Home Department* [2013] EWHC 3823 (Admin)
3. *R (Amin Sino) v Secretary of State for the Home Department* [2011] EWHC 2249 (Admin)
4. *R (M by her Litigation Friend the Official Solicitor) v Chief Constable of Sussex Police* [2019] EWHC 975 (Admin)
5. *R (NB and others) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin)
6. *R (Jayne Dawson) v United Lincolnshire Hospitals NHS Trust* [2021] EWHC 928 (Admin)
7. *R (on the application of AM (a child by his litigation friend OA and OA) v Secretary of State for the Home Department (Dublin – Unaccompanied Children– Procedural Safeguards)* [2017] UKUT 00262 (IAC)
8. *Scott Newson v The Secretary of State for Justice* [2022] EWHC 2836 (Admin)
9. *The King (on the application of Associated Society of Locomotive Engineers and Firemen and 10 Others) v The Secretary of State for Business and Trade* [2023] EWHC 1781 (Admin)
10. *R (on the application of SA) v Secretary of State for the Home Department* [2023] EWHC 1787 (Admin)

³⁷ In *R (Babbage) v Secretary of State for the Home Department* [2016] EWHC 148 (Admin), there was reputational damage in addition to drawing of adverse evidential inferences, given that a particular Government Legal Department lawyer was required to attend the hearing and provide explanation. In *R (on the application of Mahmood) v Secretary of State for the Home Department* [2014] UKUT 439 (IAC) reputational damage was suffered to the extent that the applicant solicitors were required to ‘address the concerns expressed and failures identified in this judgment in writing, within seven days of the date of sending this order. Their response will be addressed to the President of the Upper Tribunal, Immigration and Asylum Chamber and copied to the Respondent’s legal representative’ (para 29). There was also an adverse costs order (para 28).

Qualitative themes arising in the dataset

Approach to disclosure (pre-action or pre-permission disclosure)

1. *British Union for the Abolition of Vivisection v Secretary of State for the Home Department* [2014] EWHC 43 (Admin)
2. *Camila Batmanghelidjh v Charity Commission for England and Wales* [2022] EWHC 3261 (Admin)
3. *The King (on the application of British Gas Trading Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 737 (Admin)
4. *The King (on the application of Police Superintendents' Association) v The Police Remuneration Review Body* [2023] EWHC 1838 (Admin)
5. *R (K) v Secretary of State for Defence* [2014] EWHC J1106-1
6. *R (National Association of Probation Officers) v Secretary of State for Justice* [2014] EWHC 4349 (Admin)
7. *R (Abdul Aziz Jalil) v Secretary of State for Justice* [2020] EWHC 1151 (Admin)
8. *R. (on the application of M (A Child)) v Secretary of State for the Home Department (Unaccompanied Children: Art.17 Dublin Regulation: Remedies)* [2017] UKUT 124 (IAC)
9. *K, A and B v Secretary of State for Defence* [2014] EWHC 4343 (Admin)
10. *R (Prakash and another) v Asylum and Immigration Tribunal and others* [2008] EWHC J0715-1
11. *R (Terra Services Limited) v National Crime Agency and others* [2019] EWHC 1933 (Admin)

Approach to disclosure (over-disclosure)

1. *R (Carroll) v South Somerset District Council* [2008] EWHC 104 (Admin) (okay to provide relevant paragraphs rather than whole docs)
2. *R (London South Eastern Railway Ltd and another) v British Transport Police Authority* [2009] EWHC 1255 (Admin) (make available potentially relevant, but not all needed before court)
3. *The King (on the application of British Gas Trading Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 737 (Admin)
4. *The King (on the application of) Aquind Ltd v Secretary of State for Business, Energy and Industrial Strategy* [2023] EWHC 98 (Admin)

