FIRST-TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
INFORMATION RIGHTS

Appeal Reference: EJ/2021/0008
(previously EA/2019/0365)

Heard at Field House via Cloud Video Platform
On 30 June 2021

UPON APPLICATION FOR CERTIFICATION TO THE UPPER TRIBUNAL FOR CONTEMPT OF COURT

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

ANDREW DICKINSON

Applicant

and

(1) CITY OF YORK COUNCIL
(2) INFORMATION COMMISSIONER'S OFFICE

Respondents

Appearances:
Applicant: In person
First Respondent: Ms O Davies, of Counsel
Second Respondent: Not represented at the hearing

DECISION AND REASONS

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Preamble

1. This matter was heard remotely, without objection from the parties, using the Cloud Video Platform. Neither the applicant nor the first respondent indicated during the course of the hearing, or thereafter, that the mode of hearing led to an inability to participate in the proceedings fully and effectively.

Introduction

2. On 3 March 2020, the First-tier Tribunal ("the Tribunal") allowed an appeal brought by the applicant (referenced as EA/2019/0365) against a decision of the Information Commissioner of 30 September 2019, in which the Information Commissioner had concluded, *inter alia*, that City of York Council had correctly applied regulation 12(4)(b) of the Environmental Information Regulations 2004 in its response to a request for information made by the applicant.

3. The applicant subsequently filed a notice with the Tribunal requesting that the Tribunal certify offences of contempt to the Upper Tribunal, such offences in broad terms being: (i) the failure of City of York Council to comply with the decision of the Tribunal in EA/2019/0365 and (ii) that the Information Commissioner did something or failed to do something which constituted contempt, the nature of such act or omission not being particularised.

4. In case management directions of 18 May 2021, the Registrar said as follows: "*[3]…This matter must be listed, at the earliest opportunity, for a case management hearing to enable a judge to determine whether the application by Mr Dickinson is suitable for immediate determination or if a further hearing is needed*". By way of written submissions dated 14 June 2021, City of York Council requested that the matter be disposed of at the case management hearing because it lacked merit. The matter was subsequently listed for a case management hearing.

Application against the Information Commissioner

5. At the outset of the case management hearing the applicant confirmed orally that he did not seek to pursue the application for contempt as against the Information Commissioner. I treat that as an application made pursuant to Rule 17 of the 2009 Rules for the applicant to withdraw his case against the Information Commissioner. Pursuant to Rule 17(2) the Tribunal's consent is required for such notice of withdrawal to take effect and I hereby give my consent in that regard. The proceedings against the Information Commissioner are therefore at an end.

Application against City of York Council

6. The parties thereafter agreed that the intention of the Registrar had been for the Tribunal to consider at the case management hearing the issue of whether the applicant's application should be struck out in whole or in part pursuant to Rule 8(3)(c) of the 2009 Rules, i.e. that the Tribunal should consider the issue of whether "*there is no reasonable prospect of the applicant's case or part of it succeeding*". To that end both

parties made oral submissions to the Tribunal and I also had regard to written submissions that the parties had earlier provided.

Role of the First-tier Tribunal

Striking out for no reasonable prospect of success

7. Rule 8(3) of the 2009 Rules materially states:

> "The Tribunal may strike out the whole or a part of the proceedings if –
> …
>
> (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding."

8. The Upper Tribunal has also provided guidance on the approach to be taken by this Tribunal when considering whether to strike out a case as having no reasonable prospect of success. In HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation) [2014] UKUT 0329 (TCC), the Upper Tribunal stated that:

> "…an application to strike out in the FTT under rule 8 (3) (c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the First-tier to summary judgement under Part 24). The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance) prospect of succeeding on the issue at a full hearing…The Tribunal must avoid conducting a "mini-trial". As Lord Hope observed in Three Rivers the strike out procedure is to deal with cases that are not fit for a full hearing at all."

Substance of the Tribunal's role in an application for certification made pursuant to Rule 7A of the 2009 Rules

9. In Information Commissioner v Moss and the Royal Borough of Kingston upon Thames [2020] UKUT 174 (AAC), the Upper Tribunal considered the following issue: "*when the First-tier Tribunal on appeal substitutes a decision notice for that of the Information Commissioner, who is responsible for (a) deciding whether the public authority has complied with that notice and (b) taking action to enforce it?*" - concluding that the Information Commissioner does not have power to enforce a decision of the Tribunal but that the Tribunal does have such power, as conferred by section 61 of FOIA.

