



IN THE FIRST-TIER TRIBUNAL

Appeal No EA/2012/0210

**GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

MR GORDON BELL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

CHIEF CONSTABLE OF THAMES VALLEY POLICE

Second Respondent

OPEN DECISION¹

Hearing

Held on 22 January 2014 on the papers with further deliberations subsequent to further submissions¹

Before: M Hake, M Jones and Judge C Taylor

Decision

The appeal is unanimously upheld for the reasons set out below, such that we find in favour of Mr Bell.

Steps to be taken

This means we find that Thames Valley Police must within 20 working days confirm whether it holds the requested information, and if it does communicate it to the Appellant, redacting any names of police officers if relevant.

The decision is to be treated as a substitute for the Information Commissioner's Decision Notice FS50453212.

¹ This term means with the papers before us but not the parties.

Our Reasons

Background

1. In February 2010, the Appellant asked Thames Valley Police ('TVP' or Police) to investigate whether any offences had been committed during an experiment that he informed them had been conducted on five men in Oxford in 1958. Information from the University of Oxford suggested that two of the authors appeared to be alive, one being an emeritus professor of the University of Calgary, referred to below as X. *[Sentence redacted from this 'Open Decision'.]*
2. On 23 May 2012, the Appellant requested to know from TVP:
 - (1) *When and how did Thames Valley Police discover that [X] had returned to the UK from Canada?*
 - (2) *What steps - if any - were taken to locate [X] after his return to the UK?*
 - (3) *If there was no attempt to locate [X] on the part of TVP who made that decision and on what grounds was it made?"*
3. The Police responded refusing to confirm or deny whether it held requested information, relying on the exemption from that duty set out in s40(5) the Freedom of Information Act 2000 ('FOIA' or 'the Act') on the basis that in disclosing whether the information was held, they would be disclosing personal data and that this would be unfair to the relevant individual concerned. The police maintained the same position during an internal review, and the Information Commissioner ('ICO' or 'Commissioner') agreed with them in its decision notice.
4. The Appellant appealed to the Tribunal. The matter was considered by a First-tier Tribunal, and appealed to the Upper Tribunal. The point was made that the relevant individual had passed away by the time of the request. This meant that TVP responding to the Appellant's request could not mean divulging 'personal data'. This was because 'personal data' within the meaning of s1(1) Data Protection Act 1998, must relate to a 'living' individual. We are now considering the Appellant's whole appeal afresh after the Upper Tribunal directed it be remitted for reconsideration².
5. All parties now accept that that s40(5) FOIA does not apply, such that we do not need to consider this point further.³ However, TVP now relies on s30(1)(a) FOIA (*regarding investigations being conducted*), so as not to confirm or deny whether it holds the information.

² *The Information Commissioner v Gordon Bell, [2014] UKUT 0106(AAC).*

³ We note that Judge Jacobs in the Upper Tribunal appeal directed that this Court decide afresh whether and when X had died³. On the information before us, this was not something we could do. In any event, as there was agreement between all the parties that s.40(5)FOIA was wrongly relied on, this was no longer relevant. Additionally, the direction might not be viewed as a 'procedural direction' within s.12(3)(d) of the Tribunals, Courts and Enforcement Act 2007.

Preliminary Matter

6. Before deciding this case, I regarded it as important to consider as a preliminary matter whether there was any question of conflict and recusal on my part, in relation to an email that we found when reading through the papers for the hearing. My determination in relation to this is set out at paragraphs 39 to 42 below.