Impact of candour issues on case time and costs

1. *R (Amin Sino) v Secretary of State for the Home Department* [2011] EWHC 2249 (Admin)
2. *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin)
3. *R (Alemayehu) v Secretary of State for the Home Department* [2013] EWHC 1458 (Admin) (also extends to C fishing)
4. *R (Medical Justice) v Secretary of State for the Home Department* [2019] EWHC 2391 (Admin) (late disclosure)
5. *JM v Secretary of State for the Home Department* [2021] EWHC 2514 (Admin)
6. *MD v Secretary of State for the Home Department* [2021] EWHC 1370 (Admin)
7. *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2021] EWHC 2783 (TCC) (impact of “interlocutory attrition”)
8. *R (on the application of Saha and Another) v Secretary of State for the Home Department (Secretary of State’s duty of candour)* [2017] UKUT 00017(IAC)
9. *R (on the application of AM and others) v Secretary of State for the Home Department (liberty to apply – scope – discharging mandatory orders)* [2017] UKUT 00372 (IAC)

10. *R (Jet2.com Ltd) v Civil Aviation Authority* [2018] EWHC 3364 (Admin)
11. *R. (on the application of M (A Child)) v Secretary of State for the Home Department (Unaccompanied Children: Art.17 Dublin Regulation: Remedies)* [2017] UKUT 124 (IAC)

Connection between resource issues and candour issues

1. *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin)
2. *JM v Secretary of State for the Home Department* [2021] EWHC 2514 (Admin)

Finding of breach though other proceedings

1. *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812

Difficulties adducing evidence from third parties

1. *R (M by her Litigation Friend the Official Solicitor) v Chief Constable of Sussex Police* [2019] EWHC 975 (Admin)
2. *Professor Oren Ben-Dor and another v Vice Chancellor of the University of Southampton* [2015] EWHC 2206 (Admin)

Poor record-keeping

1. *MD v Secretary of State for the Home Department* [2021] EWHC 1370 (Admin)
2. *Dr Cathy Gardner v Secretary of State for Health and Social Care* [2022] EWHC 967 (Admin)
3. *R. (on the application of SA) v Secretary of State for the Home Department* [2023] EWHC 1787 (Admin) (role of private service providers)
4. *R. (on the application of AM) v Secretary of State for the Home Department* [2017] UKUT 372 (IAC)

Late provision of information to solicitors

1. *R (NB and others) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin)
2. *Gokhan Yilmaz v Secretary of State for the Home Department* [2022] EWCA Civ 300

Duty of candour's intersection with grounds of review

1. *R (Abdul Aziz Jalil) v Secretary of State for Justice* [2020] EWHC 1151 (Admin) (overlap with duty to give reasons/insufficient reasons - the form was not disclosed, and when it was it did not have the reasons)
2. *R (on the application of AM (a child by his litigation friend OA and OA) v Secretary of State for the Home Department (Dublin – Unaccompanied Children– Procedural Safeguards)* [2017] UKUT 00262 (IAC)
3. *The King (on the application of HP) v The Mayor and Burgesses of the Royal Borough of Greenwich* [2023] EWHC 744 (Admin)
4. *The King (on the application of Law Society of England and Wales) v The Lord Chancellor and Secretary of State for Justice* [2023] EWHC 3067 (Admin)
5. *R (on the application of Refinitiv Ltd) v R & C Commissioners* [2023] UKUT 187 (TCC) (Reasoning on question of whether there's a general requirement to disclose everything about decision-making process intimately connected to *nature* of the public law challenge. [14-15])
6. *R. (on the application of SA) v Secretary of State for the Home Department* [2023] EWHC 1787 (Admin)

Use of confidentiality rings

1. *Solange Hoareau v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 3825 (Admin)
2. *The King (on the application of British Gas Trading Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 737 (Admin)
3. *The King (on the application of Law Society of England and Wales) v The Lord Chancellor and Secretary of State for Justice* [2023] EWHC 3067 (Admin)

Procedural rigour

1. *Safe Passage International v Secretary of State for the Home Department* [2021] EWHC 1821 (Admin)
2. *R (Linda Ginn) v HM Senior Coroner for Inner London* [2022] EWHC 28 (Admin)
3. *R (on the application of SWP) v Secretary of State for the Home Department* [2023] EWCA Civ 439
4. *The King on the Application of Philip Webb v London Borough of Bromley* [2023] EWHC 2091 (Admin)