10. The first port of call in any consideration of the Tribunal's role in determining applications of the instant type must be an analysis of section 61 of FOIA. Section 61 states:

> "(1) Tribunal Procedure Rules may make provision for regulating the exercise of rights of appeal conferred by sections 57(1) and (2) and 60(1) and (4).

(2) In relation to appeals under those provisions, Tribunal Procedure Rules may make provision about –

(a) securing the production of material used for the processing of personal data, and

(b) the inspection, examination, operation and testing of equipment or material used in connection with the processing of personal data.

(3) Subsection (4) applies where –

(a) a person does something, or fails to do something, in relation to proceedings before the First-tier Tribunal on an appeal under those provisions, and

(b) if those proceedings were proceedings before a court having power to commit for contempt, the act or omission would constitute contempt of court.

(4) The First-tier Tribunal may certify the offence to the Upper Tribunal.

(5) Where an offence is certified under subsection (4), the Upper Tribunal may –

(a) inquire into the matter, and

(b) deal with the person charged with the offence in any manner in which it could deal with the person if the offence had been committed in relation to the Upper Tribunal.

(6) Before exercising the power under subsection (5)(b), the Upper Tribunal must –

(a) hear any witness who may be produced against or on behalf of the person charged with the offence; and

(b) hear any statement that may be offered in defence.

(7) In this subsection, "personal data" and "processing" have the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(2), (4) and (14) of that Act)."

11. By section 61(4) of FOIA, the First-tier Tribunal has a discretion to certify an offence to the Upper Tribunal only where it is satisfied that the requirements of both limbs of section 61(3) have been met i.e. that a person has done something or failed to do something in relation to proceedings before the Tribunal in appeals brought pursuant to sections 57 or 60 of FOIA and, if the proceedings were proceedings before a court having power to commit for contempt, the act or omission would constitute contempt of court.

12. It is striking that there is no reference in section 61 to a requirement for an applicant to obtain permission to proceed with an application for certification or an application for contempt, and I can identify no good reason why the word "*certify*", as it is used in section 61(4) of FOIA, should be read as introducing a permission stage akin to that

identified in CPR 81. Indeed, the statutory language of sections 61(3) and 61(4) of FOIA, when read in context and as a whole, militates against such a conclusion. In particular, by virtue of section 61(3), the discretion in section 61(4) to certify an offence to the Upper Tribunal may only be exercised where the relevant act or omission "*would constitute a contempt of court*" (emphasis added). If Parliament had intended the threshold at the certification stage to be that of "*prima facie case*" or "*strong prima facie case*", it no doubt would have said so in the clearest of terms.

13. It is further notable that there is no mention in either section 61(3) or section 61(4) of FOIA, or indeed elsewhere in section 61, as to the required standard of proof by which the allegation of contempt must be judged. In the ordinary course, given the seriousness of contempt proceedings, the standard of proof by which the contempt must be demonstrated is the criminal standard of beyond reasonable doubt: see for example, Arlidge, Eady & Smith on Contempt, 5th Edition, 12-50 onwards and [SC Mezhdunarodniy Promyshelnniy v Pugachev [2016] EWHC 92, at [41].

14. Whilst I accept that when read literally section 61 FOIA could, and indeed in many cases is likely to, lead at least partially to a duplication of the fact finding role as between the First-tier Tribunal and the Upper Tribunal, in my view this is not a good reason to read section 61 as either importing a permission stage into the contempt application procedure or as requiring the Tribunal to depart from the well-established authority as to the standard of proof by which an allegation of contempt must be assessed.

15. If such an offence is proven to the required standard, the Tribunal must then consider whether, in all the circumstances of the case, discretion should be exercised so as to certify the offence to the Upper Tribunal (section 61(4) FOIA).

Discussion

16. It is prudent to begin by setting the underlying application for certification in its proper historical context.

Background

17. On 18 February 2019, the applicant requested information in the following terms ["the Request"):

> "Can you send me the advice given to [named councillor] referenced in the email below please:
>
> Can you also provide me with all formal and informal advice offered to councillors who sit on the planning committee with regards to meeting members of the public."

