Appeal Nos.: GIA/440/2019

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

ON APPEAL FROM:

The President of the First-tier Tribunal (General Regulatory Chamber)
(Case No.: EA/2018/0122)

Before:

MRS JUSTICE FARBEY CP

Applicant: Terence Crossland

Respondents: (1) The Information Commissioner

(2) Leeds City Council

NOTICE OF DETERMINATION OF APPLICATION FOR

PERMISSION TO APPEAL

UPON CONSIDERING the application for permission to appeal (under the Upper Tribunal's reference number GIA/440/2019) against the decision of the President of the First-tier Tribunal (General Regulatory Chamber) ("GRC") upholding the decision of a Registrar to invite the applicant to make submissions as to why his appeal to the GRC (under the GRC's reference EA/2018/0122) should not be struck out,
THE APPLICATION FOR PERMISSION TO APPEAL IS STRUCK OUT under rule 8(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the UT Procedure Rules") because the Upper Tribunal considers there is no reasonable prospect of the application succeeding.

REASONS

Introduction

1. The applicant has applied for permission to appeal against the decision of the President of the First-tier Tribunal (General Regulatory Chamber) ("GRC") upholding the decision of a Registrar to invite the applicant to make submissions as to why his appeal to the GRC should not be struck out under rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the GRC Procedure Rules"). The application

for permission to appeal has an extensive procedural history. It raises a number of more general issues about the conduct of appeals within the Administrative Appeals Chamber.

Background

2. The appeal to the GRC arose from the applicant's concerns (which appear to date back to 2011) in relation to a neighbour's garden wall situated in a conservation area. The applicant requested that Leeds City Council (the second respondent) take enforcement action against the wall's owner for non-compliance with a planning condition. In July 2015, the Council decided not to take action. After that decision, the applicant pursued the matter with the Council in various ways including a number of complaints and requests for information. Some of his requests for information from the Council led to decision notices issued by the Information Commissioner (the first respondent).

3. As a result of the applicant's complaints, the Council's Internal Audit Service conducted an investigation. On 7 November 2014, the report of the investigation was issued. On 3 December 2014, the Council wrote to the applicant saying (among other things):

> "… officers have done their best to resolve your concerns and, in doing so, have provided a significant amount of information to you. In addition, the council has conducted an Internal Audit investigation into the handling of this compliance case and has, further, provided a response to your concerns under its complaints procedure. In light of these facts, the authority reserves the right to treat any further information request on this matter as 'manifestly unreasonable' under Reg 12(4)(b) of the EIR..."

4. On 30 January 2017, the applicant made a request to the Council for information relating to the handling of his complaint in relation to the planning decision. The request was in five parts. The Council provided some further information. As foreshadowed, it refused one part of the request on the grounds that it was "manifestly unreasonable" under regulation 12(4(b) of the Environmental Information Regulations 2004 ("the EIR"). The Council stated that it would not engage in further correspondence with the applicant in respect of other matters in the request on the basis that it had already stated its position on several occasions.

5. Following further correspondence, on 26 February 2017, the applicant made a further information request to the Council in relation to its handling of his complaint and previous requests for information under the EIR and the Data Protection Act 1998 ("DPA"). The request was in 13 parts. In correspondence dated 23 March 2017, the Council maintained that it had dealt with the applicant's complaint in accordance with the relevant complaints policy.

6. On 19 May 2017, the applicant complained to the Commissioner about the Council's handling of the 30 January and 26 February requests. During the course of the Commissioner's investigation, the Council informed her (among other things) that it no longer sought to rely on regulation 12(4)(b) of the EIR.

7. On 7 February 2018, the Council issued a new response in relation to both requests. This response was treated by the Commissioner as being that:

i. Some specific information was not held; and that

ii. All relevant information that was held would represent the applicant's own personal data, and would therefore fall within the terms of the DPA rather than the EIR.

8. In a decision notice dated 21 May 2018, the Commissioner set out her decision together with detailed reasons. The Commissioner decided that, on the balance of probabilities, the Council did not hold further information that would fall under the terms of the EIR and that is not the applicant's own personal data already disclosed to him under the DPA. The Council had, however, breached regulation 5(1) of the EIR by providing a response to the applicant's requests outside the time for compliance under regulation 5(2). The Commissioner did not require the Council to take any steps.

Procedural history in the GRC

9. On 15 June 2018, the applicant filed a notice and grounds of appeal in the GRC under section 57(1) of Freedom of Information Act 2000 as modified by regulation 18 of the EIR. On 31 August 2018, the Commissioner filed a response to the appeal, inviting the GRC to uphold her substantive decision that the Council did not hold further information relevant to the applicant's request. On 6 September 2018, the Council filed its response, inviting the GRC to dismiss the appeal. The Council adopted the Commissioner's position and commented that the applicant's conduct towards the Council had been "obsessive and unreasonable." On 21 September 2018, the applicant replied to the respondents' respective responses.

