Tribunals Service
Information Tribunal

Appeal under section 57 of Freedom of Information Act 2000

Information Tribunal Appeal Number: EA/2008/0061
Information Commissioner's Ref: FS50147637

Heard at Employment Appeal Tribunal
On 20 and 21 January 2009

Decision Promulgated
16 February 2009

BEFORE

CHAIRMAN

Murray Shanks

and

LAY MEMBERS

Anne Chafer and Jenni Thomson

Between

FINANCIAL SERVICES AUTHORITY

Appellant

and

INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: Charles Flint QC and Jason Coppel

For the Respondent: Jane Oldham

Subject areas covered:

Public interest test s.2

Refusal of request s.17

Law enforcement s.31

Commercial interests/trade secrets s.43

Cases referred to:

Real Estate Opportunities v Aberdeen Asset Managers [2007] EWCA Civ 197

FSA v Information Commissioner EA/2008/0047 25.11.08

Determination

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 26 June 2008.

Information Tribunal **Appeal Number: EA/2008/0047**

SUBSTITUTED DECISION NOTICE

Dated 26 February 2009

Public authority: **Financial Services Authority**

Address of public authority: **25 North Colonnade**
Canary Wharf
London E14 5HS

Name of Complainant: **Mrs C S Harries**

The Substituted Decision

For the reasons set out below, the substituted decision is as follows:

(1) the public authority dealt with the request in accordance with the requirements of Part I of the Act save that it breached section 1(1)(a) in failing to state whether it held the information requested.

(2) No step is required to be taken.

Dated this 16th day of February 2009

Signed:

Murray Shanks

Deputy Chairman, Information Tribunal

Reasons for Determination

Background

1. On 27 August 2006 the Sunday Times carried an article headed "Barclays link in drug cash route". The article alleged that an investigation by law enforcement agencies in America and Canada had disclosed that a subsidiary of Barclays Bank (namely Barclays Private Bank or BPB) had been used to launder Colombian drugs money and that in October 2003 $54 million held at BPB had been frozen by the UK Government. It was also alleged that managers at the bank had been interviewed by National Crime Squad officers and that the officer in charge had planned to argue that the bank's management had, or should have had, suspicions but had failed to act on them. The article concluded:

   Sources close to the investigation say NCS officers were preparing to make arrests when the Crown Prosecution Service (CPS) halted the case.

   Legal sources say that prosecutors would have had extreme difficulty proving that any named individual within the bank was the controlling mind behind any negligence, because so many people would have handled the accounts.

   A CPS spokeswoman said: "We concluded there was insufficient evidence for a realistic prospect of conviction against any individual at Barclays Private Bank in connection with the allegations."

   …

   Last week Barclays refused to comment on its involvement, claiming client confidentiality.

2. On 22 October 2006 Mrs Harries made a request under the Freedom of Information Act 2000 for the Financial Services Authority to supply her with any information held by it "…with regard to the matters reported on in the article in the Sunday Times with regard to BPB's involvement with Colombian drugs money".

3. The FSA's response to that request was neither to confirm nor deny whether such information was held, relying on section 44 of the Act ("Prohibitions on disclosure") read with section 348 of the Financial Services and Markets Act 2000 (FSMA) and section 43 ("Commercial interests"). The review letter confirming that decision was dated 10 January 2007 and signed by Philip Robinson in his capacity as Information Protection Officer. Mr Robinson was also a sector leader in the Financial Crime and Intelligence section of the FSA and has been its Director since 2007 and he gave both open and closed evidence to the Tribunal on behalf of the FSA.

4. Mrs Harries complained to the Information Commissioner under section 50 that the FSA had not dealt with her request in accordance with the Act. Following discussions with the Commissioner the FSA further reviewed the request and wrote to Mrs Harries on 15 January 2008 informing her that they did hold information which concerned some of the matters discussed in the Sunday Times article but that it could not be disclosed because of the exemptions in sections 21 ("Information accessible to applicant by other means"), 40 ("Personal information") and 31 ("Law enforcement") as well as sections 44 and 43. The FSA supplied the withheld information to the Commissioner on a confidential basis and the Commissioner decided in a decision notice dated 26 June 2008 that the FSA had dealt with the request in accordance with the Act in relation to the information for which the exemptions at sections 44, 40 and 21 was claimed but that the information for which the exemptions at sections 43 and 31 was claimed had to be disclosed as those exemptions were "not engaged".