18. The email referred to in the Request stated: *"Thank you for your email with your concerns and your invitation to meet you. Having taken advice I am afraid I won't take up that invitation …".*

19. On 9 May 2019, following correspondence with the Information Commissioner, City of York Council responded to the applicant by relying on Regulation 12(4)(b) EIR on the basis that the Request was "manifestly unreasonable" and that the public interest in maintaining the exception outweighed the public interest in disclosing the information. As indicated above, by way of a decision of the 1 October 2019 the Information Commissioner concurred with City of Yok Council's application of the EIR.

20. On 3 March 2020, the First-tier Tribunal upheld an appeal by the applicant against the Information Commissioner's Decision Notice and at paragraph 25 thereof stated as follows:

> "the Council will need to respond to the applicant's requests on the basis that they are not manifestly unreasonable."

21. City of York Council was not a party to the appeal proceedings and asserts that it was first alerted to the Tribunal's decision by the applicant on 4 March 2020.

22. On 5 July 2020, the applicant complained to the Tribunal about City of York Council's failure to comply with the Tribunal's decision.

23. On 5 August 2020, City of York Council sent an email in the following terms to the applicant:

> "Dear Mr Dickinson,
>
> Following the Decision by the First-tier Tribunal, I can now provide the council's response.
>
> I would like to begin by apologising for the delay and explain that as the council was not a Party to the Proceedings we did not receive the papers from them. Following your contact to advise the council about the outcome, contact was made with the Information Commissioners Office to ask for clarification about this and the actions required. No details have been provided about an expected timescale for response. The ability to consider and provide the further response required during the issues associated with the current Covid-19 pandemic had not been possible until recently.
>
> The 'advice' given to Councillor A. Reid reference in the e-mail of the 14th February 2019.
>
> This information is not held by the council in a recorded form.
>
> As it was considered that the request was exempt under section 12(4)(b) no request was made to Ann Reid at the time of your request, for copies of any notes she may have made of a discussion. Ann Reid was not re-elected as a Councillor following the elections in May 2019 and therefore has not held any information on behalf of the council since this time.
>
> To assist further with your enquiry the Assistant Director for Planning Services does recall a brief conversation about this with the Councillor at the time, but did not make any record of a discussion as there was no necessity for this.

His recollection is that he was asked whether there was an obligation to meet with people who requested this. His reply was that there is no obligation to meet and referred the Councillor to the formal guidance, as would be the standard practice to do.

All formal and informal advice offered to councillors who sit on the planning committee with regards to meeting members of the public.

The formal advice is attached above, the council does not hold a copy of informal advice offered to Councillors. Informal advice would be only to refer them to the formal advice attached.

If you are dissatisfied with our response you have the right to ask for a review of how your enquiry was handled and responded to. This can be done by contacting us through foi@york.gov.uk within 40 working days of receiving your response, stating your reason(s) why you are dissatisfied. If you remain dissatisfied after receiving the review response you can contact the Information Commissioner, contact details below:

Information Commissioner's Office, etc……."

24. The applicant made a request for an internal review, to which the City of York Council responded by way of email on 24 September 2020 in the following terms:-

"Dear Mr Dickinson,

Following your request I have now completed a review of the response under the Environmental Information Regulations (EIR).

1. Since making your request the council has failed to acknowledge your request, failed to provide any response to it (even if it was just to state that they would not provide the information) and refused to co-operate with you in any way.

   Your request was initially made on the 18th February 2019 at 22:19, received on the 19th February 2019. Your request and review was not responded to until the 9th May after the council had received contact from the Information Commissioners Office (ICO). I therefore apologise for this delay which was related to the fact the council initially considered your request to fall under section 12(4)(b) of the EIR.

   Following receipt of the response, you requested a review on the same day and this was responded to on the 6th June 2019. This was within 20 working days and therefore in time.

   The council received an enquiry from the ICO on the afternoon of Friday the 13th September and responded at 12:03 on Monday the 16th September. This was therefore by the next working day and within an appropriate timescale.

   As explained in the response sent on the 5th August 2020, the council was not a Party to the Tribunal Proceedings and was therefore not required to provide any information. The council has already explained the delay in providing the response following the Tribunal's Ruling.