Redactions

1. *R (Plantaganet Alliance Ltd) v Secretary of State for Justice and others* [2013] 1 Inquest LR 204
2. *R (on the application of AM and others) v Secretary of State for the Home Department (liberty to apply – scope – discharging mandatory orders)* [2017] UKUT 00372 (IAC)
3. *The King on the application of IAB and Others v Secretary of State for the Home Department* [2023] EWHC 2930 (Admin)
4. *R (Babbage) v Secretary of State for the Home Department* [2016] EWHC 148 (Admin)
5. *R (AAA and Others) v Secretary of State for the Home Department* [2022] EWHC 2191 (Admin)
6. *The King (on the application of Law Society of England and Wales) v The Lord Chancellor and Secretary of State for Justice* [2023] EWHC 3067 (Admin)
7. *The King (on the application of Police Superintendents' Association) v The Police Remuneration Review Body* [2023] EWHC 1838 (Admin)

Whether need for disclosure order means there's been a candour failure

1. *ZS v Secretary of State for the Home Department* [2019] EWHC 75 (Admin)
2. *R (Jet2.com Ltd) v Civil Aviation Authority* [2018] EWHC 3364 (Admin)
3. *R (The Plantaganet Alliance Limited) v Secretary of State for Justice and others* [2013] EWHC 3164 (Admin)

The line between the duty of candour and freedom of information/ subject access routes

1. *Bokrosova v London Borough of Lambeth* [2015] EWHC 3386 (Admin)
2. *R (Plantaganet Alliance Ltd) v Secretary of State for Justice and others* [2013] 1 Inquest LR 204
3. *R (Babbage) v Secretary of State for the Home Department* [2016] EWHC 148 (Admin)
4. *R (Buav) v Secretary of State for the Home Department* [2012] EWHC 2696 (Admin)
5. *British Union for the Abolition of Vivisection v Secretary of State for the Home Department* [2014] EWHC 43 (Admin)
6. *R (Ali) v Secretary of State for the Home Department* [2014] EWHC 4145 (Admin)
7. *R (Shirko Ismail) v Secretary of State for the Home Department* [2019] EWHC 3192 (Admin)

Role of caseworkers in responding to PAPs

1. *The King (on the application of) THM and NHM (Minors, by their litigation friend, KHM) v Secretary of State for the Home Department* (Upper Tribunal (Immigration and asylum chamber), 2023-02-02, JR-2022-LON-001274 (UR))

Part 18 requests for information

1. *R (M by her Litigation Friend the Official Solicitor) v Chief Constable of Sussex Police* [2019] EWHC 975 (Admin)
2. *R (JZ) v Secretary of State for the Home Department* [2022] EWHC 1708 (Admin)

Disclosure applications

1. *British Union for the Abolition of Vivisection v Secretary of State for the Home Department* [2014] EWHC 43 (Admin)
2. *K, A and B v Secretary of State for Defence* [2014] EWHC 4343 (Admin)
3. *Maya Evans v Secretary of State for Defence* [2010] EWHC J0127-1
4. *R (The Plantaganet Alliance Limited) v Secretary of State for Justice and others* [2013] EWHC 3164 (Admin)
5. *R (K) v Secretary of State for Defence* [2014] EWHC J1106-1
6. *R (A) v Chief Constable of B Constabulary and another* [2013] EWHC 4120 (Admin)
7. *R (A) v Secretary of State for Defence* [2008] EWHC J1218-1
8. *R (Larkfleet Limited) v South Kesteven District Council* [2014] EWHC 3887 (Admin)
9. *R (Leyton Orient Football Club Ltd) v London Legacy Development Corporation* [2013] EWHC J0919-1 (no need for minutes)
10. *R (Mcvey and others) v Secretary of State for Health* [2009] EWHC J1014-1
11. *R (Mcvey) v Secretary of State for Health* [2009] EWHC J1005-1
12. *R (National Association of Probation Officers) v Secretary of State for Justice* [2014] EWHC 4349 (Admin)
13. *R (Perry) v London Borough of Hackney and others* [2014] EWCA Civ 1372
14. *R (Public and Commercial Services Union and others) v Minister for the Civil Service* [2011] EWHC 2556 (Admin)
15. *Secretary of State for the Home Department v SIAC* [2015] EWHC 1236 (Admin)
16. *Secretary of State for the Home Department v SIAC* [2015] EWHC 681 (Admin)
17. *R (Waltham Forest Borough Council) v Secretary of State for Education*, CO/10437/2010 (6 Dec 2010)
18. *R (Sky Blue Sports and others) v Coventry City Council* [2014] EWHC 1747 (Admin)
19. *R (Alemayehu) v Secretary of State for the Home Department* [2013] EWHC 1458 (Admin)
20. *R (Sean Ambrose Mccarthy and others) v Secretary of State for the Home Department* [2012] EWHC 3368 (Admin)
21. *R (David Johnson) v Crown Prosecution Service* [2019] EWHC 317 (Admin)
22. *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 1642 (Admin)
23. *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2021] EWHC 2595 (TCC)
24. *R Cathy Gardner and Fay Harris) v Secretary of State for Health and Social Care* [2021] EWHC 2422 (Admin)
25. *R (Terra Services Limited) v National Crime Agency and others* [2019] EWHC 1933 (Admin)
26. *The Police Federation for England and Wales v Secretary of State for the Home Department* [2019] EWHC 1308 (Admin)