5. The FSA appeals to the Tribunal against the Commissioner's decision in relation to sections 43 and 31. We, like the Commissioner, have been supplied on a confidential basis with copies of the documents containing the withheld information annotated to show where the various exemptions are claimed. It is clear that the vast bulk of the material is indeed covered by the prohibition on disclosure in section 348 of the FSMA. The issues for us to decide are whether the Commissioner was correct to find that sections 43 and 31 did not apply to the material for which those exemptions are claimed and, if he was wrong as the FSA contend, whether in all the circumstances the public interest in maintaining the relevant exemption outweighed the public interest in disclosure of the information

covered by it. In doing so we can review the facts and form our own judgment in relation to the public interest balance but we must decide the issues as at the date of the FSA's final decision in January 2007.

The legal framework relating to the FSA

6. It is important in our view in resolving this appeal to have regard to the legal framework in which the FSA operates. The FSA is responsible for regulating the financial services industry in the UK. It has the functions conferred on it by the FSMA, which include the power to make rules and to investigate breaches of the FSMA or rules made under it and to take enforcement action in respect of such breaches. Paragraph 6 of Schedule 1 to the FSMA expressly provides:

> **(1) The [FSA] must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Act are complying with them.**
>
> **…**
>
> **(3) The [FSA] must also maintain arrangements for enforcing the provisions of, or made under, this Act.**

7. The FSA's investigatory or supervisory functions are supported by compulsory powers to gather information (section 165 of the FSMA) and to appoint formal investigators with extensive powers (sections 167 to 175) but they also rely to a great extent on information provided voluntarily by regulated firms themselves and third parties. Section 348 of the FSMA is designed to assist in this process. It provides as follows:

> **(1) Confidential information must not be disclosed by [the FSA]…without the consent of-**
>
> **(a) the person from whom [the FSA] obtained the information; and**
>
> **(b) if different, the person to whom it relates.**
>
> **(2) In this Part "confidential information" means information which-**
>
> **(a) relates to the business or other affairs of any person; [and]**

> **(b) was received by the [FSA] for the purposes of, or in the discharge of, any [of its] functions … under this Act…**
>
> **(3) It is immaterial for the purposes of subsection (2) whether or not the information was received … by virtue of a requirement to provide it imposed by or under this Act…**

This section was considered by the Court of Appeal in *Real Estate Opportunities v Aberdeen Asset Managers* [2007] EWCA Civ 197 to which Mr Flint for the FSA helpfully referred us. Arden LJ said this at paras [31] to [34]:

> **[31] What is the apparent object of preserving confidentiality in information provided to the FSA? … First, it ensures respect for the private life of the person who was the subject of information: if none of the gateways provided by s 349 is available, neither the FSA nor a secondary recipient can disclose the information without obtaining the consent of the subject of the information (s 348(1)). Disclosure in those circumstances without such consent might involve a violation of art 8 (respect for private and family life) of the European Convention … Secondly, restrictions on the disclosure of confidential information in the financial markets are likely to assist in the process of regulation because of the encouragement that it is likely to give to people in the market to disclose timeously information which may be of importance to the regulator for the purpose of exercising its regulatory functions. As the judge accepted, the position of the FSA may in this respect be compared the position of the Bank of England under the Banking Act 1987 of which Lord Woolf MR, giving the judgment of the Court of Appeal in *Barings plc (in liq) v Coopers & Lybrand* … [2000] 1 WLR 2353 at 2359 (para 16) said:**
>
> > **'The maintenance of confidentiality under Pt V of the 1987 Act for information provided to the Bank is plainly of great importance. Protecting those who provide information to the Bank encourages voluntary disclosure from institutions, third parties and whistle blowers, any of whom might otherwise be unwilling to divulge material. The Bank is of the view that, absent such protection, it would be deprived of the raw material it requires for effective supervision.'**
>
> **[32] In *Re Galileo Group Ltd* … [1999] Ch 100 at 11, Lightman J made the point that confidentiality enhances candour in favour of other regulators. He said:**
>
> > **'The maintenance of confidentiality as provided in s 82 is of vital importance to the discharge by the bank of its supervisory responsibilities under the [Banking Act 1987]. Confidentiality is vitally important to encourage the maximum free flow of information from supervised institutions and third parties whether such disclosure is obligatory or voluntary.'**
>
> **[33] Accordingly, there are strong reasons for restricting disclosure of information provided to a regulator…**

[34] The importance which Parliament attached to the restrictions on disclosure is emphasised by the fact that a breach of s 348 is made a criminal offence under s 352.