   In conclusion I accept that there were delays in responding to your initial request. The ICO addressed this delay in their Decision Notice of 30th September 2019 and

did not require the council to take any further action on this point. Further to this no further comment was made on this point by the Tribunal. The council has responded appropriately following the initial response to avoid any further inappropriate delays.

This part of your complaint is partly upheld, due to the initial delay, but all further contact has been responded to appropriately.

2. You have been forced to refer this to the ICO and then to the lower tribunal and finally to attend a hearing and give evidence at a hearing. All of which consumed time, effort and vital public resources. If the information was 'not held' why did the Council not respond sooner and avoid wasting everyone's time and money?

The council's initial response dated the 9th May 2019 Stated:

"The council considers you have been provided with all information relevant to your request in previous correspondence and in your response from the Local Government and Social Care Ombudsman and the Decision Notice from the Information Commissioners Office."

The review response dated the 6th June 2019 stated:

"… it is considered all relevant information had been provided previously I accept that no further advice or assistance to progress your ability to receive relevant information was necessary."

The council has explained on a number of occasions both in relation to this request and previous requests, complaints and correspondence that the only advice to Councillors held in a recorded form, is the inform provided previously and again on the 5th August 2020 on the link included in the response.

As the council had provided all information it held relevant to your request prior to the request being received, it was considered the appropriate response was to apply section 12(4)(b) rather than provide the information again with the same explanations that no other information was held.

The Tribunal did not uphold this position and the council therefore complied with the Ruling to respond without the reliance on section 12(4)(b). This meant the council needed to provide the link to the information it held and advise again that no other information providing advice to Councillors is held in a recorded form. It provided further information to explain what advice had been given verbally.

In conclusion the council has advised on a number of occasions that the only advice to Councillors, held in a recorded form, about this subject is the information you had already been provided with.

The council fully accepts your right to challenge this through the ICO and Tribunal proceedings, but does not accept you were forced into this decision and pursued this in the full knowledge that the council had clearly explained on a number of occasions that it did not hold any other information in a recorded form.

3. However, notwithstanding this, you still believe the original response from Councillor Reid was true. You requested a meeting with her regarding a planning application and she responded '… having taken advice I am afraid I won't take up that invitation. It is not … appropriate for members of the planning committee to meet … objectors …'. That would suggest that the 'advice' she received as that she should not meet with me, which is contradictory to what the assistant director allegedly claims he told her.

   The council does not dispute the validity of the response from Councillor Reid and has in fact confirmed that verbal advice was provided, explaining what this advice was.

   The council does not however consider the response from Councillor Reid suggests she was told not to meet with you. It was explained in the response of the 5th August 2020 that the Assistant Directors recollection of this advice was:

   "… there is no obligation to meet and referred the Councillor to the formal guidance, as would be the standard practice to do.

   Following consideration of this advice the Councillor decided that she would not meet with you and briefly explained that to avoid any charges of bias and ensure every member receives the same information before coming to a decision, it was in her view not usually appropriate to meet applicants or objectors separately.

   In conclusion I consider the information provided on the 5th August 2020 and in previous responses was accurate and appropriate and for clarity I consider the verbal advice given was entirely consistent with the written advice you have been provided with.

   This part of your complaint is not upheld.

   If you remain dissatisfied you can now contact the Information Commissioner, contact details provided below:

   Information Commissioner's Office, etc …"

25. As already alluded to, the applicant subsequently lodged with the Tribunal a "*Notice of Application for Certification to the Upper Tribunal for Contempt of Court*", relying on the following grounds:

> "Subsequent to the Tribunal's Decision the Council have responded to my FOI request (received 5th August 2020 ref: Appendix A2) and stated that the requested information "**does not exist**". I find it totally unbelievable that in 30 years (see email ref: Appendix B1) there has never been any documented advice issued to councillors. I do not accept the Council's response and believe they are intentionally withholding information."

26. In written submissions made to the Tribunal, City of York Council assert as follows:

> "25. The Council submits that the Appellant's application must be dismissed for two reasons.
>
> 26. First, the Council has in fact complied with the FTT Decision.

