



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2020/0091V**

**Before**  
Judge Stephen Cragg Q.C.

**The case was heard through the CVP platform on 11 January 2021.**

**Between:-**

**Robert Wakeling**

Appellant

-and-

**The Information Commissioner**

Respondent

**Attendances:**

For the Appellant: In person

For the Respondent: Mr Leo Davidson

**DECISION AND REASONS IN RELATION TO APPLICATION UNDER RULE  
7A FIRST-TIER TRIBUNAL (GENERAL REGULATORY CHAMBER) RULES  
2009 (AS AMENDED)**

## DECISION

1. The application is dismissed.

## MODE OF HEARING

2. The proceedings were held via the Cloud Video Platform. All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

## BACKGROUND

3. The Appellant appealed against a decision notice from the Commissioner to the effect that his request for information from a local council (Teignbridge District Council) was vexatious for the purposes of s14 FOIA.
4. The hearing of that appeal took place on 11 January 2021 and there is a separate decision which deals with the merits of the appeal.
5. However, during the preparation of the appeal the Appellant made an application under rule 7A of the Tribunal Rules for the Tribunal to certify to the Upper Tribunal certain acts and omissions of the Commissioner as amounting to contempt.
6. Directions were given that that application should be heard at the same time as the substantive appeal, and that duly occurred.

## THE APPLICATION

7. On 29 September 2020 the Appellant made the following application to the Tribunal:-

In accordance with Rule 7A of the First-tier Tribunal (General Regulatory Rules) 24th September 2019, the Appellant hereby applies to the Tribunal to certify to the Upper Tribunal the following acts and omissions by the Respondent (Information Commissioner) and Witness (Teignbridge District Council). The

submission of the Respondent 24th September 2020 crystallises the extent of disobedience by the Respondent in a continued effort to obstruct the Tribunal in the implementation of justice. On the 03rd of September the Respondent was provided with a detailed report identifying that the submissions of Teignbridge District Council consisted of false, misrepresented, and omitted information to a very great degree, and this report was followed up with further evidence from the Appellant on 21st September. That the Respondent has continued with the misinformation, without address or concern, and disobeyed the Directions given on 07th September and earlier, identifies disrespect for the Tribunal, and wilful intent to interfere with the cause of justice.

1. Disobeyed Directions of Judge Moira Macmillan to agree the content of the electronic bundle with the Appellant before submission, failed to comply with the directed submission date, failed to investigate the misinformation as identified by the Judge, and failed to act upon the Judge's identification of a breach of ECHR Act Article 6.

2. Sought to obstruct the implementation of justice by the inclusion of irrelevant material for the purpose of causing confusion and distraction. The inclusion of a planning appeal amounting to 68 pages (E668 - E716) and which has no relevance to the Case, exemplifies the wilful attempts to establish an unfounded and falsified claim of vexatious against the Appellant.

3. Disobeyed Procedural Directions of Registrar Mr S Bamawo to cooperate with the Appellant to clarify issues before submission to the Tribunal, and disobeyed submission date Directions.

4. Submitted and allowed to be submitted misinformation with the wilful intent of interfering with the cause of justice.

8. I should note that the Appellant submitted a final document to the Tribunal at the hearing on 11 January 2021, said to be a response to the Commissioner's skeleton argument filed on 7 January 2021. It is headed up 'Certification Bundle' It largely deals with issues that occurred before the Appellant filed his appeal on 26 February 2020 (and so relates to issues which arose when the Commissioner was investigating the Appellant's complaint and before the Commissioner was party to any proceedings),

and makes generalised comments about the Commissioner withholding information, but also makes points which go to the substantive appeal. The Appellant also argues why his application is not out of time.

## LEGAL FRAMEWORK

9. Section 61(4) FOIA gives the FTT a power to “certify the offence to the Upper Tribunal” where a person does something, or fails to do something, which would constitute contempt of court.

10. Rule 7A of the Tribunal Rules states, materially:-

7A. – (1) This rule applies to certification cases.

(2) An application for the Tribunal to certify an offence to the Upper Tribunal must be made in writing and must be sent or delivered to the Tribunal so that it is received no later than 28 days after the relevant act or omission (as the case may be) first occurs.

(3) The application must include –

- (a) details of the proceedings giving rise to the application;
- (b) details of the act or omission (as the case may be) relied on;
- (c) if the act or omission (as the case may be) arises following, and in relation to, a decision of the Tribunal, a copy of any written record of that decision;
- (d) ...
- (e) the grounds relied on in contending that if the proceedings in question were proceedings before a court having power to commit for contempt, the act or omission (as the case may be) would constitute contempt of court;
- (f) a statement as to whether the applicant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate, and
- (g) any further information or documents required by a practice direction.

(4) If an application is provided to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time) –

(a) the application must include a request for an extension of time and the reason why the application was not provided in time, and

(b) unless the Tribunal extends time for the application, the Tribunal must not admit the application.

(5) When the Tribunal admits the application, it must send a copy of the application and any accompanying documents to the respondent and must give directions as to the procedure to be followed in the consideration and disposal of the application.

(6) A decision disposing of the application will be treated by the Tribunal as a decision which finally disposes of all issues in the proceedings comprising the certification case and rule 38 (decisions) will apply.