It probably goes without saying that there is specific provision allowing disclosure of "confidential information" by, among others, the FSA for the purposes of their public functions and any person for the purposes of civil proceedings under FSMA (see section 391 of the FSMA and the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188)).

8. As to its enforcement powers, if the FSA considers that a firm it regulates has contravened the FSMA or rules made under it, it can publicly censure that person (section 205), impose financial penalties (section 206) and/or require restitution (section 384). The FSMA lays down an elaborate procedure which must be followed before any of these actions are taken, involving first the issuing of a "warning notice" (which must specify any proposed action by the FSA and the reasons for it to enable the person to whom it is addressed to make representations) (section 387), second the issuing of a "decision notice" which gives the person to whom it is addressed the opportunity to refer the matter to the Financial Services and Markets Tribunal (section 388) and, only then, a "final notice" when the FSA decides to take action, whether of its own accord or on the direction of the Financial Services and Markets Tribunal (section 390). If the FSA decides not to take further action after a warning notice or decision notice it must give a "notice of discontinuance" (section 389).

9. We accept Mr Robinson's evidence that for some time the FSA's general approach to enforcement has been to use its formal statutory powers only in the most serious cases and otherwise to seek to resolve issues informally by agreement with those it regulates. We also accept that this approach is followed for valid reasons, namely that (a) issues can be resolved more speedily and efficiently, (b) with the co-operation of the firm concerned, and (c) the outcomes are more certain than those which emerge from a formal process which may end up in litigation.

10. Mr Flint also referred the Tribunal to section 391 of the FSMA which deals with the publication of the contents of the various notices the FSA must issue when taking

formal enforcement action and which we regard as of considerable significance in the context of this appeal. It provides:

> **(1) Neither the [FSA] nor a person to whom a warning notice or decision notice is given or copied may publish the notice or any details concerning it.**
>
> **(2) A notice of discontinuance must state that, if the person to whom the notice is given consents, the [FSA] may publish such information as it considers appropriate about the matter to which the discontinued proceedings related…**
>
> **(4)The [FSA] must publish such information about the matter to which a final notice relates as it considers appropriate…**
>
> **(6) But the [FSA] may not publish information under this section if publication of it would, in its opinion, be unfair to the person with respect to whom the action was taken …**

(In contrast to the position in relation to section 348 a breach of section 391 of the FSMA does not appear to amount to a criminal offence.) The Tribunal has also looked at the Financial Services and Markets Tribunal Rules 2001 (SI 2001/2476) which provide at rule 17(3):

> **The Tribunal may direct that all or part of a hearing shall be in private -**
>
> **(a) upon the application of all the parties; or**
>
> **(b) upon the application of any party, if the Tribunal is satisfied that a hearing in private is necessary, having regard to -**
>
> **(i) … the protection of the private lives of the parties; or**
>
> **(ii) any unfairness to the applicant … that might result from a hearing in public,**
>
> **if, in either case, the Tribunal is satisfied that a hearing in private would not prejudice the interests of justice.**

11. It is apparent from these provisions that it is the policy of the legislation that the views of the FSA in relation to the conduct of those it regulates should remain private unless and until a final decision to take formal enforcement action has been reached and that even then it should not publish information if to do so would be "unfair". Furthermore, even if a matter is referred to the Tribunal for judicial resolution, it will not necessarily be publicised if that would interfere with the private

lives of, or be unfair to, those the FSA regulates. The underlying rationale of these provisions would appear to be the protection of the reputation and commercial interests and private life of those who are subject to investigation or enforcement proceedings.