The Task of the Tribunal

7. The Tribunal's remit is governed by s.58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the ICO's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.
8. We note that in correspondence the Appellant made criticisms of the ICO and suggested general bias towards the police. It is not within our remit to consider such matters since our remit is determined by the Act. However, we are independent of the ICO, and consider afresh the Appellant's complaint including the essential issue as to whether the Appellant was entitled to be informed as to whether the information he requested was held and should be disclosed, or instead whether the exemption TVP claims is properly relied upon.
9. The Appellant has also indicated concern that he is not legally represented. It is common in our experience for requestors not to instruct a lawyer to represent them and the Tribunal tries where it can to be user friendly. We note that this appeal in particular does involve some very technical areas of law that we must consider. However, the Tribunal's role is to be fair and independent, and to try to ensure that an appellant is not unfairly prejudiced by not being legally represented. As such, we have considered the veracity of the arguments put to us (including those of the ICO and TVP) on their own merits. We do not simply accept arguments without their proper consideration, even in the absence of representations presenting the opposing position. Nevertheless, we can only decide based on the information and arguments put to us, and we cannot be clear what information we do not know if the Appellant has chosen not to provide arguments on the exemption. In the absence of the parties in a paper hearing, we must decide if we have sufficient information to make a decision, and then do so.

The Law

10. A person making a request of a public authority for information is generally entitled to be informed in writing whether it holds the information requested, unless exemptions or exclusions set out in the FOIA apply. (*S.1(1)(a)FOIA*). This is known as the '*duty to confirm or deny*'. (*S.1(6) FOIA*).
11. For the purposes of this appeal, TVP would not be required to confirm or deny that it holds the specific requested information where:

- (i) The requested information if held by TVP has at any time been held for the purposes of any investigation which it has or had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. (See s.(2)(1); s.30(1)(a)(i); and s.30(1)(3) FOIA
 - (ii) In relation to the information, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information. (See s.(2)(1)(b) and s.30(3)FOIA).
12. If the requester is entitled to be informed whether the information is held or not, the provisions in the Act set out the circumstances for entitlement to also having the information requested communicated (ie disclosed) to the requestor:
- (i) He would be entitled to have the information communicated to him, unless it was exempt information because the held information has at any time been held for the purposes of any investigation which it has or had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence (under s.1(1)(b); s.2(2)(a) and s.30(1)(a)(i)FOIA); and
 - (ii) in all the circumstances of the case, the public interest in maintaining the exemption so as to withhold the information outweighed the public interest in disclosing the information (under s.2(2)(a)FOIA).
13. If not entitled to have the information confirmed or denied, it follows that the requestor would not be entitled to have the information communicated to him or her under s.1(1)(b) FOIA.

Issues in this Appeal

14. In accordance with paragraphs 11 to 12 above, the matters for this Tribunal are:
Duty to confirm or deny

A) Investigation: If TVP were to hold the particular information requested, was it or would it have been held by TVP at any time for the purposes of any investigation which it has or had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence; and if so

B) Public Interest: in relation to the information, in all the circumstances of the case, would the public interest in maintaining the exclusion of the duty to confirm or deny outweigh the public interest in disclosing whether the public authority holds the information.

C) Duty to disclose: If the Appellant is entitled to be informed whether the information is held or not, and it is so held, then is he entitled to have the information itself communicated to him? (ie Was it held by TVP at any time for the purposes of any investigation which it has or had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence; and if so then in all the circumstances of the case, does the public interest in

maintaining the exemption outweighs the public interest in disclosing the information?)