27. *Camila Batmanghelidjh v Charity Commission for England and Wales* [2022] EWHC 3261 (Admin)
28. *The King (on the application of Law Society of England and Wales) v The Lord Chancellor and Secretary of State for Justice* [2023] EWHC 3067 (Admin)
29. *The King (on the application of Police Superintendents' Association) v The Police Remuneration Review Body* [2023] EWHC 1838 (Admin)
30. *R (on the application of Refinitiv Ltd) v R & C Commissioners* [2023] UKUT 187 (TCC)
31. *Middleton v Bromley Magistrates Court* [2011] EWHC 3868 (Admin)
17. *R (John Arnold Bredenkamp) v Secretary of State for Foreign and Commonwealth Affairs* [2013] EWHC 2480 (Admin)
32. *R (Mohammed) v Secretary of State for Defence* [2012] EWHC J1116-2
33. *R (Jet2.com Ltd) v Civil Aviation Authority* [2018] EWHC 3364 (Admin)

Work Package 2 Methodology: Perspectives on the operation of the duty

Introduction

Work Package 2 mainly correlates to answering research question two: what perspectives are there on the operation of the duty? To gain a more complete picture of the impact of the duty and how it is interpreted and perceived in practice, the Principal Investigator (PI) undertook interviews with key stakeholder groups. Interviews are a suitable qualitative method to capture stakeholder perspectives, as the data that one collects is shaped by the perspectives of the respondents.³⁸

Method: Qualitative interviews and participant selection

The PI undertook in-depth semi-structured interviews with 19 public law practitioners, 16 of whom were independent public law practitioners (barristers and solicitors) and 3 of whom were lawyers within the Government Legal Department. The practitioners comprised:

- 5 solicitors (majority claimant-acting);
- 3 barristers (majority claimant-acting);
- 1 solicitor (mixed practice);
- 1 barrister (mixed practice);
- 3 solicitors (majority defendant-acting);
- 3 barristers (majority defendant-acting);
- 3 Government Legal Department (litigation group).

This selection is designed to provide representation of claimant and defendant experiences, while accounting for both in-house and independent legal representatives' perspectives.

A semi-standardized method interview approach was adopted. This approach provided appropriate space for the design of pre-determined questions and topics for each class of participant, which were discussed and reviewed by the advisory group. The semi-standardized approach allowed questions to be asked in a broadly consistent and systematic order, permitting comparison across the data, with freedom for digression, which enriches the quality of information gathered.³⁹

Interview sampling approach

Capturing a comprehensive range of solicitors and barristers who have acted both for and against all classes of public authority defendants was not viable within timeframe of the project. The data gathered in Work Package 1 (the Content Analysis Study) revealed information that informed how interviewees were selected to be approached. For example, the content analysis study captured which public authority defendants feature more commonly in judicial review cases in which issues of candour arise.⁴⁰ This information was used to purposively sample by making targeted invitations to interview, and snowball sampling was also incorporated by seeking suggestions from targeted interviewees. The PI worked to ensure the participants

³⁸ H. Lune and B.L. Berg, *Qualitative Research Methods for the Social Sciences* (9th edn, Pearson Education, 2016) 67.

³⁹ Lune and Berg, *Qualitative Research Methods for the Social Sciences*, 69-70.