The disputed material

12. As we say above the Tribunal has been provided with the documents containing the withheld information and we have considered those parts which the FSA claim to be covered by sections 43 and 31 (to which we shall refer as the "disputed material") in detail. We describe the disputed material in more detail in the Confidential Annex to this determination but we believe that we can safely set out here the agreed description of it which the parties helpfully supplied:

> **The disputed material comprises internal FSA analysis of, views on, and preparatory material relating to information it had received regarding the question as to whether Barclays Private Bank had been used, as the Sunday Times alleged in its article of 17 August 2006, in the laundering of drugs money.**

13. We should record that we have some doubts as to whether the disputed material (or at any rate all of it) necessarily came within the terms of Mrs Harries' request and, if it did, whether in fact it was not covered by section 348 of the FSMA and thus section 44 of the Act. However, as the parties have proceeded on the basis that the disputed material was within the terms of the request and was not covered by section 44 and have argued the appeal on that basis, we have put our doubts to one side in deciding the appeal.

Section 43

14. So far as relevant section 43(2) provides as follows:

> **Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial Interests of any person…**

It was common ground that in order to come within the section there must be at least a "real and significant risk" of the relevant prejudice.

15. For the reasons set out in the Confidential Annex we are satisfied that disclosure of the disputed material would have involved a real and significant risk of prejudice to the commercial interests of Barclays and BPB in particular.

Public interest on section 43

16. It seems to us that the main relevant considerations in relation to the public interest balance on section 43 as at January 2007 were as follows:

Public interest in disclosure

(1) The allegations made in the Sunday Times article were very serious ones and concerned a major UK bank: any information about the matters raised would clearly have been of substantial and legitimate interest to the public, as maintained by Mrs Harries in her representations to the Tribunal;

(2) The information requested would also have informed the public about how the FSA dealt with the issues raised by the case and how it operated in general, clearly matters of substantial public interest;

(3) However, as we have said, the bulk of the material held by the FSA coming within the terms of Mrs Harries' request was undoubtedly covered by the prohibition in section 348 of the FSMA and therefore could not be disclosed and we are satisfied that the disputed material on its own would have been of limited objective value, providing the public only with (necessarily provisional) internal FSA views and analysis but with none of the information on which they were based and only with such views and analysis in so far as they did not themselves have the effect of disclosing "confidential information";

(4) We also accept Mr Robinson's evidence that there is nothing in the disputed material which would have disclosed anything unusual or of concern in the way the FSA was performing its functions in this case;

Public interest in maintaining exemption

(5) For the reasons we set out in the Confidential Annex we regard the extent of the likely prejudice to Barclays' commercial interests which would have resulted from disclosure of the disputed material in January 2007 as "modest", albeit sufficiently significant to pass the section 43 threshold;

(6) But, however modest, the fact that Barclays had had no opportunity to make any representations to the FSA concerning their provisional internal views and analysis and the consequent unfairness to Barclays if they were made public would have strengthened the public interest in maintaining the exemption;

The legislative policy

(7) Taking account only of those considerations in our view the scales would have been fairly evenly balanced. However, as we say in paragraph 11 above, the legislative policy disclosed by section 391 of the FSMA and the Tribunal Rules appears to be that the views of the FSA should not be publicised at all unless and until a matter reaches the Tribunal or the final notice stage and, even then, not if it would be unfair to the person against whom enforcement action is being taken. It seems to us that the disclosure of internal FSA views which involved a risk of commercial prejudice to Barclays in a case where (as was clear and accepted by Mr Robinson) no enforcement action was ever even started against them would cut right across this legislative policy. In our view this consideration would have very substantially weakened the public interest in disclosure of the disputed material and strengthened that in maintaining the section 43 exemption.

17. We are therefore of the view that the public interest balance was clearly in favour of maintaining the section 43 exemption in this case. Given the conclusions we draw from the legislative policy which we have identified it is likely to be rare for disclosure to be required in a similar case but we stress that the individual circumstances must always be considered; if, for example, in this case the disputed material had disclosed something untoward in the FSA's response to the

information it had received about the matters reported in the Sunday Times the result may have been different.