(1) The Council provided the Appellant with a full response on 5 August 2020, and a further response on 24 September 2020 following an internal review.

(2) There is therefore no act or omission that could possibly constitute contempt of court. In fact, the Appellant does not appear to argue otherwise, but takes issue instead with the substance of the Council's response. He does not say that the Council has failed to respond, but that it has failed to "satisfactory respond" [sic] and that he "do[es] not accept the Council's response". That, however, is not an appropriate basis on which to pursue an application for certification – particularly in circumstances where it was open to the Appellant to escalate a complaint to the ICO as to the substance of the responses.

(3) To the extent that there has been a delay in response, a number of the Council's resources were understandably diverted during the first national lockdown owing to the Covid-19 pandemic. In any event, the delay is not determinative given that the FTT Decision did not specify a time limit for compliance.

27. Second, the underlying order is not clear, certain and unambiguous.

(1) In determining if an act or omission would constitute contempt of court, a basic and fundamental requirement is that the underlying order be expressed in clear, certain and unambiguous language: see *Harris* (above).

(2) That this principle of certainty must apply in certification cases – particularly in respect of time limits – is supported by the Rules, which require applications to be received no later than 28 days after the relevant act or omissions "first occurs".

(3) Here, the FTT Decision did not specify a date by which the Council was required to respond to the Request. In circumstances where the Council was not a party to the proceedings, the Council did not have any clarity in respect of the timescales for compliance. Moreover, there is simply no date on which the act or omission "first occurs" such that there can be no contempt.

(4) Further and in any event, an offence of contempt is a very serious matter and given the absence of a clear timescale for compliance, it would be unjust to proceed in circumstances such as these.

28. The Council further submits that the matter can accordingly be disposed of at the CMR and that there is no need for a further hearing."

27. In his written Reply, the applicant draws to the Tribunal's attention that he:

(i) has been seeking an amicable resolution with the Council in relation to these proceedings.

(ii) That the Council's response that the information does not exist is incorrect and there is ample evidence to support the position that such evidence does exist and therefore should have been produced in response to the request for information.

(iii) There is a conflict between Miss Reid's initial response and the Council's current response. If the Council's response were to be seen as a valid response this would set a very dangerous precedent and create an absurd situation.

(iv) The Council's response is in essence the same as a failure to respond

(v) The applicant has no other remedy because he has been informed by the Information Commissioner's Office that he cannot pursue this matter with that organisation.

28. I initially address the issue of the terms the Tribunal's 'Substituted Decision Notice'. First, it is not in dispute that paragraph 25 of the First-tier's Decision Notice was intended to constitute a Substituted Decision Notice, and indeed did so. The next question that must be posed and answered is what exactly the Substitute Decision Notice required City of York Council to do, it being said by City of York Council that the Notice was not clear, certain and unambiguous in its requirements.

29. The applicable legal principles that can be drawn from the authorities in relation to construction of court orders and findings of contempt in relation to breach of an order, are as follows:

(i) The terms in which an order was made are to be restrictively construed (see Federal Bank of the Middle East v Hadkinson [2000] 1 WLR 1695.

(ii) The words of the order are to be given their natural and ordinary meaning and are to be construed in their context, including the historical context and with regard to the object of the order (Hadkinson) and the reasons given by the order for making the order at the time that it was made (Sans Souci Limited v VRL Services Limited [2013] UKPC 6)

30. In my conclusion, having applied the principles identified above there is nothing even remotely ambiguous or unclear about the applicant's request or the Tribunal's Substituted Decision Notice. The fact that the Substituted Decision Notice does not impose a timeframe on City of York Council to comply with its terms is unfortunate, but it does not make the substance of the acts required of City of York Council either unclear or ambiguous. The issue of an absence of a timeframe in the Substituted Decision Notice may resonate in another case, where timeliness is taken an issue, but that is not the case in the instant matter.

31. The core issue in the underlying certification application is whether the applicant can demonstrate beyond reasonable doubt that City of York Council have not complied with the substance of the Tribunal's Substituted Decision Notice which would require the Tribunal to be satisfied that the City of York Council's communications of 5 August 2020 and/or 24 September 2020 do not amount to a response "*to the applicant's requests on the basis that they are not manifestly unreasonable.*"

32. Having carefully considered all of the documentation and submissions before me, I conclude that there is no reasonable prospect of the applicant demonstrating beyond

reasonable doubt, or indeed even to the balance of probabilities, that the aforementioned communications are not sufficient to comply with the terms of the Tribunal's Substituted Decision Notice.

