IN THE FIRST-TIER TRIBUNAL

GENERAL REGULATORY CHAMBER

(INFORMATION RIGHTS)

Case No. EA/2010/0203

ON APPEAL FROM:
Information Commissioner
Decision Notice ref FS50300018
Dated 6 December 2010

Appellant: Jeffrey Lampert

Respondents: (1) Information Commissioner

(2) Financial Services Authority

Date of Hearing: 24 May 2011

Date of decision: 7 June 2011

Before

HH Judge Shanks

Alison Lowton

Narendra Makanji

Representation:

Appellant:	In person
Information Commissioner:	Anneliese Blackwood
FSA:	Greg Choyce

Subject areas covered:

Freedom of Information Act 2000:

Whether information held s.1

Vexatious or repeated requests s.14

Personal data s.40

Cases referred to:

Durant v Financial Services Authority [2003] EWCA Civ 1746

Decision

For the reasons set out below the Tribunal decides that the decision notice dated 6 December 2010 is not in accordance with the law and substitutes the following notice for it.

Substituted decision notice

Public Authority: Financial Services Authority

Complainant: Jeffrey Lampert

Decision

For the reasons set out below, the Public Authority was not obliged to comply with the Complainant's request for information by reason of sections 14(1) and 14(2) of the Freedom of Information Act 2000. No action is required by the Public Authority.

HH Judge Shanks

7 June 2011

Reasons for Decision

Background facts

1. The Appellant, Jeffrey Lampert, was Chairman of a company called Heritage plc which went into insolvent liquidation in the mid 1990s. The company had a loan from Lloyds TSB which was guaranteed by Mr Lampert up to £500,000. The bank called on this guarantee and in due course obtained a substantial judgment against Mr Lampert and started bankruptcy proceedings against him in 2003. Mr Lampert maintains that there are several million pounds missing from the receivership of Heritage which he says means that his guarantee ought not to have been called on. He has been in dispute about this with the bank for many years.

2. On 7 June 2007 Mr Lampert's MP, Dr Rudi Vis, wrote to the FSA asking it to investigate the matter thoroughly and inform him to what extent the FSA considered it an example of a bank taking unfair and illegal advantage of a customer. An internal FSA memo to David Strachan dated 14 June 2007[1] states as follows:

> **[the letter] is the latest in a long-running correspondence … on behalf of his constituent Mr Jeff Lampert and concerns the actions of Lloyds TSB in the matter of the insolvency of Heritage plc in the mid 1990s …**

[1] Bundle B, tab 11, p2.

> **Previously, we have clearly stated that insolvency practice is not a matter for the FSA …**
>
> **I am seeking your guidance on how best to proceed:**
>
> **1. We can, of course, go back to him repeating our stance …**
>
> **2. We have the option of taking it to the Banking Sector Team …**
>
> **3. Alternatively … I could pursue this individual matter with [Lloyds TSB] so that we get both sides of the story … I realise we don't normally take up individual complaints, but there have been exceptions in the past.**

Mr Strachan and the writer of the memo agreed that they would adopt the third option and take the matter up with Lloyds TSB.

3. As shown by the documents at pp 3 to 25 of tab 11 in bundle B the FSA made some enquiries of Lloyds TSB and wrote back to Dr Vis on 6 August 2007 in these terms:

> **We have made further enquiries into this case and cannot conclude that Lloyds TSB has acted unfairly or in an illegal manner. The matter has been tested in the courts, which have found in the bank's favour on each occasion, and it seems that the bank ultimately suffered a loss of some £1 million on the winding up of Heritage plc. Furthermore, nothing arising from our review persuades us that there are systemic problems in respect of the dealings of banks with guarantors that would justify wider work by the FSA.**
>
> **In these circumstances we regard this matter as closed.**

4. On 13 August 2007 Dr Vis wrote to the FSA again in more detail saying that he considered "… it imperative that we work together to fully comprehend Lloyds TSB's actions, and the serious implications…". The letter ended:

> **All the bank has to do to demonstrate it has proper systems and controls in place is to provide all interested parties with a verifiable Statement of Account of all receipts against the debt of Heritage plc. Unless it is able to do so, I request you urgently take the appropriate and overdue action.**

> **As this matter has been with you for some months, please ensure you respond within two weeks…**

On 14 September 2007 the FSA wrote a holding letter to Dr Vis and on 26 September 2007 the Managing Director of the Retail Markets Division wrote to him in these terms:

> **I have reviewed our actions and have concluded that we have handled this case appropriately and that it is not proportionate for us to spend further time on it. We have nothing to add to our earlier correspondence with you and separately with Mr Lampert, and we regard the matter as closed. We will not, therefore, enter into further correspondence with you or Mr Lampert on these issues.**

In his letter of 13 August 2007 Dr Vis had also asked for disclosure of the FSA's files on the matter; the reply of 14 September 2007 stated that they could not be disclosed because of section 348 of the Financial Services and Markets Act 2000.

