

SUMMARY OF LEADING COUNSEL'S ADVICE

"40 In summary, therefore, my opinion on the specific questions asked as follows:

- (1) the obtaining by an appointed auditor of a particular local authority of council tax records and the full electoral register for that particular local authority, and a comparison of that data, is capable of amounting to an exercise of the auditor's statutory functions under the Act, in particular section 5 and 8 of the Act;
- (2) the auditor may in principle conclude that he needs access to, or be provided with a copy of the council tax records and the full electoral register for a particular local authority and may exercise his powers under section 6 of the Act to require the local authority (or the electoral registration officer in the case of the electoral register) to provide copies;
- (3) the collection and matching of council tax and electoral register data for a particular local authority by the appointed auditor for that authority would not breach the DPA, the Regulations, the legislation governing council tax data;
- (4) the Audit Commission will have power under section 32B of the Act to require a local authority to provide council tax records and full electoral register and to match that data. It is more debatable as to whether the Audit Commission could require the electoral registration officer to provide a copy of the full electoral register but, on balance, in my opinion, the Audit Commission could not do so. In practice, the problem is unlikely to arise as electoral registers are routinely obtained by the local authority to which they relate and the Audit Commission can require the local authority to provide a copy.
- (5) the decision in the first Robertson case does not have a bearing on whether the exercise of powers by the auditor under section 6 (or the Audit Commission under section 32B) of the Act is compatible with the ECHR. The second Robertson case, in my opinion, supports the view that the requirement that the full electoral register be disclosed to the auditor (or the Audit Commission) is compatible with Article 8 ECHR.

CLIVE LEWIS Q.C."