10. On 25 September 2018, a Registrar of the GRC issued case management directions. She stated that, under section 58 of FOIA, the tribunal may only determine whether a decision notice issued by the Commissioner was or was not in accordance with the law.[1] It followed that the tribunal in the present case had power to decide whether or not the Council held further information within the scope of the applicant's request. The Registrar expressed her doubts as to whether the applicant's notice and grounds of appeal fell within the scope of section 58.

11. In light of this analysis, the Registrar issued an "invitation for representations." I doubt the wisdom of calling it an "invitation" as its effect was to require the applicant to submit representations as to why his appeal should not be struck out on the basis that it had no reasonable prospects of success. However, its precise description is immaterial. It amounted to an opportunity (under rule 8(4) of the GRC Procedure Rules) to make representations in relation to a proposed striking out under rule 8(3) of the GRC Rules.

[1] Section 58 states in full: "(1) If on an appeal under section 57 the Tribunal considers—
(a) that the notice against which the appeal is brought is not in accordance with the law, or
(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal. (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based."

The applicant was informed that any representations should be filed by 30 October 2018, after which a decision about strike out would be made.

12. The applicant made representations on 1 October 2018, contending that the decision notice was not in accordance with the law in its consideration of (i) the duty to make available environmental information on request (EIR reg 5); (ii) the form and format of information (EIR reg 6); (iii) representations and reconsideration (EIR reg 11); (iv) the treatment of the exceptions to the duty to disclose environmental information (EIR reg 12); and (v) the refusal to disclose information (EIR reg 14). The applicant cited the full extent of section 58 (rather than just the aspect cited by the Registrar) and submitted that the various provisions on which he relied engaged the section in its full form. He asked the Registrar to provide reasons as to why the grounds of appeal could not engage section 58 of FOIA.

13. By email dated 3 October 2018, the Registrar explained to the applicant that she had not reached the view that the appeal did not fall within section 58. She explained that her case management directions had invited the applicant to say why the Council at the date of the request held information which met the scope of the two requests for information that underlay the appeal.

14. By letter dated 5 October 2018, the applicant requested that the Registrar's case management directions be considered afresh by a judge. He complained that the procedure adopted by the GRC discriminated against him as a non-lawyer. He accused the Registrar of adopting an illogical analysis of the law and of demonstrating her pre-judgment of the case. He set out the objective of his requests to the Council and how he felt that the Council ought to have dealt with his requests. He requested that the GRC correct their interpretation of section 58 and state how it proposed to address its "incorrect pre-judgment."

15. On 10 October 2018, the GRC President (Judge Alison McKenna) upheld the Registrar's case management directions and rejected the applicant's view that the GRC was biased against him. The material part of her ruling states:

> "3 The Applicant asked the Registrar a number of questions about her directions by email on 1 October and she replied succinctly on 3 October 2018. I am satisfied that the basis of her proposed strike out has been made clear. If the Applicant does not wish to have his appeal struck out, he must file his submissions by the date set. Alternatively, he may like to ask for his… submissions of 5 October to be considered…
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> 4 Having reviewed the Registrar's Case Management Directions of 25 September 2018… I am satisfied… that it is fair and just to proceed as the Registrar has directed and that her directions should stand. I agree with her that the Applicant's grounds of appeal require amplification and all she has done at this stage is to offer him an opportunity to do so.
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> 5 The Applicant has expressed the view that the GRC is biased against him… As the Applicant chooses to be a frequent user of the Chamber's services, it is inevitable that he will be dealing repeatedly with the same

> people in a small Chamber. I see no evidence of bias in relation to the matter before me and so make no further directions about that matter."

16. On 12 October 2018, the applicant applied to the GRC for permission to appeal against the Registrar's and Judge McKenna's decisions. By a decision dated 16 October 2018, Judge McKenna refused permission to appeal.

Grounds of appeal to the Upper Tribunal

17. By notice and grounds of appeal sent by email on 4 November 2018, the applicant applied to the Upper Tribunal for permission to appeal. Part of his application concerned the GRC's separate case management direction relating to the production of bundles for the GRC appeal. The Upper Tribunal subsequently gave this aspect of the proceedings its own reference number and the issue has been dealt with as a separate appeal (GIA/438/2019).