5. On 4 March 2008 Mr Lampert requested the FSA to supply him with "… copies of [their] files in regard to your investigation into Lloyds TSB Bank's guarantee procedure …". At some stage Mr Lampert was supplied with the documents at bundle B tab 11 pp 2 to 25 to which we refer above in response to that request; we understand from the FSA that before doing so they had obtained the consent of Lloyds TSB which meant that section 348 no longer prohibited their disclosure. On 11 November 2008 Dr Vis requested a copy of "… a report of the investigation instigated at [his request] by the FSA in June 2007…". The response to that was that there was no such information. Similar requests were made by Alan Keen MP and Dr Vis in November and December 2008 which received similar answers.

6. On 17 January 2009 Mr Lampert requested:

> **… all information held by the FSA in regard to [his] dispute with Heritage plc/Lloyds including documents [he] would have seen/have access to already, such as copies of the information [he was] provided in [his] FOI request [of 4 March 2008] and correspondence between [him] and Dr Vis MP and the FSA.**
>
> **… please incorporate in this request documents relating to … FSA correspondence about this matter with Alan Keen MP, the vice Chair of the APPG against Financial Exploitation.**

This request appears to have been worded the way it was after discussion between Mr Lampert and the FSA, who provided him with all the information previously supplied in order to be helpful and to close down the long running issues. Nevertheless, Mr Lampert complained to the Information Commissioner about their response to the request putting forward the view that the FSA held more information which they were withholding. The Commissioner found against him on that issue and found that the information requested comprised Mr Lampert's personal data and was therefore exempt from disclosure under section 40(1) of the Freedom of Information Act 2000 in any event.

7. In October or November 2009 Mr Lambert made an application under Civil Procedure Rule 31.17 against the FSA in the course of bankruptcy proceedings brought against him by Lloyds TSB in which he sought disclosure of documents held at all levels of the FSA relating to the memo of 14 June 2007 to which we refer in paragraph 2 above; the basis of the application was that this would assist him in defending the bankruptcy proceedings. In his judgment on the application given on 22 March 2010[2] Deputy Bankruptcy Registrar Briggs stated:

> **Mr Lampert has been before the Courts before in relation to this issue [ie Lloyds' failure to account properly for its recoveries and costs relating to Heritage plc]. Recourse sought by Mr Lampert through the Courts, [Banking Code Standards Board] and DTI have all been unsuccessful…**
>
> **… it is the case of the FSA on sworn evidence state that they have provided all the necessary information relating to the memo dated the 14th June 2007…**
>
> **The truth of the matter is that Mr Lampert simply does not trust what the FSA have said. He believes there are more documents and they should be disclosed … The evidence given by the FSA is sworn evidence by an employee of the FSA which on this application I accept …**
>
> **I therefore dismiss the application…**

[2] Bundle B tab 5; the judgment is apparently misdated 22 January 2010.

The request for information and the Commissioner's decision notice

8. The request with which this appeal is concerned was made on 13 January 2010. The parties have helpfully agreed on its scope for the purposes of the appeal: it is for documentation held by the FSA as at that date recording:

    (1) the outcome of any investigation into Lloyds TSB following the memo of 14 June 2007 and showing how, when, why and on whose instructions such an investigation was terminated;

    (2) the calculation of Lloyds TSB's loss;

    (3) as (1) in relation to any investigation which was referred to as "continuing" in the FSA's letter to the Commissioner of 23 September 2009.[3]

9. By a letter dated 9 February 2010 (which was confirmed on review) the FSA stated that they held information of the description requested but were not required to disclose it under section 14 of the 2000 Act because the request was repeated and vexatious. As well as the factual background we have set out above the letter noted the following points:

    (1) The FSA had also dealt with 15 written queries during the processing of the Mr Lampert's requests of 4 March 2008 and 30 January 2009;

    (2) Mr Lampert had been advised by the FSA in numerous telephone conversations that the FSA had not carried out an investigation following the memo of 14 June 2007;

    (3) Lord Turner, the FSA Chairman, had written to Dr Vis on 1 May 2009 stating that further correspondence and meetings on the issues raised by Mr Lampert would serve no useful purpose and that the staff had been instructed not to reply to further correspondence and to terminate any phone calls should he ring.

10. Mr Lampert complained to the Commissioner about the way his request had been dealt with and the Commissioner issued a decision notice dated 6 December 2010.

[3] Bundle B, tab 11, p27: see further reference to this letter at para 13(2) below.