⁴⁰ See breakdown of "defendant types", in this document, 8.

included an even spread of barristers and solicitors, who have acted both for and against the most readily featured public authority defendants in the case database delivered in Work Package 1, and participants also had experiences acting for intervenors and interested third parties. Further, the interviewees included those who have acted both for and against public authority departments who do not feature prominently in the case law.

Interviews with Government Legal Department lawyers

A contact in the Government Legal Department worked with the PI to identify lawyers to be interviewed with a range of experience across the department's areas of practice. The participant sample sought to interview those with experience working on issues of candour with most central government departments. The interview sample here is smaller than anticipated, as the principal investigator faced some barriers to participant recruitment. The 3 interviewees do, however, capture a wide spread of experience working with many central government departments. All the interviewees worked in litigation, and captured experience working with the following policy clients: the Home Office, the Department for Health and Social Care, the Department for Work and Pensions, the Cabinet Office, and the Ministry of Justice.

The interviews collected data on: experiences of undertaking the disclosure exercise as outlined in the Treasury Solicitor Guidance; approaches to disclosure at pre-action stage; approaches to advice on the proportionality of searches to be conducted as outlined in the Treasury Solicitor Guidance; the perceived impact of the duty and whether it has resulted in reform of internal procedures in departments, such as record-keeping practices; views and experiences of potential changes to litigation patterns and the use of disclosure applications; views on the current scope of the duty, and its operation; views on the desirability of – and options for – reform of the duty.

Interviews with claimant public law practitioners

The PI interviewed 8 public law solicitors and barristers who regularly represented claimants challenging government decision-making. The PI employed targeted invitations for interview and following the delivery of Work Package 1, the data suggested there was a benefit to hearing multiple views from those with experience acting against the Home Office, the Department for Health and Social Care, the Ministry of Justice, the Ministry of Defence, and the Foreign, Commonwealth and Development Office. This class of participants had experience acting against a wide range of defendants, including the Home Office, the Department for Work and Pensions, the Foreign Office, the Ministry of Defence, the Ministry of Justice, the Department for Environment, Food & Rural Affairs, the Department for Transport, the Cabinet Office, the Department for Business, Energy & Industrial Strategy, local authorities, police forces and law enforcement agencies, health bodies and trusts, regulators, and ombuds.

Interviews with defendant public law practitioners

The PI interviewed 8 independent public law solicitors and barristers who regularly represented defendants, including 2 who had an even claim/defence practice. Public authority defendants are a varied class that go beyond central government departments, including local government, regulators, and even private entities. To interview practitioners with experience with all classes of defendant was not viable. For instance, while independent counsel regularly represents local authorities, there are 333 local authorities in England alone. The participants had nonetheless represented multiple kinds of defendants during their careers, including local authorities, wielding some insight into these varied experiences. The PI employed targeted invitations for interview and following the delivery of Work Package 1, the data suggested there was a benefit

to hearing from those with experience acting against the Home Office, the Department for Health and Social Care, the Ministry of Justice, the Ministry of Defence, and the Foreign, Commonwealth and Development Office. This class of participants had experience acting for a wide range of defendants, including the Home Office, the Foreign, Commonwealth & Development Office, the Cabinet Office, the Department for Environment, Food & Rural Affairs, the Ministry of Defence, the Department for Transport, the Treasury, the Department for Business, Energy & Industrial Strategy, security and crime agencies, police bodies, local authorities, regulators, and ombuds.

The interviews with independent practitioners collected data on: experiences of receiving or advising upon disclosure of information from defendant authorities, including during the pre-action process; experiences of the pre-action protocol stage and the relationship between candour and settlement of disputes; experiences of requesting specific disclosure or further information in the course of judicial review proceedings; views on the current scope of the duty and its operation; and views on the desirability of – and options for – reform of the duty.

Conducting the interviews

The interviews were arranged by contacting interested and suggested participants in advance. The interviews lasted for around one hour, were conducted online via video call and recorded. The interview files were then saved on a secure server and securely shared with a voice transcription service. The interview transcriptions were then analysed to identify and draw out key themes to complement and inform the content analysis in Work Package 1.

To ensure effective delivery of Work Package 2, all research instruments, including the interview schedule, research project information pack and interview consent form, were reviewed by the advisory group.

