

20 December 2019  
Our ref: FOI081119

Dear ,

**Re: FOI request - technical restatement due 7 November**

Thank you for your letter of 11 December, setting out your concerns with our decision to postpone publication of our restated forecast and request for further information.

We are very happy to provide as much further information as we can about the process surrounding that decision. And, as you will have seen, on 16 December we published the restated forecast you requested, precisely as it stood on 7 November.

To begin with it is important to distinguish between our judgement that it was appropriate to postpone publication, and our subsequent application of Section 22 of the Freedom of Information Act (FOI Act). Our reply of 6 December was concerned primarily with our assessment of whether the requested information was exempt from release under the terms of the FOI Act, and specifically our assessment of the public interest test. As we set out in that reply, we judged the balance of public interest to be best served by the application of the general principles of the General Election Guidance, on the advice of the Cabinet Secretary.

The description of the wider background to the original postponement decision as set out in paragraphs 2 and 3 of your letter is accurate. However, we do not agree with your assessment of the likely legality or otherwise of our actions: first, that we were not compliant with the terms of the Budget Responsibility and National Audit Act 2011 (BRNA), and secondly that *“it is far from clear that publication of the Restated Forecast would not have been consistent with that Guidance”*.

As you set out in paragraph 6 of your letter, it is of course correct that we have “complete discretion” in the performance of our duties as specified in BRNA, and that we must perform those duties “objectively, transparently and impartially”. Indeed, it was these specific requirements of our founding legislation that guided our original decision to publish a technical restatement of our March 2019 forecast when the Chancellor cancelled the 6 November Budget. The large classification and other statistical changes implemented by the Office for National Statistics since March meant that our most recent

published forecast no longer provided a meaningful baseline against which to monitor incoming monthly data or to assess policy statements.

We notified the Treasury and Treasury Committee of this intention on 29 October and that the restatement would be published on 7 November, consistent with our stated release policy. On 6 November, the Treasury raised concerns about the publication's consistency with the Cabinet Office General Election Guidance. As a public body we are subject to the Guidance, but the Guidance is also clear that the decision on whether to publish ultimately rests with us. We asked for the Cabinet Secretary – as the ultimate arbiter of this Guidance – to give his opinion before reaching a final decision on whether to publish. On the basis of the Cabinet Secretary's advice, we decided not to proceed with publication. We explained transparently that our decision was based on his advice, consistent with the principles in the BRNA, and have subsequently published our restated forecasts in full at the earliest opportunity,

Turning to your second argument, which is essentially a disagreement over the correct interpretation and application of the Guidance. We are happy to provide more detail and to explain our finely balanced judgement and the contradictions in the Cabinet Office guidance that made it so. The difficulties with interpreting the Guidance is clearly demonstrated by the fact that we originally took the view that it was appropriate for us to publish in what was likely to be the election campaign period.

We made that decision on 29 October, which was the same day that Parliament passed the Early Parliamentary General Election Act 2019, but before publication of the Cabinet Office's 2019 General Election Guidance. Instead we based our decision on how and when to publish this technical restatement on the Guidance from the 2017 General Election. Neither the 2017 nor 2019 versions contain specific provisions that are directly relevant to our circumstances, but both set out rules for statistical releases (in Section K) and both are clear that public bodies, such as the OBR, are subject to the guidance (in Section O).

The key sections of the guidance that we drew upon are repeated verbatim in both sets of guidance. In particular, we followed the terms of Section K.5, which states that "Regular pre-announced statistical releases (e.g. press notices, bulletins, publications or electronic releases) will continue to be issued and published." We therefore chose a date that was consistent with our regular release policy. But whether this publication should be considered a "regular" release is clearly a matter of judgement. On one hand, it could be considered regular, given that we publish a restatement of our previous forecasts regularly at this time of the year; but on the other, we have never previously published it in this form and absent a forecast. We took what we thought a reasonable view that best serves transparency, but also did not feel strongly that the alternative view was unreasonable.

Section K4 requires that "The greatest care must continue to be taken to ensure that information is presented impartially and objectively" – a

requirement that the Budget Responsibility and National Audit Act already places on us at all times. But the guidance also includes more general statements about what is appropriate during the election period. For example, paragraph 5 of the prefaces states that “Departmental and NDPB activity should not be seen to compete with the election campaign for public attention”, which is reiterated in respect of statistical activities in Section K3.

We were therefore aware that the publication could be challenged on the grounds of some sections of the General Election Guidance, but felt that by restricting it to a technical restatement that would facilitate discussion of the public finances and by following our routine publication timetable, we had met the terms of the guidance. However, a reasonable case can clearly be made for and against publication (as has subsequently happened). In these circumstances, we judged it appropriate to accept advice from the Cabinet Secretary as the ultimate arbiter of these rules.

However, this episode highlights the fact that the Guidance was not written with the role of ‘watchdog’ bodies like the OBR in mind, as distinct from conventional government departments and agencies that act for ministers. As we state in the Foreword to our *Restated March 2019 forecast*, we will therefore be seeking greater clarity from the Cabinet Office in future editions of its Guidance, so that we are able to perform our statutory duty effectively during election periods.

As indicated in our initial reply, if you would like to request an internal review of our decision to apply Section 22 of the FOI Act, as provided for by the Act, you may do so. With regard to your specific requests in paragraph 11, we intend to consider them as additional FOI requests (unless explicitly advised otherwise) and respond appropriately under the terms of the FOI Act.

Yours sincerely

**Freedom of Information unit  
Office for Budget Responsibility**

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Any review request must be made within 2 months of the date of this letter.

It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

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