The Commissioner accepted that the request was a repeat of the earlier request dated 17 January 2009 and concluded, as in that case, that any information falling within the scope of the request was the "personal data" of Mr Lampert. It followed that he found that the information requested was absolutely exempt from disclosure under section 40(1) of the 2000 Act. He did not make any finding about whether the FSA was entitled to rely on section 14.

The appeal

11. Mr Lampert has appealed against the Commissioner's decision notice. He maintains that there are still documents that the FSA has not disclosed to him and that the Commissioner was wrong to find that the requested information was covered by section 40(1). The FSA was joined to the appeal and a hearing held to resolve all issues.

12. The issues we have had to decide on the appeal are as follows:

    (1) The following factual issues:

        (a) whether the FSA carried out any investigation into Lloyds TSB following the memo of 14 June 2007 beyond the short inquiry which culminated in their letter to Dr Vis dated 6 August 2007;

        (b) whether the FSA held any document containing a "calculation of Lloyds TSB's losses";

        (c) whether briefing notes prepared for Lord Turner concerning a letter from Dr Vis on behalf of Mr Lampert (which are dated 30 April 2009 and which were seen by but not supplied to Mr Lampert sometime before his appeal) came within the terms of his request for information.

    (2) Whether the Commissioner was correct to conclude that the information requested by Mr Lampert on 13 January 2010 was exempt from disclosure under section 40(1);

(3) If not, whether the FSA could nevertheless rely on section 14 to refuse to comply with the request.

(1) Factual issues

13. The FSA has consistently maintained that they carried out no investigation into Lloyds TSB beyond the brief inquiry we have mentioned. As we record above in paragraph 7 the Bankruptcy Registrar has so found in a contested application. Nothing daunted, Mr Lampert still maintains that an investigation was carried out. He relies on a number of documents which he took the Tribunal through at the hearing. We considered all of these documents and we are quite satisfied on the balance of probabilities that there was indeed no investigation. In particular:

(1) There is an internal Treasury email dated 5 January 2010[4] which was disclosed to Mr Lampert in which an official states: "My involvement has been limited to one theme – explaining (ad nauseam) that HMT cannot TELL the FSA to release the results of their investigation into this case to Mr Lampert or his MP." We are satisfied that this is not evidence that an investigation was carried out by the FSA; it is clear that the official is assuming that that is so because it is what Mr Lampert has told him and he is merely expressing his view that the Treasury cannot force the FSA to disclose the result of any investigation that may have taken place;

(2) There is an FSA letter to the Information Commissioner dated 23 September 2009[5] which refers to an "investigation" which was continuing. Read properly in context it is clear that this is a reference to an investigation by the Commissioner himself into the FSA's compliance with one of Mr Lampert's requests for information and not to an investigation carried out by the FSA;

(3) Mr Lampert referred to the letter from Dr Vis to the FSA dated 13 August 2007[6] to which we refer above at paragraph 4; he said that he could not accept that the FSA did not carry out an investigation following that letter and that the Treasury would not have become involved if there had been no

[4] Bundle B, tab 9, p19
[5] Bundle B, tab 11, p27
[6] Bundle B, tab 13, p17

investigation. We have already referred at paragraph 4 above to the letter to Dr Vis dated 26 September 2007 which though not in the bundle was produced for us at the hearing; it is clear to us from the terms of that letter that the FSA did not take any further action in response to Dr Vis's letter of 13 August 2007 and the reliance on section 348 of the Financial Services and Markets Act 2000 is of no significance given that Dr Vis was asking to see copies of all the FSA's files connected with the matter. So far as the Treasury involvement is concerned it is clear that the explanation for this is that Mr Lampert himself or those acting on his behalf brought about this involvement.

(4) Mr Lampert also drew our attention to a number of letters responding to his requests for information where the FSA has said that it holds information answering to such request; read in context it is clear that none of these involve any admission that there are any documents going beyond those of which the Tribunal and Mr Lampert are already aware.

14. As to "the calculation of Lloyds TSB's losses", again the FSA say there is no such document. The only reference to any information about such losses is in a note dated 2 August 2007[7] which the FSA supplied to Mr Lampert long ago. This document is clearly a note of a telephone conversation between an FSA official and someone at Lloyds TSB; it records that Lloyds TSB told the FSA in the course of that conversation that there was "… still a shortfall of over £1m". There is no evidence that any document containing a calculation of Lloyds TSB's losses was supplied to or created by the FSA and we are quite satisfied that there is no such document.

15. As to the briefing notes to Lord Turner dated 30 April 2009 which the Tribunal members were shown in the course of the hearing, it is clear that they do not take the issue of whether there was an investigation any further and, as we told Mr Lampert, they are consistent with the case the FSA has been running all along. In the circumstances, we find that they do not come within the terms of the request for information.