33. Reading the terms of the Tribunal's decision strictly but in their proper context, City of York Council were required to do no more than respond to the applicant's request for information of 18 February 2019, other than by stating that the requests were manifestly unreasonable.

34. In coming to this conclusion I have had particular regard to paragraph 17 of the Tribunal's decision, which reads as follows:

> "17. It is not the case, in our view and contrary to the view of the Commissioner, that he can anticipate that the information is likely not to be held. It is true that the Councillor says that she spoke to the Assistant Director. But is seems not unlikely that either the Councillor or the Assistant Director made a note of the advice given (or received), or that accounts that he is making referenced to a conversation by email (or via another platform). …"

35. I conclude that there is nothing in this passage which amounts to a finding by the Tribunal that the requested information is held and, more importantly, there is nothing in this passage which precludes City of York Council responding to the request by stating that the information is not held.

36. In short, City of York Council was directed by the Tribunal to respond to the applicant's requests other than by stating that such requests were manifestly unfounded, and the Council has done exactly that, and has provided reasons for its approach. In my view City of York Council has plainly complied with the requirements of the Tribunal's decision and there is no reasonable prospect of the applicant being to demonstrate otherwise to the standard required.

37. I appreciate that the applicant may not agree with the response from City of York Council, indeed he may have evidence in support of the contention that there is further information which has not been provided (although I make no finding on this); however, the Tribunal did not issue a decision requiring production of certain information, it directed City of York Council to provide a response other than by stating that the requests were manifestly unreasonable.

38. If the applicant seeks to challenge the substance of the City of York Council's response, the appropriate course is to make a complaint to the Commissioner pursuant to section 50 of FOIA. The applicant was notified of this available avenue of redress in both the August and September communications from City of York Council. The applicant states that he has sought to require the Information Commissioner to engage with his attempts to obtain this information, quoting from an email sent by the Information Commissioner's Office on 20 April 2020, which states as follows:

> "The issue to whom considering compliance with the steps in a FTT decision falls is currently awaiting judicial consideration by the Upper Tribunal. This means that the

> Commissioner cannot force the Council to provide the information to you or give them a time limit …"

39. The terms of that email are an accurate reflection of the decision of the Upper Tribunal in Moss, and relate to the enforcement of the Tribunal's decision in EA/2019/0365. The applicant conflates this issue with his entitlement to complain to the Information Commissioner about the substance of City of York's response to his requests. In this latter regard I observe that at paragraph 8 of the Information Commissioner's submissions of 8 February 2021, after initially espousing her view that City of York Council had complied with the requirements of the Tribunal's Substituted Decision Notice, the Commissioner says as follows:

> "To the extent that the appellant is unhappy with the response provided to him in August 2020, the Commissioner understands that the second respondent treated this as a new request response and clearly informed the appellant if he was unhappy, then he could make a further s.50 complaint to the Commissioner. As far as the Commissioner is aware, the appellant has not done so."

40. The applicant confirmed at the hearing that he had not made a formal complaint to the Commissioner about the August and/or September communications. That was an avenue open to him.

41. In summary, I conclude that there is no reasonable prospect of the applicant being able to demonstrate beyond reasonable doubt at a full hearing of this matter that City of York Council failed to comply with the terms of the Tribunal's Substituted Decision Notice in EA/2019/0365 and, consequently, I conclude that the applicant has no reasonable prospect of demonstrating that the requirements of section 61(3) of FOIA have been met.

42. In such circumstances, and having considered the circumstances of the case as a whole, I exercise my discretion pursuant to rule 8(3) of the 2009 Rules so as to strike out the applicant's application for certification of an offence to the Upper Tribunal.

Decision

For the reasons given above, the applicant's application to certify an offence by City of York Council to the Upper Tribunal is struck out.

Consent is given to the applicant to withdraw his application to certify an offence by the Information Commissioner to the Upper Tribunal.

Signed Date: 29 July 2021
Upper Tribunal Judge Mark O'Connor