Evidence and Submissions

15. We have received a bundle of documents including submissions that were before the previous First-tier Tribunal, and further information provided in open and 'closed' or confidential form from TVP in accordance with our directions as explained below. We do not have specific arguments from the Appellant addressing s30(1)(a)FOIA. We have sought to clarify that he understands TVP's changed position. He has confirmed that he does, but that as an individual not legally represented he does not wish to provide further arguments on this exemption. From the gist of his response, he appears to contest TVP's arguments, and so we have continued with this appeal. Likewise, the ICO has not provided arguments on whether this exemption applies. It did not need to consider s30(1)(a)FOIA during its investigations, and has not during the course of this appeal. Its position is that it is neutral on the point.
16. Having reviewed the material, we directed the Second Respondent to provide further information in order to be able to reach a decision on this matter. Although not specifically referred to in submissions, the bundle documents showed:
- (iii) The Appellant by *email of 25 September 2012 and 24 May 2012* alleged that:
 - o X had administered a highly dangerous bacterial endotoxin (salmonella abortus equi) into five people as test subjects and none of them could be found.
 - o The identical experiment was performed on 115 RAF servicemen at Porton Down, with 108 of the test subjects reported as missing. Six airmen including the Appellant are the only known survivors.
 - (iv) The Appellant's email of 1 November 2012 alleged that there are 'so many missing Porton Down veterans who were poisoned at Porton Down', and he also indicated servicemen died. The Appellant therefore seems to allege that X was connected with events at Porton Down that resulted in deaths, and that X in some way may have had some responsibility for this.
 - (v) A letter from TVP to the ICO dated 24 August 2012, (page 101 of the bundle) stated:
'[X] was a doctor at Calgary University, Canada. We believe... he was involved in an incident surrounding experiments at Porton Down, Wiltshire which was investigated by Wiltshire Police in 1999.'
17. In view of the fact that TVP had indicated some form of a connection between experiments performed by X and events at Porton Down, we asked for it to explain the connection they believe there to have been; what they knew to have happened at Porton Down, and any agreed or disputed facts in relation to the Appellant's emails on this matter. We also asked for it to disclose on a confidential basis to the Tribunal and Information Commissioner only whether they held the requested information and in closed bundle, the file or any information they do hold on X, and the requested

18. The Second Respondent disclosed on a confidential basis whether it held certain material requested by the Tribunal, to the extent that any was held. It did not specifically respond to our direction as to whether they held the requested information. It also sent a response to the Tribunal, that it was only aware of Porton Down as a result of various articles on the internet. It provided us with an example from the BBC news website from 2003. This stated:

"An inquiry into the cases of servicemen used as "guinea pigs" in chemical weapons tests has decided there is insufficient evidence to warrant a criminal prosecution.

The men took part in tests at the Porton Down research centre in Wiltshire over a 30-year period from the 1950s to the 1980s. A Wiltshire Police investigation into the cases has revealed there was criminal liability arising out of the conduct of some former scientists. But lawyers have decided there is not enough evidence to charge anyone. Lawyers acting for some of the ex-servicemen involved say they may take the case to the civil courts as evidence from the recent investigations can be used in a civil action, it is believed. The decision not to prosecute has angered veterans who claim they were duped into volunteering for the tests.

Former serviceman and test survivor Gordon Bell, from Sunderland, said: "I am absolutely outraged - we have the evidence, we have lots of witnesses. "There is no reason why they should not prosecute..."

Inquest

"What they did to people was a disgrace to this country - it was parallel to the Nazi experiments carried out in concentration camps." He claims that substances being tested for chemical weapons were dripped on to his skin.

Mr Bell has also claimed that Aircraftsman Ronald Maddison, from Consett, Co Durham, died in May 1953 when a nerve agent was dripped onto his arm. The inquest into his death is due to start on 30 September 2003.

Ella Foster, 83, whose father was Mr Maddison's cousin, told BBC News Online: "It is a bit disappointing but the families have done all they can. I did think they might have tried to bring a prosecution. But it may well be that they think too long has elapsed, or that those responsible are no longer alive."

Campaign groups representing veterans interests argue that servicemen were told they were helping with research into the common cold. But many of them died after being exposed to deadly nerve agents and other toxic chemicals.

Porton Down veteran Ken Earl said: "I am very disappointed, but not entirely surprised. I am particularly disappointed for the veterans who have been treated so shabbily by a government which they served without question.

"Who was it at the MoD who authorised these chemical and biological tests to be carried out on naive and unsuspecting servicemen and women?"

Operation Antler

A statement from Wiltshire Police read: "Chief Constable Dame Elizabeth Neville has written to over 700 former service personnel, or their next of kin, who have

had contact with the Police investigation, concerning their participation in the human experimentation programme at Porton Down.

"The Chief Constable outlines the investigation conducted by Wiltshire Police and the result of the Crown Prosecution Service (CPS) decision.