[7] Bundle B, tab 11, p6.

(2) Section 40(1)

16. The Commissioner's position on this issue as set out in his decision notice was as follows:[8]

> **In the previous case the Commissioner had decided that the information was the personal data of [Mr Lampert] because it dealt with complaints he had made to, and other dealings he had had with, the [FSA] and because [he] was identifiable from that information. The Commissioner is satisfied that any information falling within the scope of the request which is the subject of this decision notice would also have been captured by [Mr Lampert's] previous request … and therefore the Commissioner must conclude that any information falling within the scope of the request of 13 January 2010 is the personal data of [Mr Lampert]. Consequently the Commissioner has decided that the requested information is exempt from disclosure under section 40(1) of the [Freedom of Information] Act.**

17. In the light of the guidance of the Court of Appeal in *Durant v FSA*[9] (a similar case to this one on the facts), we consider that the Commissioner was wrong to decide, in effect, that, merely because the information requested by Mr Lampert arose from complaints he made to (or other dealings he had with) the FSA, it constituted his personal data. Ms Blackwood for the Commissioner took the Tribunal through various documents which were accepted as coming within the terms of the request (at bundle B, tab 11, pp 2-26) and demonstrated that there was indeed information contained in them which may well have been Mr Lampert's personal data, for example his address, the fact he had given a guarantee to the bank, and his wife's name. However, there was other information contained therein which was clearly not his personal data and the terms of the request did not, as we have said, make it inevitable that all the information coming within the request would constitute his personal data. In those circumstances, we consider that it was not open to the Commissioner to decide that the information was exempt under section 40(1) in the

[8] Bundle A, tab 6, para 17.
[9] [2003] EWCA Civ 1746

way that he did and that he ought first to have considered whether the FSA were entitled to rely on section 14(1) or (2) of the 2000 Act.

(3) Section 14

18. Section 14(2) provides that a public authority which has previously complied with a request for information is not obliged to comply with a subsequent substantially similar request from the same person unless a reasonable interval has elapsed. As we record at paragraphs 5 and 6 above, the FSA supplied various documents to Mr Lampert following his request of 4 March 2008 and 17 January 2009. In the light of our findings of fact at paragraphs 13 and 14 above it is clear that the provision of those documents represented full compliance with the earlier requests. It is also clear that the request we are concerned with is a "substantially similar request" to those of 4 March 2008 and 17 January 2009. Again, given our finding of fact that there was no investigation going beyond the limited inquiry culminating in the letter dated 6 August 2007[10] and that Mr Lampert had been informed of that fact by the FSA, it is clear that a reasonable interval had not elapsed before the subsequent request. In these circumstances, we consider that the FSA were entitled to rely on section 14(2) in relation to the request we are concerned with and that the Commissioner ought to have so found.

19. Section 14(1) provides that a public authority is not obliged to comply with a request for information which is vexatious. It seems to us in the light of the history we have set out and our findings of fact that there is ample material here from which it could be found that Mr Lampert's request of 13 January 2010 was vexatious, in particular:

    (1) it was a repetition of earlier requests which had been complied with, as we have found in paragraph 18 above;

    (2) it was the final request in a series of at least six from Mr Lampert and MPs acting on his behalf covering essentially the same ground which the FSA had had to deal with;

    (3) one of the requests had already been taken unsuccessfully to the Commissioner;

[10] Bundle B, tab 11, p26.

(4) Mr Lampert was also in the course of pursuing the request by way of an application for disclosure from the court, which had been unsuccessful;

(5) all the requests related to facts going back to the mid-1990s which had been the subject of extensive litigation between Mr Lampert and Lloyds TSB;

(6) the request arose out of Mr Lampert's refusal to accept that the position was as repeatedly stated by the FSA (and as now found by this Tribunal), namely that the FSA had not carried out any investigation beyond the limited inquiry we have mentioned;

(7) as pointed out in the FSA's letter dated 9 February 2010 which we refer to at paragraph 9 above, the FSA had dealt 15 written queries in the course of dealing with his requests of 4 March 2008 and 30 January 2009 and Lord Turner had made clear to Dr Vis in his letter of 1 May 2009 that no useful purpose would be served by further communication with the FSA on the topic.

20. Mr Lampert denied that his request for information was vexatious. He said that obtaining information from the FSA was like "pulling a tooth" and that each time he had put in a further request exemptions previously relied on had dropped away and a little more information had been supplied and that he did not believe he had reached the end. He complained that the briefing notes to Lord Turner (dated 30 April 2009) had still not been supplied to him. He said the FSA did not come to the matter with clean hands and he was sure that further investigations must have been carried out following Dr Vis's letter of 13 August 2007[11]. We do not accept his description of the FSA's behaviour: we consider that they have been as helpful as they could be and that they have continued to communicate with Mr Lampert for some time longer than they perhaps needed to; the main piece of relevant information (ie bundle B, tab 11, pp2-25) was supplied following a request to Lloyds TSB by the FSA which they arguably need not have made. The Lord Turner briefing notes do not come within the terms of the request and in any event do not take matters any further at all. We have found as a fact that there were no further investigations.