Section 31

18. Since all the disputed material which is claimed to be covered by the section 31 exemption is also covered by the section 43 exemption our conclusions on section 43 mean that it is not strictly necessary for us to decide the issues raised in relation to section 31. That consideration, combined with the fact that section 31 was only raised by the FSA in January 2008 during the Commissioner's investigation and that the Commissioner does not appear to have considered whether it would be right to allow the FSA to rely on it at that stage before himself adjudicating on it, makes us somewhat reluctant to attempt to reach a final view on the section 31 issues. However, given the importance the parties (and the FSA in particular) appear to attach to them and the extent of the evidence and submissions which have been mustered, we have decided nevertheless to do our best to resolve them.

19. The relevant part of section 31 relied on by the FSA provides as follows:

> **(1) Information … is exempt information if its disclosure under this Act would, or would be likely to, prejudice …**
>
> > **(g) the exercise by any public authority of its functions for…**
>
> **(2) …**
>
> > **(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise [or]**
> >
> > **(d) the purpose of ascertaining a person's fitness or competence … in relation to any profession or other activity which he is, or seeks to become, authorised to carry on…**

Again it was common ground that in order to come within the section there must be at least a "real and significant risk" of the relevant prejudice.

20. The Commissioner appears in his decision notice to have accepted the FSA's contention that disclosure of the disputed material could have resulted in firms

being less open with it and that this could have adversely affected its ability to monitor compliance and thus its effectiveness as a regulator. But the Commissioner went on to find that this would not prejudice the specific functions set out in sections 31(2)(c) and (d) of the Act, apparently because of his view that the FSA could regulate effectively without using informal methods by using its compulsory information-gathering powers. With respect to the Commissioner we cannot accept this line of reasoning. As shown by the quotations in paragraph 7 above, it is well established and accepted by the courts that voluntary disclosure of information to the regulator is helpful to the effective exercise of its investigatory and supervisory functions and is in the public interest. The purposes of those investigatory and supervisory functions are precisely those described in sections 31(2)(c) and (d) (ie "ascertaining whether circumstances which would justify regulatory action … exist or may arise" and "ascertaining a person's fitness … in relation to any … activity which he is, or seeks to become, authorised to carry on") and that remains the case whether particular investigations involve the use of formal or informal information-gathering methods or whether they lead to enforcement action, whether formal or informal, or none at all. Thus it must follow that if indeed the disclosure of the disputed material would have adversely affected the voluntary flow of information, it would have adversely affected (or prejudiced) the exercise by the FSA of functions described in sections 31(2)(c) and (d).

21. Before the Tribunal the types of prejudice to its regulatory functions which the FSA through Mr Robinson maintained would have been caused or risked by the disclosure of the disputed material under the Act were summarised as follows:

    (1) a decrease in the amount of information voluntarily provided by firms;

    (2) the FSA would therefore be forced to make more use of its formal information-gathering and investigatory powers;

    (3) the inhibition within the FSA of the expression of candid views about firms;

    (4) prejudice to the FSA's working relationship with other law enforcers which would be likely to adversely affect the amount and quality of the information supplied by them to the FSA;

(5) firms would be permitted to assess the FSA's regulatory intentions.

22. Points (3) to (5) were never considered by the Commissioner so far as we can see and Mr Flint did not press them in his final submissions. In our view he was clearly right not to press them since it was apparent from Ms Oldham's and our own questioning of Mr Robinson in the light of the documents that, as a matter of fact, there was really nothing in any of them[1].

23. As to points (1) and (2), Mr Robinson's evidence (supported by that of Richard Thomas, the Global Head of Compliance for the Barclays Wealth division of the bank, who had not of course seen the disputed material itself) was that if information like the disputed material had to be disclosed under the Act, firms would be less likely than at present to be open with the FSA and voluntarily supply information raising possible regulatory issues about themselves (which even includes on occasion, we are told, legally privileged material). They also gave evidence that firms would be less likely to supply information about their competitors or about developments or conditions in the market generally. Given the protection provided by section 348 of the FSMA (which must make it very unlikely that the identity of any "informer" will emerge in any case where it would not in any event emerge because the FSA has taken action, whether formal or informal) we have no difficulty in finding that these latter concerns are too fanciful to be of significance. The concerns expressed in relation to firms' willingness to be open with the FSA and supply information about themselves are, however, worthy of further consideration.