Ethical implications

Potential ethical issues were addressed as follows:

- Informed consent was sought from all interviewees before interviews. Where interviewees had not provided written informed consent in advance of the interview, the PI instead sought recorded verbal consent at the start of the interview. This involved asking the interviewee to consent to a series of questions, as listed on the Project Consent Form provided to the interviewee. Permission was given in all interviews to be recorded and transcribed.
- Interviewees were given anonymity. Where interview comments have been reproduced for research purposes, these have been made non-attributable.
- Transcripts and notes are kept on a secure database, which is password-protected.

In line with the Project's *Data Management Plan* (approved by Durham University's Research Data Manager), data was collected and stored as follows:

The interview files (MP3 sound recordings) were saved to a separately created Durham University Sharepoint site - to which only the PI had access - and were securely shared with a voice transcription service. Once transcriptions were received (word documents), these were uploaded to the same Sharepoint site, and the MP3 recordings were destroyed. The interview transcripts will be destroyed one year after the publication of outputs arising from the project.

Interpretation of Data

The PI subject the interview transcripts to a systematic analysis. First, metadata was attached to each interview transcript, adding various “case properties” to build an interviewee profile, such as a descriptor of the interviewee’s professional perspective (e.g. “GLD lawyer”; “independent counsel – Treasury Counsel list”), and descriptors of their professional experience (e.g. “Home Office”; “Local Authorities”). The PI then created a coding scheme by reading each interview transcript and assigning a code to sentences or paragraphs identifying key themes from the interviews (e.g. “extent of duty”; “reform suggestion – duty too burdensome”; “reform suggestion – duty requires clarification”). The PI began by subjecting a sub-set of the interviews to a pilot open-coding exercise (circa 8 transcripts). The code was then reviewed and refined. This coding exercise provided evidence of perceptions on the operation of the duty capable of interpretation and analysis.

Limitations

An inherent limitation of interview data is that it is not possible to verify the reliability of self-reported data derived from interviews. The interview subjects in this project are considered “elite” interviewees, possessing ‘inside knowledge that you hope to acquire or have a privileged vantage point’ and can be ‘challenging to interview, or particularly sensitive subjects.’⁴¹ For example, one class of interviewees - Government Legal Department (GLD) lawyers - may have felt constrained from revealing challenges they face advising public authority clients on the approach to candour. The PI was conscious of this limitation, but it is also the case that GLD lawyers were speaking with the approval of senior management, which should encourage them to speak as freely as possible within the constraints of their role. It is also true that the independent practitioners to be interviewed may feel constrained in their answers for reasons such as legal advice privilege and litigation privilege. Given such constraints, the participants shared answers or views that were sometimes framed at a level of abstraction.

The PI sought to achieve a higher participation rate, particularly from Government Legal Service lawyers. In particular, the interview data would have benefitted from speaking with lawyers working within the Foreign, Commonwealth and Development Office. Though the PI sought further recruitment, further interviews were not secured during the project timeline. Nonetheless, it is not possible to perfectly capture an accurate measure of the execution of the duty of candour from expert interviews. The interview data therefore provided further qualitative information of key stakeholder reflections on the operation of the duty in practice that supplements the case law data in Work Package 1. The case law and interview data was triangulated against other information gathered in wider literature, including the Treasury Solicitor Guidance on Discharging the Duty of Candour and Cooperation, the Administrative Court Judicial Review Guide 2023, academic literature and practitioner commentary, and submissions to the Independent Review of Administrative Law.

⁴¹ S. Halliday and P. Schmidt (eds) *Conducting Law and Society Research: Reflections on Methods and Practices* (CUP 2009) 72.

Work Package 3: Exploring potential reform options on the duty of candour in judicial review

Introduction

Work Package 3 mainly correlates to answering research question three: what changes might be required to the duty? Based on the data collected from work packages one and two, the objective of the third work package was to explore what changes might be required to the duty of candour, and this aspect of the project was explorative and evaluative. The project does not offer conclusive recommendations for reform but instead sought to explore a list of potential options for reform derived from the analysis undertaken in work packages one and two and developed in line with a sub-set of interview participants from Work Package 2.