[11] Bundle B, tab 13, p19.

21. In all the circumstances we consider that the request of 13 January 2010 was vexatious and that the FSA were entitled not to comply with it on that basis as well as on the basis of repetition. We therefore consider that the Commissioner ought to have found in his decision notice that they were entitled to rely on both sections 14(1) and 14(2) as they had maintained.

Disposal

22. For all those reasons we have decided that, although Mr Lampert was not entitled to any information in response to his request of 13 January 2010, the Information Commissioner's decision notice dated 6 December 2010 was not in accordance with the law and should be substituted with the notice set out above.

23. We hope that our findings will now bring an end to this matter at last.

24. Our decision is unanimous.

HH Judge Shanks

Dated 7 June 2011

IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS)
GENERAL REGULATORY CHAMBER

Appeal No: EA/2010/0203

BETWEEN:

JEFFREY LAMPERT

Appellant

and

(1) THE INFORMATION COMMISSIONER
(2) FINANCIAL SERVICES AUTHORITY

Respondents

DECISION ON APPLICATION FOR PERMISSION TO APPEAL

1. Mr Lampert has applied for permission to appeal against the Tribunal's decision dated 7 June 2011 which found that the FSA was not obliged to comply with his request for information by reason of both sections 14(1) and 14(2) of the Freedom of Information Act 2000. The right of appeal is only on a point of law so that permission can only be granted if he has identified an arguable mistake of law on the part of the Tribunal.

2. Mr Lampert's proposed grounds of appeal against the Tribunal's findings on sections 14(1) and (2) (which are at paragraphs 18 to 21 of the Tribunal's decision) are at paragraphs 13 to 20 of his application. He refers to "ICO 2009 guidelines to Section 14" and sets out what he says are two requirements of the "Vexatious Request" defence. The only relevant guidance I am aware of was published by the Commissioner on 3 December 2008; although that document can be of assistance it is not a statement of the relevant law and does not purport to be: the law is contained in section 14 itself.

3. In any event, whatever his precise source, Mr Lampert says that the two requirements are (1) that the request was repeated by the same person and was identical to a previous request and (2) that a reasonable interval between requests has not elapsed, the guidelines suggesting 60 working days as a benchmark. I am afraid neither of those propositions are entirely correct: section 14(2) refers to a "subsequent identical or *substantially similar* request" (my emphasis) and to a "reasonable interval" but there is no mention of a 60 day "benchmark" anywhere in the legislation. Further I would point out that neither of the requirements Mr

Lampert refers to appears to be of any direct relevance to section 14(1) which simply refers to a request which is "vexatious."

4. Basing himself on his assertion as to what the two requirements are Mr Lampert points out in paragraph 16 that more than 60 days elapsed between his first and second and his second and third requests for information. As I have said there is no legal basis for any 60 day requirement (and I confess I can find no reference to such a requirement in anything published by the Commissioner). The only requirement of section 14(2) is that a "reasonable interval" has not elapsed; what is reasonable clearly depends on the circumstances; in this case the Tribunal found that a reasonable interval had not elapsed because (it found as a fact) there was no FSA investigation or enquiry going beyond the limited one culminating on 6 August 2007 and Mr Lampert was so informed by the FSA (see paragraph 18 of the decision). As for section 14(1), the relevant findings are at paragraphs 19(1) and (2) of the Tribunal's decision: the precise amount of time between Mr Lampert's requests is of no relevance to those findings. This point therefore does not give rise to any arguable point of law on either section 14(1) or (2).

5. At paragraphs 18 and 19 Mr Lampert says in effect that he is still seeking the Lord Turner briefing notes[1] and that his request was designed to capture such documents and so is not a repetition of previous requests. The Tribunal found as a matter of fact that the briefing notes were not caught by the new request and that they did not establish that there were any further investigations as Mr Lampert contends. In any event, section 14(2) only requires that the later request is "substantially similar" to the earlier request and the mere fact that there may be one additional document coming within its terms which did not come within the terms of the earlier request (not least because the document did not exist at the time of the earlier request) does not prevent the request being "substantially similar" as the Tribunal found it to be. In any event, even if the point had any merit, it does not impinge on section 14(1) and would therefore be entirely academic.

6. For those reasons Mr Lampert's proposed appeal is hopeless and I reject his application for permission to appeal. He may renew his application direct to the Upper Tribunal provided that the Upper Tribunal receives his application no later than a month after this decision is sent to him.

