IN THE MATTER OF AN APPEAL AND APPEALS TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS)

UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal No. EA/2012/0042

BETWEEN:

ROBERT CAPEWELL

Appellant

AND

THE INFORMATION COMMISSIONER

Respondent

RULING ON APPLICATION TO STRIKE OUT APPEAL

DECISION

The Tribunal acting by a single judge strikes out the Appellant's Notice of Appeal under r.8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Tribunal rules) on the ground that the Tribunal considers that there is no reasonable prospect of the Appellant's appeal or part of it succeeding.

REASONS

1. The Appellant appeals against the decision of the Information Commissioner (the Commissioner) as set out in a Decision Notice dated 6 February 2012 reference number FS50403934. The Commissioner in his written response seeks an order that the appeal be struck out under the Tribunal rules.

2. On 23 February 2011 the Appellant wrote to the Ministry of Justice being the public authority in this matter requesting the following information:

> "1. Will there be any new conduct rules using the appointment of management receivers since my case became the bench mark case,
>
> 2. Can you please supply me with the rules these people when appointed have to follow.
>
> 3. If a receiver has been allocated the work from an independent panel who decides the suitability of the appointment,
>
> 4. If a receiver has been chosen to look after certain types of cases, ie fraud cases, is it normal for the other management receivers on the independent panel not to be chosen and the majority of the work allocated to one man and his team of racketeers,
>
> 5. If a senior member of customs was the person handing out this mans work would some one of [sic] asked in time how come this man has been getting the work when we have a panel of suitable qualified men or women who could have done the appointments,

6. If there had been a breach of the 2010 bribery act, what would the MOJ do about this."

3. The public authority responded on 17 March 2011. It claimed that the requested information was not held and explained that the appointment of management receivers was the responsibility of the Insolvency Service. An internal review upheld the original decision. After the involvement of the Commissioner in this matter the public authority was contacted. The public authority explained to the Commissioner that a number of related services had been contacted in its search for the requested information including but not limited to Her Majesty's Court Service, the Bribery Act Implementation team, the Judicial Policy and Appointment's division, the Royal Courts of Justice and other similar organisations and units. In particular the Criminal Policy Team had confirmed to the public authority that there was no recorded information held in relation to the first question. The Commissioner confirmed that there were no Criminal Procedure Rules about the conduct of receivers appointed under the Proceeds of Crime Act 2002 and therefore the public authority itself did not hold any of the requested information. The said Team with reference to question 6 of the questions set out above had confirmed that the Bribery Act 2010 had not yet "been commenced" and that any investigation of any alleged crime connected with that Act would be "an operational matter for the Police". Again for that reason the public authority confirmed that it did not hold the requested information. With regard to questions 2 and 3 the public authority made the same response and the same also applied to questions 4 and 5 as they too related to legislation on governing appointments. In the Decision Notice at paragraph 13 the Commissioner noted that the "relevant business areas" confirmed that no recorded information was held by the public authority in that connection.

4. In paragraph14 of his Decision Notice the Commissioner confirmed that in cases where there was a dispute between the amount of

information located by a public authority and the amount of information which a complainant believed might be held, the Commissioner, in the light and wake of decisions made by this Tribunal, applied the civil standard relating to the balance of probabilities, ie the Commissioner had to decide whether on such a balance a public authority held at the time of the request any information falling within the scope of the request.

5. At paragraph 15 the Commissioner confirmed that he was satisfied that in the present case the public authority did not hold any of the recorded information relating to the request. Moreover, he confirmed that the public authority had demonstrated "adequate and reasonable searches for the requested information" which when coupled with the Commissioner's own research and investigation had shown "that the appointment and conduct of management receivers is not within the remit of the MOJ."

6. At paragraph 17 and following of the Decision Notice the Commissioner considered the duty to provide advice and assistance under section 16 of the Freedom of Information Act 2000 (FOIA). At paragraph 18 the Commissioner pointed out that the MOJ had directed the complainant, ie the Appellant, to the Insolvency Service. A letter from that Service had evidenced and confirmed that the said Service did not "govern the appointment or conduct of management receivers". That position was confirmed formally in writing by the MOJ itself and the relevant confirmation is set out at paragraph 19 of the Decision Notice. Paragraph 20 stated that the MOJ had confirmed to the Commissioner that the Crown Court had a discretion to appoint a management receiver and that the same was done on application by the Crown Prosecution Service.