"The decision of the CPS, based upon the evidential files they have reviewed to date, is that no individual will be prosecuted for any criminal offence," it concluded.

The Wiltshire Police investigation - codenamed Operation Antler - was launched in 1999 and is believed to have cost £2m."

19. The ICO gave no further submissions in relation to this.

20. The Appellant submitted the following email in response to our direction:

'A message for Tribunal Judge Taylor.

Instead of focusing on matters relating to the Freedom of Information Act you should be bringing attention to government the killing of our servicemen who were duped into attending Porton Down. You are well aware of this situation as well as rampant corruption and cover up involving Wiltshire Police, Thames Valley Police, and The City of London Police the latter who failed to investigate a 3.72 million pounds fraud...It is your duty Judge Taylor to have these matters addressed by the Attorney General who should then present the facts to government. Failure on your part to do what is expected of you makes you and the FOI Commissioner complicit to a crime against humanity. In a " decision notice" from the Commissioner (Bell vs the BBC) he allowed the BBC to withhold information concerning the deaths of servicemen leaving one to ask if this man is sane.

You will also be aware Mr Taylor of news suppression by all media sources...

Injecting into the blood stream of servicemen a deadly bacterial endo toxin - a lipopolysaccharide {LPS} derived from salmonella abortus equi - without any medical followup - as admitted to by Porton Down - is in its self a crime of gross criminal negligence. Many men were left to die without much needed medical attention. My self having survived the induced infection as well as a number of other vile experiments that were unlawfully performed on me I find myself being denied access to a lawyer which you will know to be a serious"human rights" violation.

If you are to maintain your silence on these serious issues Mr Taylor instead of dithering with particular aspects of the Freedom Of Information Act you become complicit to a crime against humanity. As to Upper Tribunal judge Edward Jacobs who allowed the switching of lawyers at his hearing that took place without my knowledge where he dismissed my appeal knowing I had no lawyer to represent me. It is people such as Jacobs who pose a direct threat to the justice system - if there is such a thing in the UK...'

21. In relation to the submissions from the Appellant, we would note that our sole role and powers are as described above in paragraphs 7 and 14. Further, we can only make decisions based on material the parties put before us, and he should not assume we have any knowledge of the events he describes beyond that given to us by the parties for this appeal.

Issue A: Investigation

22. TVP has stated that:

- (i) The Appellant had asked it to investigate whether any offences had been committed, (*see para.1 above*), and that the report from the Appellant was recorded as a 'Crime Related Incident' for administrative purposes, although no crime was recorded. TVP investigated offences. Following certain unsuccessful attempts by it to contact X, no further investigation was carried out. Therefore, given the allegations made by the Appellant, any information held by it in respect of the request made by the Appellant would (if held at all) be information held for the purpose of an investigation falling within s30(1)(a) FOIA.
- (ii) See also paragraph 16(iii) above.

Our Finding

23. We accept TVP's position. [Sentence redacted from this 'Open Decision'.]

24. The Appellant has not argued that TVP did not have a duty to conduct an investigation in relation to any investigation held. Since the Appellant had requested the investigation be initiated, it would be unusual for the Appellant to argue that it would be acting outside its duty in doing so, and we see no reason to conclude that it did not have such a duty or that it was not acting within its duty to conduct the investigation.

25. [Sentences redacted from this 'Open Decision'.]

26. We conclude that if TVP were to hold the particular information requested, it would have been held at one time for the purposes of an investigation which it had had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. [Sentences redacted from this 'Open Decision'.]

Issue B: Public Interest

27. TVP has stated that in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information because of three arguments.

28. TVP's first contention is that it is not generally in the public interest for the police to confirm or deny whether investigations have been carried out into particular named individuals, where that information is not already in the public domain.

29. TVP's second contention is that to confirm or deny the existence of any such investigation, or the extent of it, would be unfair to the individuals concerned (whether or not they are deceased); and to their friends and families. [Sentence redacted from this 'Open Decision'.]