HH Judge SHANKS
14 July 2011

[1] **The notes are dated 30 April 2009 and referred to in paragraphs 12(c), 15 and 20 of the Tribunal decision.**

IN THE UPPER TRIBUNAL
Administrative Appeals Chamber
Judge: P L Howell QC

File No: GIA 2086/11

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
Tribunal Procedure (Upper Tribunal) Rules 2008 SI No 2698
FREEDOM OF INFORMATION ACT 2000

APPLICATION FOR PERMISSION TO APPEAL FROM DECISION OF FIRST-TIER TRIBUNAL

Applicant:	Jeffrey Lampert
Respondents below:	(1) Information Commissioner (2) Financial Services Authority
First-tier Tribunal:	Information Rights
First-tier case ref:	EA/2010/0203
Decision dated:	7 June 2011

NOTICE OF DETERMINATION OF APPLICATION

I refuse permission to appeal.

REASONS

No arguable error of law in the tribunal's decision is shown. An appeal to the Upper Tribunal can only be brought on some question of law: section 11 Tribunals, Courts and Enforcement Act 2007. The tribunal's decision that on the facts of this case the applicant's request fell within the exceptions in section 14(1) and (2) of the Freedom of Information Act 2000 for vexatious and repeated requests so that the Authority did not have to comply with it was properly based on the evidence and one the tribunal was entitled to reach, applying any reasonable meaning of the terms of those provisions. The reasons for that conclusion were clearly and comprehensively set out in the decision of 7 June 2011 and I agree with the first-tier Judge's grounds for refusing permission in his further determination of 14 July 2011: no useful purpose could be served, as the proposed appeal is hopeless.

(Signed)

P L Howell
Judge of the Upper Tribunal
8 September 2011

Under rule 22(3)-(5) of the Upper Tribunal Procedure Rules the applicant may apply for this decision to be reconsidered at an oral hearing but any such application must be made in writing and received by the Upper Tribunal within 14 days after the date on which this notice is sent to the applicant.

THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Appeal No. GIA 2086 2011

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Appellant:	**Jeffrey Lampert**
Respondent:	**Financial Services Authority (the Authority) and Information Commissioner (the Commissioner)**
Tribunal:	**First-tier Tribunal General Regulatory Chamber Information stream**
Tribunal Case No:	**EA 2010 0203**
Hearing Date:	**24 05 2011**

APPLICATION FOR PERMISSION TO APPEAL
DECISION OF THE UPPER TRIBUNAL

I refuse permission to appeal

REASONS

1 The appellant requests permission to appeal against the decision of the First-tier Tribunal on 24 05 2011. He first requested permission to appeal from a First-tier Tribunal judge. This was refused. He renewed his application to the Upper Tribunal. This was also refused on the papers. So the appellant exercised his right to renew the application at an oral hearing and I was listed to hear the renewed application. I gave directions for the hearing on 1 11 2011. It was held by me in London on 12 03 2012.

2 The appellant attended the hearing, accompanied by a representative from the Personal Support Unit based at the Royal Courts of Justice. I heard submissions from both. The Financial Services Authority was represented by Mr Greg Choyce, who had also represented the Authority before the First-tier Tribunal and in other proceedings involving both the appellant and the Authority. I am grateful to all for their thorough but courteous submissions to the hearing. The Information Commissioner was not directed to appear at the hearing and did not do so.

3 The appellant had made a number of attempts to secure information from the Authority. The matter before the First-tier Tribunal was the refusal by the Information Commissioner of an application made on 13 01 2010 to order the production of specified information by the Authority. The decision of the First-tier Tribunal records the parties as agreeing the scope of that request at the tribunal hearing. That is set out in paragraph [8] of the tribunal decision. It also records the Authority as resisting the application because it was repeated and vexatious (paragraph [9]). It is recorded further that the Commissioner accepted that the request was a repeat and that the information requested was personal data within the scope of section 40 of the 2000 Act (paragraph [10]).

4 In summary, the First-tier Tribunal decided against the appellant in the outcome. But it found for the appellant in connection with the section 40 issue. Instead, it concluded that the Commissioner should have considered section 14 before considering section 40. This

deals with vexatious or repeated requests. The First-tier Tribunal decided that both section 14(1) (vexatious requests) and section 14(2) (repeated requests) applied to this appeal. The tribunal therefore decided that the Information Commissioner's notice was not in accordance with the law. Instead it substituted its own notice that the Authority was not obliged to comply with the appellant's request by reason of section 14(1) and (2) of the Act.

