

IN COURT OF APPEAL (CIVIL DIVISION)

C1/2017/0470/A

BEFORE FLOYD, SALES AND FLAUX LJ

AND ON APPEAL FROM THE HIGH COURT OF JUSTICE

DIVISIONAL COURT (SIR BRIAN LEVESON PQBD AND LEGGATT J)

BETWEEN

**THE QUEEN ON THE APPLICATION OF
PRIVACY INTERNATIONAL**

Appellant

AND

THE INVESTIGATORY POWERS TRIBUNAL

Respondent

AND

**SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS (1)
GOVERNMENT COMMUNICATIONS HEADQUARTERS (2)**

Interested Parties

RESPONDENT'S SUPPLEMENTARY NOTE

1. At the hearing on Thursday 5 October, there was some discussion as to the approach that the Investigatory Powers Tribunal (“the Tribunal”) would take to a claim under s.65(2)(c) or (d) of Regulation of Investigatory Powers Act 2000 (“RIPA”). Those sub-sections provide:

“(2) The jurisdiction of the Tribunal shall be—

- (a) to be the only appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 in relation to any proceedings under subsection (1)(a) of that section (proceedings for actions incompatible with Convention rights) which fall within subsection (3) of this section;
- (b) to consider and determine any complaints made to them which, in accordance with subsection (4). . . , are complaints for which the Tribunal is the appropriate forum;
- (c) to consider and determine any reference to them by any person that he has suffered detriment as a consequence of any prohibition or restriction, by virtue of section 17, on his relying in, or for the purposes of, any civil proceedings on any matter; and**
- (d) to hear and determine any other such proceedings falling within subsection (3) as may be allocated to them in accordance with provision made by the Secretary of State by order.”** (Emphasis added)

2. Those provisions bear on s. 67 (9) of RIPA which in turn provides:

“(8) Except to such extent as the Secretary of State may by order otherwise provide, determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether they have jurisdiction) shall not be subject to appeal or be liable to be questioned in any court.

(9) It shall be the duty of the Secretary of State to secure that there is at all times an order under subsection (8) in force allowing for an appeal to a court against any exercise by the Tribunal of their jurisdiction under section 65(2)(c) or (d).” (Emphasis added)

3. Sections 65 (c) and (d) of RIPA have not been brought into force (see schedule of commencement provisions from Halsbury’s attached). The Tribunal has therefore never had to consider a claim under those provisions.

JONATHAN GLASSON QC

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9 October 2017