30. TVP's third contention is that this case does not indicate a significant public interest and public confidence does not require the existence of an investigation to be confirmed or denied.

Our Findings

31. We do not accept TVP's first contention described in paragraph 28. This is because, first, TVP does not explain why it is not generally in the public interest to respond on these matters, and second, it does not explain why such rationale applies specifically to this case. It seems to us that the Act requires us to consider the circumstances applicable to this case.

32. As to TVP's second argument, there is a risk that it might be perturbing for the deceased friends and family for the Police to confirm or deny the requested information if it would in turn indicate to the world at large the existence and extent of the investigation. We consider this to be a factor to consider, . Whilst we do not discount the risk of upsetting any family or friends of the deceased, it should be considered within the context that the Appellant has already shown us that it is in the public domain (through a published article) that X was involved in the experiments, and that these appear to have been similar or to have had some connection with those conducted at Porton Down [Sentences in this paragraph have been redacted from this 'Open Decision'.]

33. We do not accept TVP's third contention set out in paragraph 30 above. The questions for us to consider are whether there are any public interests favouring disclosing whether the public authority holds the requested information and if so, whether the weight of interest in not confirming or denying is greater than that of confirming or denying. We consider the strongest public interest to have been revealed by the following factors:

1. The BBC article, an extract of which is in paragraph 18 above. This indicated that:
 - a. An apparently large number of former servicemen including the Appellant were said to have been 'used as guinea pigs' in chemical weapons tests, at the Porton Down research centre in Wiltshire from the 1950s to the 1980s which the Appellant is quoted as having alleged had in some cases very serious consequences.
 - b. The article indicated that a Wiltshire Police investigation into the cases revealed there was criminal liability arising out of the conduct of some former scientists, but it was decided there was not enough evidence for a charge. Lawyers for some of the ex-servicemen involved had said they would look to use the evidence from the investigation to pursue a civil action.
 - c. The decision not to prosecute angered veterans who claimed they were duped into volunteering for the tests.
2. The article indicated a concern of worrying treatment of servicemen being experimented on over a period of thirty years. We consider a public interest in

being able to know what was and was not known in relation to these apparently very serious allegations.

3. TVP conceded a belief in a connection between X and the events at Porton Down. By letter to the ICO dated 24 August 2012, it indicated a belief that X was a doctor *'involved in an incident surrounding experiments at Porton Down, Wiltshire which was investigated by Wiltshire Police in 1999.'*
 4. Where the inquiry suggested criminal liability but insufficient evidence to charge, there will understandably be a significant public interest in wanting to know anything in relation to what happened; what was known and so on. We consider there to be a very weighty public interest, particularly if ill health and deaths may have resulted from experiments. It is clearly of interest for the public, (as indicated by the expensive investigation that was pursued in Wiltshire), to understand what it can, or at least to know whether there was some unexplored avenue or more to tell. Any information in relation to any suggested potential connection between experiments conducted by X and the alleged Porton Down events would seem to fall within such an unexplored avenues. Therefore, we consider the Appellant's request to fall within this category of transparency.
34. (We would note additionally, that in the absence of the Appellant presenting for us an analysis of his arguments in one overarching document, we attempted to ascertain from bundle documents any arguments that the Appellant gave that might be arguable as indicating a public interest. We were unable to make firm conclusions in relation to this material. However, in the round, taken together with the BBC article, and other arguments made above, there seemed to us to be sufficient that was questionable, to indicate a public interest in finding out what could be found. The information that appeared of relevance was:

Appellant's email of 25 September 2012 and 24 May 2012: The Appellant alleged that:

- (iii) X had administered a highly dangerous bacterial endotoxin (salmonella abortus equi) into five people as test subjects and none of them could be found.
- (iv) The identical experiment was performed on 115 RAF servicemen at Porton Down, with 108 of the test subjects reported as missing. Six airmen including the Appellant are the only known survivors. The police failed during their five year *'corrupted investigation'* to trace the missing airmen and have since ignored his requests to have them traced, and MI5 formed part of the investigation. The police asked for the Appellant's help in finding X and he provided an email. The police then informed him that X had returned to the UK but could not find him.
- (v) X informed Porton Down as to his findings of the experiment after which Porton Down *'continued where [x] left off.'*
- (vi) X published his own test results on the internet.