5 A number of additional documents were put before me before and at the hearing. These included documents produced from the Metropolitan Police and a copy of the transcript of proceedings before (but not of the decision of) Floyd J in *Lampert v Lloyds TSB Bank* in the Chancery Division on 24 06 2011. The Authority produced a chronology, although the appellant objected to some parts of it as not relevant.

6 As I emphasised at the hearing, my task is to consider whether there is any arguable ground for considering that the tribunal below erred in law in such a way as to have a material effect on its decision. In considering that issue, I cannot consider new evidence. So I am not assisted by additional documentation such as that from the police. The matter is to be decided on the evidence before the tribunal, unless it is shown that evidence was missing through some procedural reason or other unfairness. But I also emphasised that I would take that decision without regard to the decisions of the First-tier Tribunal judge and the Upper Tribunal judge who had previously refused permission.

7 The appellant helpfully summarised his main points in a skeleton argument, which I went through with him at the hearing. It was clear from his submissions that he is convinced that he has not been given sight of all relevant documents about his affairs held by the Authority. He also took strong exception to being described as "vexatious". Further, he considered that the term had been misused by the tribunal. He raised further points linked to the terms of the information requests. However, I pointed out to him that the tribunal had expressly adopted a view of the application that he had accepted together with the Authority, so I would need strong persuasion that that recorded understanding was not the proper basis for the tribunal to consider the matter.

8 The representative of the Personal Support Unit added in a short additional submission supporting the contention of the appellant that it was arguable that the appellant had not been treated fairly by the tribunal below. He had come along to resist an argument based on section 40, but had been met by an argument based on section 14. He had been taken by surprise by that, and natural justice (and/or the Convention on Human Rights) required a further hearing so that he could answer the point.

9 Mr Choyce resisted the application. There was, he submitted, nothing new in the case put to me, and nothing new in the request made by the appellant. The tribunal was correct in dealing with the matter under section 14, and had not been unfair in any way in doing so.

10 Having heard the parties, I thought it right to look in more detail at the papers before the tribunal below in particular to see how far the issues in dispute had been identified and explored at or before the hearing in the First-tier Tribunal.

11 I note first that the issue of the scope of the application had been the subject of case management directions and proceedings before the full hearing took place. In particular, the Authority provided a Position Statement to the tribunal on 6 04 2011. Paragraph [3] of that document identifies the three issues identified in paragraph [8] of the tribunal decision. That was echoed in paragraph [4] of the Commissioner's Further Representations issued on 5 05 2011. I consider that these documents make it plain that the scope of the application was

subject to thorough consideration and the outcome is reflected fairly in the First-tier Tribunal decision.

12 As to the relevance of section 14, I note that this formed the basis of the rejection of the appellant's request by the Authority on 9 02 2010. On 16 06 2010 that point was put to the Authority by the Commissioner in a letter informing the Authority of the appellant's complain and asking fur a full explanation. The reply from the Authority specifically bases its response on both section 14(1) and section 14(2). Further, in a reply by the appellant dated 1 03 2011 the appellant submits that "the FSA is abusing s 14 of the Act" (paragraph 17 of the appellant's first witness statement). In the position statement of 6 04 2011, the Authority again based its case on both section 14(1) and section 14(2). Finally, the Authority's skeleton argument returns to the issue contending that the FSA was justified in relying on both limbs of section 14.

13 I am satisfied in the light of the above that the tribunal, in resting its decision on section 14, took a course of action for which the Authority had consistently argued from its first refusal to provide the appellant with any further information following his request. Further, the Authority had made that clear in all its submissions to the Commissioner and to the First-tier Tribunal. While the approach taken by the Commissioner resulted in no comment on this issue in the Commissioner's decision, that did not change the basis of the Authority's approach.

14 I do not accept therefore that there could be said to be any element of "ambush" or procedural unfairness in the tribunal finding that section 14(1) or (2), or both, applied to the appellant's request if section 40 did not. The matter was plainly in issue before the tribunal. It may be that the appellant, being unrepresented and unadvised, did not appreciate that the tribunal could reach a decision that was different to the Commissioner. It undoubtedly does have that power, and I see no error of law in it exercising that power in the way it did in this case. As noted above, the matter had been questioned by the Commissioner in the proceedings even if the Commissioner did not consider it relevant to the notice given under section 40.

15 The other ground on which the appellant rested weight at the hearing was an attempt to challenge a finding of fact by the First-tier Tribunal. The tribunal found, at paragraph [13] that "we are quite satisfied on the balance of probabilities that there was indeed no investigation." This was a finding directly relevant to the first of the three agreed issues within the scope of the appellant's complaint. And at paragraph [18] the tribunal repeated "our finding that there was no investigation going beyond the limited enquiry culminating in the letter dated 6 08 2007". The appellant sought (and still seeks) papers showing that the Authority conducted an investigation into his complaint about Lloyds TSB. The Authority repeatedly stated (and states) that it did not, and that therefore there were no documents to produce.