7. The Notice of Appeal is dated 22 February 2012. It is accompanied by an email sent by the Appellant to the Tribunal dated 8 February 2012 and timed at 16.53. It contains the following passage, namely:

"the issue i have with the letter written to me on the 6th feb 2012 is that there does seem to be a complete lack of knowledge by the ministry of justice who i believe control the court system, the receiver in my case was given the status, ie high court appointed, so some one in the court system gave this man this status, i wanted to know once i was told yes the moj does control the uk courts therefore the high court status of this receiver was signed off by a court officer who would be answerable to the MOJ there for [sic] i ask that some one has a look at this actual full issue who at the MOJ deals with the licences given out to receivers ..."

8. In his response dated 5 April 2012 at paragraph 7 the Commissioner states that he is "unable to determine any valid grounds in the Appellant's Notice of Appeal." With great respect the Tribunal agrees. As can be seen from the passage quoted above the Appellant complains about the "lack of knowledge" on the part of the MoJ as to who is responsible for the appointment and conduct of management receivers. Prior to the passage quoted above there is a brief reference to "page 5, part 20". The Tribunal respectfully agrees with the Commissioner this appears to be a reference to paragraph 20 of the Decision Notice which explains that the MOJ has informed the Commissioner that management receivers were appointed by the Crown Court on application by the CPS.

9. This last matter is an issue touched on in the Commissioner's consideration of the MOJ's duty to provide advice and assistance under FOIA. That is generally and specifically addressed within the confines of paragraph 17 to 22 inclusive of the Decision Notice.

10. As indicated above the Decision Notice pointed to the fact at paragraph 18 that it was not part of the Insolvency Service's remit to appoint and oversee the work of management receivers. In effect this was an indication to the Appellant that he might wish to contact that Service or indeed the CPS to see if they could assist with his request. The fact remains ,as the Commissioner rightly points out ,that the finding made by the Commissioner was that the Insolvency Service did not appoint

or oversee the work of management receivers who are in fact appointed under the Proceeds of Crime Act 2002.

11. Reverting to paragraph 20 of the Decision Notice ,that paragraph as has been said confirmed that there was an exchange between the MOJ and the Commissioner that the Crown Court had a discretion to appoint a management receiver and that this was done on the application of the CPS. At paragraph 21 it was pointed out that the MOJ did "correctly" direct the complainant to the CPS as well as to the Insolvency Service in relation to a response to questions 2, 3 and 6 of the request. It also informed the complainant/Appellant that there were no criminal procedure rules about the conduct of management receivers appointed under the 2002 Act. It followed that any request or query should be directed to the CPS in the future and not the MOJ.

12. This Tribunal therefore accepts the contention made by the Commissioner that the extent of the MOJ's "knowledge" beyond that finding expression in the Decision Notice relating to the appointment of management receivers is not a matter for the Commissioner nor for this Tribunal. The Tribunal also agrees with the Commissioner that the extent of any such "knowledge" has no bearing on the Commissioner's substantive decision to the effect that the MOJ did not hold any information within the scope of the request.

13. It necessarily follows that no valid grounds are raised by the Appellant in his Notice of Appeal to undermine that decision.

14. In accordance with the Tribunal rules the Appellant was given an opportunity to respond to the application to strike out which was indicated to him in the Response. This Response took the form of three emails dated 16 April, 18 April and 19 April 2012. In the first of these emails the following passage appears:-

"This moj issue is only re the rules the moj have in allowing the court system to appoint management receivers over assets under the crimjnal [sic] justice act of 2002 this requestis only re the moj S not

knowing themselves they do this task theyadmit the rule of the courts [sic]. my receiver was given the licence by the court to be court appointed what i needed to know once we found the correct dept at the moj which they seem to think does not assist is to ask who from customs gave this man his reference to act as a management reciever [sic] as my actual complaint involves corruption. and all the work going to this man sinclair because his mate worked at the rcpo as a lawyer he is dead now ..."

15. In the second of the emails the Appellant contends whether or not the MOJ had "knowledge of the workings of an organisation bares [sic] no relation to either the IC or the FtT-IR and the IC feels your appeal could be struck out as it has no prospect of success." Thereafter there is nothing as it seems to the Tribunal which is of any materiality in providing reasons as to why the appeal should not be struck out. Finally, there is nothing of any substance in the third email referred to, that of 19 April 2012.

16. For all the above reasons the Tribunal acting by a single judge is entirely satisfied that there exist no valid grounds for an appeal and that the appeal must be struck out on the basis that it stands no reasonable chance of success on the appeal.

David Marks QC
Tribunal Judge

Date: 18 May 2012