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1 In relation to point (4), the FSA helpfully pointed out after the hearing that, unlike the NCS, its successor body SOCA (Serious Organised Crime Agency) is not a "public authority" for the purposes of the Act and that information held by a public authority which has been supplied by SOCA or which relates to it is absolutely exempt from disclosure by virtue of section 23. The FSA go on to claim that this makes it even less likely that information will be shared with the FSA if disclosure of the disputed material is required under the Act. We are afraid we regard it as fanciful to suppose that a public body in the position of SOCA, whose information is in any event protected by the absolute exemption in section 23 of the Act, would fail to pass on information which it would and should otherwise pass on to the FSA just because in this particular case the FSA had been required to disclose the disputed material.

24. The evidence of Mr Robinson and Mr Thomas in relation to these concerns must of course be accorded due respect. However we are not inclined simply to accept it without question and, having considered the matter anxiously, we are not satisfied that disclosure of the disputed material under the Act in January 2007 would have involved a real and significant risk of decreasing the amount of information voluntarily provided to the FSA by firms about themselves thereafter. That conclusion is based on the following (cumulative) considerations (which necessarily assume that for some reason section 43 did not apply to the disputed material in this particular case):

    (1) The incentives on firms to supply information about themselves and generally to co-operate with the FSA, namely (a) Principle 11 of the FSA's Principles for Business which requires them to do so and (b) their desire to mitigate any steps taken against them and avoid formal enforcement action, would have remained in place even if disclosure of the disputed material in this particular case would have led them to believe that the FSA's views based on such information might one day possibly have to be disclosed pursuant to another request under the Act;

    (2) Mr Thomas accepted that if Barclays was less open with the FSA that would be highly detrimental to both sides;

    (3) There is always a risk for firms (of which they must always be aware) that, if they supply information about themselves voluntarily, not only the FSA's views but the information itself will ultimately come to be published pursuant to section 391(4) of the FSMA;

    (4) There is no evidence that anyone's behaviour had changed to being less open as at January 2007 although the Act had by then already been in force for two years; we would have thought that Barclays and firms like it must have had access to legal advice before then which would have alerted them to at least the remote possibility that the FSA might have to make some disclosure under the Act which they would not wish for;

    (5) Any information that firms were going to supply about themselves would always remain protected by section 348 of the FSMA and, as we have

stated above in paragraph 17, any internal FSA views based on it not coming within section 348 and involving prejudice to their commercial interests would rarely fall to be disclosed under the Act by reason of section 43.

25. We therefore agree with the Commissioner that section 31 was not engaged in this case but for reasons different to those relied on by him. That conclusion makes it unnecessary for us to consider the public interest test in relation to section 31.

26. In case it is of comfort to the FSA we would again emphasise that this conclusion relates to the specific circumstances of this case. It does not mean that section 31 can never be relied on to resist disclosure of internal FSA views based on information supplied. There may well have been a different outcome in this case if, for example, the disputed material had been requested during an on-going investigation or its disclosure would for some reason have risked the identification of a confidential source or revealed something novel about the FSA's methods of investigation.

Miscellaneous matters

27. The Commissioner found that the FSA had breached section 17(1)(b) of the Act because it sought to rely on exemptions which had not been specified in its refusal notice in the course of his investigations. For the reasons already given in the Tribunal's determination in *FSA v Information Commissioner* EA/2008/0047 25.11.08 at paragraph 20 this finding is clearly misconceived and we therefore give the FSA permission to take the point and allow their appeal in relation to it.

28. The FSA also claimed in its notice of appeal that the Commissioner had himself breached the Act by disclosing exempt information in his decision notice. Mr Flint did not pursue this point at the hearing. He was clearly right not to do so.

29. At the hearing there was some discussion about the form in which the disputed material might be communicated to Mrs Harries in the event that the FSA's appeal did not succeed. This is now obviously academic but for future reference the Tribunal notes that it is generally not necessary and may be unhelpful for a large number of very heavily redacted internal documents to be supplied in response to a

request for information and we draw attention in this connection in particular to the provisions of sections 11(4) and 16(1) of the Act.

Conclusion

30. The FSA's appeal is allowed and the Tribunal issues the substituted decision notice set out above.

31. Our decision is unanimous.

Signed:

Murray Shanks

Deputy Chairman Date 16 February 2009