There are multiple sources that could be reformed in relation to the duty of candour, either to enhance or relax the duty, or to provide more detailed guidance. This includes reform of the Treasury Solicitor Guidance, relevant procedural Practice Directions, and the Administrative Court Judicial Review Guide. Any reform options must take account of their operation in practice. To support the development of these options, the PI hosted a private focus group with a diverse sub-group of the interview sample (6 interviewees). The objective of the focus groups was to explore the options for reform, their benefits and risks, and their credibility.

Method: Focus group and participant selection

The focus group method was adopted as an appropriate method given that interviewees were selected based on their professional experience, and the session was organised around a particular theme.⁴² The focus group is an appropriate technique to meet the exploratory and evaluative aims of Work Package 3: exchanges amongst participants can lead to deeper probing and reflection, and more robust valuation of the potential benefits, risks, and credibility of reform options. As Halperin and Heath have noted, ‘when a group of people with similar interests discuss an issue together, they are likely to produce richer insights and a wider range of information than individual responses obtained privately’.⁴³

Focus group membership selection

In Work Package 2, 19 interviews were conducted with a range of independent public law barristers and solicitors, and Government Legal Department Lawyers. Focus group members were drawn from these interviewees. The PI sought to ensure that the class of focus group participants comprised a spread of barristers and solicitors and a range of practical experience. The PI also drew upon the data from Work Package 2 to ensure that a range of views regarding the duty’s operation and views on the need for reform were reflected in the focus group membership.

Conducting the focus group

The focus group was arranged by contacting a sub-set of interview participants from Work Package 2 who had indicated their willingness to take part in a private roundtable. The focus group lasted for around 90 minutes, and was conducted online and recorded. The recording file

⁴² A. Bryman, *Social Research Methods* (5th edn, OUP, 2016) 502.

⁴³ S. Halperin and O. Heath, *Political Research: Methods and Practical Skills* (2nd edn, OUP, 2017) 302.

was saved on a secure server and was securely shared with a voice transcription service. To ensure effective delivery of Work Package 3, all research instruments, including the Focus Group Document, the research project information pack and focus group consent form, were reviewed by the project advisory group.

In advance of the focus group, the PI circulated a research instrument document to participants comprising a list of reform options to guide discussion (Focus Group Document). The aim was to provide participants with sufficient time in advance of the roundtable to reflect upon the options considering their professional experience.

Rather than acting as an interviewer, the PI acted as moderator/facilitator.⁴⁴ The PI relied on the Focus Group Document to guide the discussion amongst participants, along with a limited set of questions, giving a wide amount of space to allow discussion to develop amongst participants.

Ethical implications

Potential ethical issues addressed as follows:

- Informed consent was sought from all members before the focus group. The focus group was recorded and transcribed;
- Participants were given anonymity. Where comments have been or will be reproduced for research purposes, these have been made non-attributable;
- The focus group operated under **Chatham House Rule**: ‘participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.’
- Transcripts and notes were kept on a secure database and password-protected.

In line with the Project’s *Data Management Plan* (approved by Durham University’s Research Data Manager), data will be collected and stored as follows:

The focus group of around 90 minutes was conducted online via video call and recorded (Microsoft teams). The focus group file (MP3 sound recording) was saved to a separately created Durham University Sharepoint site - to which only the PI had access - and was shared securely with a voice transcription service. Once the transcription was received (word document), this was uploaded to the same Sharepoint site, and the original MP3 recording was destroyed. The focus group transcript will be destroyed one year after the publication of outputs arising from the project.

Interpretation of data and limitations

Given the unstructured nature of responses and discussions in focus groups, coding, analysis, and interpretation of the transcript was challenging. Further, while focus group data can be good for identifying areas of consensus, as those who agree will commonly contribute, this may mean that different views are under shared.⁴⁵ To account for these limitations, it is not assumed that a full range of views can be derived from the focus group data. Rather, the findings are treated as exploratory rather than conclusive, which is in keeping with the aim of

⁴⁴ Halperin and Heath, *Political Research: Methods and Practical Skills*, 302.

⁴⁵ S. Halliday and P. Schmit, *Conducting Law and Society Research: Reflections on Methods and Practices* (CUP 2009) 231.

Work Package 3.⁴⁶ The data nonetheless gives valuable insights into the potential practical challenges and viability of the explored options.

⁴⁶ Halperin and Heath, *Political Research: Methods and Practical Skills*, 302.