Appellant's email of 23 May 2014:

- (vii) The Appellant alleged the police covered up the killing of 39 servicemen who had attended Porton Down.

Article

- (viii) We were shown an article published in 1959, co-authored by X, which presented findings of an experiment on five people, who were injected with what is referred to as '*bacterial pyrogens*' and '*pyrexal*'. There is nothing in this article indicating that the substance injected was dangerous or caused harm, or that the authors thought it was dangerous, or that the authors breached any rules relating to conducting scientific experiments. Whilst the Appellant asserted wrongdoing, we have no way to conclude that it was based on the information provided by the Appellant.

Notes

- (ix) We were presented with various typed notes marked '*confidential discreet*', with this marking crossed out in place of manuscript stating '*unclassified*'. The papers are also stamped '*restricted*', on one page, this marking is crossed out. These notes were stamped as a '*technical paper*' dated 1963. They have different authors to the 1959 article and describe pyrexal as a '*lipopolysaccharide prepared from salmonella abortus equi*' and that this is '*prepared commercially for intravenous pyrexotherapy*'.
- (x) The notes describe what seems to have been further experiments, which were carried out by the 1963 authors where the pyrexal was given to volunteers. This paper explains that the substance had been in experimental use in the UK in therapy and as a tool in certain scientific investigations since 1956 producing '*signs associated with fever, such as headaches, malaise, shivering, sweating, and aching of back and limbs*', and reports of it in 'Swedish Bible Printers' disease resulting from its use in printers. The report then notes trials carried out on 81 servicemen, noting the symptoms experienced and time period it took for recovery. The report referred to a report by X, and states that it did not find the same very high temperatures X '*sometimes reported*' and seems to conclude that a pyrexal induced fever is '*harassing as opposed to incapacitating*'. (From the references to this report, the authors are referring to a report by X and other authors in 1957 and not 1959.) This report does not seem to help the Appellant's assertion that X committed wrongdoing.
- (xi) The panel was not able to make the links from reading the 1959 and 1963 papers or any other material in the bundle that; (a) X administered a highly dangerous substance on five individuals and that none can be found; or (b) the same experiment was then conducted on 115 RAF servicemen who went missing. We cannot conclude wrongdoing by X. If it is correct that X later published his test results on the internet, we would think he would have been unlikely to do so if it had indicated that he had committed a wrongdoing.)

35. In conclusion, in relation to the duty to confirm or deny, we recognise that the exemption set out in s30(1)(a)FOIA does apply because if the Police were to hold the particular information requested, it would be held at some point for the purposes of an investigation which it has or had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

36. We accept that there is a risk that it might be perturbing for the deceased friends and family for the police to confirm or deny the requested information if it would in turn indicate to the world at large the existence and extent of a criminal investigation. We consider this to be a significant public interest, however, the interest in confirming whether the information is as set out in paragraph 33 above is weightier.

Issue C: Duty to disclose

37. All submissions advanced by the parties were relatively brief and we received no arguments in relation to this. However, it is self-evident that if TVP was seeking to rely on the exemption set out in s30(1)(a)FOIA in relation to whether it had a duty to confirm or deny holding the requested material, it would also seek to rely on it in relation to whether it must disclose it. If it considered it was not required to disclose whether it held the information, then presumably, it would similarly, and potentially even more so, assert a weighty public interest in relation to resisting disclosing what the information was.
38. We find that the exemption in s30(1)(a)FOIA is 'engaged' so as to apply in relation to the duty to disclose the information, but that the public interest in disclosing the information is weightier than that of withholding it. These are for the same reasons as set out in paragraphs 23 to 26; 31 to 33; 36 and 35 above. If any disclosure would include names of officials, we consider that these should be redacted, on the basis that we do not consider there to be any reason why it would be in the public interest to disclose these. (We have not been given any arguments in relation to this or whether such names would be personal data, but do not consider it proportionate to pursue this in this case and cause delay in issuing the decision, in the absence of any party having provided arguments.)