16 The appellant has been engaged in other litigation alongside this appeal and his previous applications under the Freedom of Information Act. As he contends that a considerable amount of money disappeared from a company in which he was involved and that this resulted in his personal bankruptcy, the existence of other proceedings does not surprise me. But there is always a danger that two or more courts or tribunals appear to stray into each other's jurisdiction without any deliberate intention of doing so. There is, less often, a danger that one court or tribunal takes a step that can only be taken properly by another court or tribunal.

17 In this case the appellant was able to produce, as noted above, a transcript of proceedings before a judge of the Chancery Division of the High Court. In those proceedings, Floyd J was considering an application to produce documents in connection with the bankruptcy proceedings. During the proceedings he was taken to the decision of the First-tier Tribunal in this appeal. The appellant made a point to him about "reviews" and "investigations", referring to paragraph [5] of the First-tier Tribunal decision. In commenting on this submission, Floyd J stated: "I do not think there is any dispute that there was some form of investigation".

18 The appellant now asks me to find that this shows that the First-tier Tribunal erred in law in finding that there was no investigation of the kind contended by the appellant. I do not accept that submission. I did not see the decision taken by Floyd J following these proceedings but I am told the appellant did not succeed in them. That plainly does not assist the appellant. More specifically, I do not consider that this point helps the appellant either. It is plain from the proceedings that the appellant had taken Floyd J to the decision of the First-tier Tribunal, though Mr Choyce made a point about the appellant appealing that decision only later in these proceedings. More to the point, it is obvious from the transcript that the court was going through the First-tier Tribunal decision paragraph by paragraph but had only reached paragraph 5 when Floyd J made the comment recorded. The relevance of the wording of the request (recorded as a matter of agreement in paragraph [8]), and the finding of fact of the tribunal, recorded in paragraph [13] and again in paragraph [18], had not been reached at that stage of the argument – and, indeed, were never reached by the appellant. The transcript shows that Mr Choyce took Floyd J to paragraph [18] and that finding of fact in his submission to the court.

19 I find that the comment in passing of Floyd J is of no assistance to the appellant. The finding of fact of the tribunal below is entirely clear, as is its interpretation of the scope of the application to it. I can see no arguable error of law in the decision of the tribunal on these points.

20 The other issue of law is whether the tribunal misinterpreted or misapplied both section 1491) and section 14 (2) of the Act in its decision. I refer to **both** because the Authority rested its decision on both and so did the tribunal. It would not be sufficient here to find an arguable error about one of those subsections unless an arguable error were also identified with regard to the other subsection.

21 Section 14(1) depends on the meaning of "vexatious". And it must be emphasised that it is the request that must be vexatious, not the appellant. So the history of an appellant conducting other litigation is not relevant here. It is the repetition of requests that is the focus as with subsection (2). Subsection (2) applies when substantially identical or substantially similar requests are made without a reasonable interval between them.

22 In my view, both these subsections are to be applied as a matter of the application of the ordinary English language on the evidence shown. The Chambers Dictionary defines vexatious in the context of litigation as meaning that it was brought on insufficient grounds with the intention of annoying the other party. The Oxford dictionaries carry similar meanings. What is "substantially similar" and what is "reasonable" as a period of time are clearly matters for the evaluation of the tribunal.

23 Paragraphs [18] to [21] of the tribunal decision set out both its understanding of the section and its findings and reasons for considering both relevant here. The main point made against that by the appellant is that this not consistent with the code of practice issued by the

Commissioner on section 14, *When can a request be considered vexatious or repeated?* and copied into the papers. He sought to persuade me in his skeleton argument that each of the points listed in that document as relevant to whether something is vexatious should be found in his favour. In my view, that takes the appellant no further.

24 I resist the temptation to turn an ordinary English word into a technical term, or to embroider it in the way the Commissioner suggests. Indeed, I rather agree with the comment made by Floyd J at page 10B of the transcript referred to above; "I think it is a bit dangerous to have these benchmarks." So far as relevant here, the Commissioner's guidance does not fetter the decision of the tribunal in any way. And there is no authority binding on the tribunal suggesting otherwise or giving the tribunal other guidance about whether something is "vexatious". I decline to offer such guidance here. It is not needed in this case. The tribunal has looked fully at the facts and reached a decision well within any margin of discretion that the facts may have given it. And in any event, it has reached a decision under section 14(2) which is also fully within its competence on the evidence before it. So, at the end of the day, it is not material even if it erred in law – and I say it did not – on the matter of section 14(1).

25 I see no other ground warranting consideration in this application and must therefore dismiss it.

David Williams
Judge of the Upper Tribunal
19 03 2012

[Signed on the original on the date stated]