11. The Commissioner has submitted a skeleton argument resisting the application. That skeleton argument seeks to explain the level of seriousness of an act or omission which is required before such act or omission becomes a contempt of court. I bear that in mind: it is certainly not every failure to comply with an order of the court which will constitute contempt of court. The Commissioner cites the Editors of the White Book who say at 3C-9,

“Generally, because the court has at its disposal other sanctions for ensuring that justice is done between the parties, a failure by a party to comply with an obligation imposed on him by rules of court is not a contempt of court.”

12. I also bear in mind that when exercising its certification power, the Tribunal must seek to give effect to the overriding objective as set out in r.2(3)(a) of the Rules.

## DECISION

13. The Commissioner makes the point that some of the complaints included in this application are out of time. However, the Appellant made his application on 29 September 2020 about ongoing events which had occurred in the previous few weeks. The complaints were partly about the Commissioner missing deadlines, and it would be unfair, in my view, to dismiss the Appellant's application on the basis of time limits, and I exercise my discretion to extend time.
14. However, in my view none of the conduct referred to in the application comes anywhere near the seriousness required to amount to contempt and therefore should not be certified to the Upper Tribunal as an offence where a person has done something, or fails to do something, which would constitute contempt of court.
15. In general, these were appeal proceedings which generated a lot of paperwork and required a number of directions by judges and registrars to bring the case successfully to a hearing on 11 January 2021. The preparation of the case took place during the coronavirus period in 2020 when public authorities including the Information Commissioner's Office were struggling to deal with new ways of working including, relevantly to this case, the preparation and delivery of electronic bundles in a system that had previously relied on the preparation and copying of hard copy bundles.
16. Any failures by the Commissioner to comply with case management directions, in these extenuating circumstances, did not, in my view, have the intention or effect of disrupting the proceedings or flouting the authority of the Tribunal.
17. It is always preferable if the parties to an appeal comply with directions given and, if not possible, make applications to vary the directions before time limits pass. That did not always happen in this case, but the accepted

lapses were dealt with by judges and registrars in subsequent directions hearings (these continued until 22 December 2020).

18. In respect of **Point 1**, relating to the missed case management deadlines in August 2020, the Commissioner accepts that these were regrettable failures, but in the scheme of the proceedings minor. The failures related to agreeing and providing a bundle for the appeal hearing.
19. As the Commissioner submits there was no disruption to the proceedings as a hearing date had not been set. In total, there was a delay of three weeks from the initial deadline (6 August 2020) and the provision of the bundles (27 August 2020). The Tribunal exercised its discretion on 18 August 2020 to grant an extension of time and did not see fit to impose any sanction on the Commissioner at that time. No issue in relation to Article 6 arises here: the bundle was prepared and available well before the appeal hearing on 11 January 2021.
20. In relation to **Point 2** which alleges that there was an intention to 'obstruct the implementation of justice by the inclusion of irrelevant material for the purpose of causing confusion and distraction', as the Commissioner argues, she did no more than collate, in the trial bundle, the material which had been provided by the Appellant and the public authority. This was a case which had documentation spanning 15 years, amounting to over 800 pages, and I accept that it was not the function or right of the Commissioner to vet what other parties may wish to include in the bundle.
21. **Point 3** relates to (i) a failure to cooperate with the Appellant, specifically to identify and clarify issues; and (ii) a failure to provide dates to avoid by 21 September 2020 contrary to the 4 September 2020 directions. The Registrar reminded the parties of the existing duty of co-operation, as part of the overriding objective. The Commissioner argues that any failure to comply with the 4 September 2020 directions, while regrettable, was minor

and did not cause any material disruption to the proceedings. It is also pointed out that the matter was considered by UTJ O'Connor at the case management hearing on 9 October 2020 where he issued updated directions, requiring the parties to "comply with the substance of directions 7, 8 and 12" of the 4 September 2020 directions.

22. **Point 4** alleges that the Commissioner submitted, and allowed to be submitted, misinformation with the wilful intent of interfering with the cause of justice. Once again the Commissioner points out that she included in the bundle information from both the Appellant and the relevant council in relation to their respective cases as to whether the Appellant's request for information was correctly categorised as vexatious or not. The Commissioner says, and I agree, that if the material in the bundle is probative, the Tribunal will have regard to it; if it is irrelevant, the Tribunal is quite capable of simply ignoring it.

23. To the extent that the Appellant seeks to include Teignbridge District Council (who were not a party to the appeal) in this application, for completeness I reiterate that the Council was entitled to provide information to the Commissioner to be included in the appeal bundle and this is what happened. In doing that there was nothing which amounted to contempt.

24. Further, applying the overriding objective will point to the same result. Although the parties must co-operate with the Tribunal to ensure that cases are dealt with fairly and justly, it is also necessary to deal with cases proportionately. In this case the Appellant was, in my view (and as the Judge who heard the appeal), able to participate fully in the proceedings when the appeal was eventually heard on 11 January 2021, and the Tribunal, over the months, were able to deal with any failures to comply with directions by making further directions. In my view that was the proportionate way to deal with any procedural issues which arose.



25. This application is therefore dismissed. By virtue of rule 7A(6) the Appellant has a right to make a written appeal against this decision within 28 days of the date this decision is sent to the Appellant (see rule 42 of the Rules for details).

**Stephen Cragg QC**

Judge of the First-tier Tribunal

Date of Decision: 05 February 2021

Date Promulgated: 08 February 2021