Other Matters

Considering the Question of Conflict

39. When the panel reviewed the bundle, we noted an email at page 47 from the Appellant, which stated:
- (i) *".. the law firm Leigh Day & Co who was well aware of this situation at the time he was secretly meeting with MOD and Treasury officials but held he his silence, as a result he was paid 3.72 million pounds - stolen from UK taxpayer funds - that was awarded to him from persons within the Treasury and else where all of whom who have decided to remain anonymous. I would ask the Tribunal to look at and closely examine all I have said here."*
40. I notified the parties with details of my work at HM Treasury, and explained that I had no prior knowledge of the events the Appellant described, had not and did not work in any related areas. I directed the parties to notify the Tribunal office within a set time if they considered this to be a conflict, and if so, to give their full reasons. No parties objected to me continuing to hear the case.

41. I considered case-law on when a judge should stand down from hearing a case. This included:

- (ii) Rex v Sussex Justices ex parte McCarthy [1924] KB 256, 259: (Lord Hewart)

'It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.'

- (iii) Porter v Magill [2002] 2 AC 357 (House of Lords):

'The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.'

- (iv) Re Pinochet (No 2) [2000] UKHL 2, (House of Lords):

'If the absolute impartiality of the judiciary is to be maintained, there must be a rule which automatically disqualifies a judge who is involved ... in promoting the same causes in the same organisation as is a party to the suit.'

'Inconvenience, costs and delay do not... count in a case where the principle of judicial impartiality is properly invoked.'

- (v) Gillies (AP) v SoS for Work and Pensions (Scotland) 2 [2006] UKHL (House of Lords, Baroness Hale):

'Expertise on the tribunal not only improves decision-making and reduces the need for outside expertise; it also thereby increases the accessibility and user-friendliness of the proceedings.'

42. Taking into account the lessons from the case-law set out above and that:

- (vi) There have been no references to HM Treasury in the submissions and it has not been of any relevance to the matters that are within the remit of the appeal or Tribunal. (These matters are broadly as described in paragraphs 7 and 12 to 14 above, and more particularly whether the Appellant has a right to be informed of whether requested information is held, and if so, have that information disclosed to him);
- (vii) The only reference to HM Treasury that I have found in the bundle has been the wording of the email on page 47 of the bundle, set out above. This email does not seem to have been of any relevance or have any bearing on the matters before the Tribunal, and the Appellant has not shown to us any reason why it might have;
- (viii) I have made full disclosure to the parties in relation to my working part-time for HM Treasury and anything that seemed to be relevant, and no one has objected to me hearing the case;

- (ix) HM Treasury is not a party to this appeal and to my knowledge is has no connection with it and it is a large organisation of roughly 1100 staff with a relatively high turn around of people working there;
- (x) I am not involved with the work of any party to the appeal; and
- (xi) Prior to reading the papers submitted by the parties in this appeal, I had no prior knowledge of any of the events the Appellant described, had not and did not work in any related areas,

I have not considered there to be a conflict in me hearing the case. In seeking to conduct a fair hearing and the operation of justice, it is also important to consider whether a fair-minded and informed observer would consider there to be a real possibility of bias and that justice must not only be done but be seen to be done. When asked, none of the parties or panel members stated any concern of bias or gave any reasons why there may be a perception of bias. Accordingly, I ruled that it was best for me to continue sitting as part of the panel deciding the appeal.

43. Our decision is unanimous.

Judge Taylor

5 June 2015

ⁱ A closed decision has also been issued, because our full reasons unavoidably contain information as to whether any police investigation was conducted which may or may not contain the information requested. However, we have indicated where sentences have been so redacted to try to make this as clear as possible.