18. In his grounds of appeal in relation to the opportunity to make representations as regards a proposed strike out, the applicant submits that the Registrar's case management directions contained "explicit and unambiguously incorrect interpretation and application" of section 58 of FOIA and that Judge McKenna ought to have overturned the "incorrect and damaging position" of the Registrar. The applicant submits that section 58 means that a decision notice can be appealed if it does not correctly assimilate the relevant facts of the case and/or does not correctly interpret and apply the law to the particular facts and circumstances of the case to identify all relevant breaches of the law in the case as a whole. A decision notice can be "not in accordance with the law" if it fails to identify relevant breaches of the relevant laws. This flows from the purpose of the decision notice which should enable anyone reading it to understand whether the person requesting the information was correct and whether the local authority had breached the law in any respect. Not only the decision but all the legal arguments and the evidence on which the decision was reached may be the subject of an appeal. On this basis, the decision notice was not in accordance with the relevant law, namely the EIR.

19. The applicant submits that this appeal raises an important point of law because a second judge of the GRC has applied the same interpretation in another appeal brought by the applicant which he seeks to appeal in the Upper Tribunal. The correct interpretation of section 58 is critical to both appeals and should be decided before any further action is taken on either of the appeals in which the applicant has raised the point.

Procedural history in the Upper Tribunal

20. On 21 March 2019, Upper Tribunal Judge Wright directed the applicant to file a written submission under rule 8(4) of the UT Procedure Rules as to why the permission application should not be struck out without a hearing under rule 8(3)(c) on the basis that it had no reasonable prospect of succeeding. Judge Wright explained to the applicant that the decision under appeal was not a decision to strike out his appeal in the GRC but was the decision to ask him to make representations as to why the appeal should not be struck out.

21. Judge Wright explained:

> "6. I can… identify nothing in [the applicant's] reasons that sets out why it was an arguable error of law for Judge McKenna to rule or decide to invite [the applicant] to explain why his appeal has reasonable prospect of success and should not be struck out. It is this *invitation to explain* which is the operative 'decision' on the challenge, but I can find no clear case advanced as to why that decision was arguably wrong in law.
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> 7. [The applicant] appears to argue that the First-tier Tribunal's failure to understand the basis on which his appeal to it could be successful shows a fundamental error on its part as to the correct construction and scope of section 58 of the Freedom of Information Act 2000. Whether that is so or not, he can make those points by accepting the invitation and explaining why his appeal has reasonable prospects of success. However, I do not at present see why a potentially wrong view about section 58 shows an error of law in the act of inviting [the applicant] to further explain his appeal and why it is likely to succeed. As a matter of statutory law, rule 8 vests in the First-tier Tribunal authority to invite an applicant to say why his appeal has reasonable prospects of success if the First-tier Tribunal considers it may not. The First-tier Tribunal therefore had a lawful statutory basis for its 'invitation decision'. And I struggle at present to see the arguable basis on which it was unlawful for the First-tier Tribunal to even exercise that invitation. The decision in issue is not to strike out the appeal. It is no more than a decision to ask [the applicant] to explain why there is merit in his appeal. What is the error of law in the act of the First-tier Tribunal asking [the applicant] to further or better explain his appeal grounds? That is what [the applicant] needs to better explain to me."

22. Judge Wright observed that the power to direct a party to make submissions about a proposal to strike out his application should not be used lightly and should only be used as a matter of last resort. It should not be used where less severe steps could be taken to alleviate the perceived deficit in the application. However, in the present case, the deficit in the application for permission to appeal was simply its lack of legal arguability and, subject to any representations which the applicant might make, he could not see how that may be remedied without ruling on whether the grounds of appeal were arguable, which is what rule 8(3)(c) covers.

23. Judge Wright directed that the applicant should within 14 days file a clear and concise written submission setting out why the permission application should not be struck out. Judge Wright suggested to the applicant that he would need to explain why Judge McKenna erred in law in maintaining the invitation to him to explain why his appeal to the GRC had a reasonable prospect of success. In short the question for the applicant was: What was the error of law in inviting him to provide that explanation? Judge Wright signed his case management direction on 21 March 2019.

24. The appeal then became mired in interim procedural issues raised by the applicant. There is no need for me to set out all the details here. The following gives the flavour.

25. On 18 April 2019, the applicant made an application addressed to me for Judge Wright to be stood down from the appeal on the grounds that he was biased against the applicant.

The allegations of bias were said to be based on Judge Wright's conduct of an earlier appeal brought by the applicant (GIA/1388/2018) which had involved an oral hearing on 17 September 2018. On 3 May 2019, the applicant made supplementary representations – addressed to me – on the issue of standing down Judge Wright from the appeal.

26. On 10 May 2019, having been granted an extension of time to comply with Judge Wright's direction, the applicant made written submissions on strike out. He also made extensive written submissions on a number of other topics.

27. On 30 May 2019, the applicant made a written application to Judge Wright to recuse himself on the grounds that he had breached the applicant's right to a fair hearing. By that time, the applicant's submissions on a narrow interim appeal within the context of an extant appeal in the GRC ran to 40 pages.

28. On 30 September 2019, Judge Wright dealt with the applicant's correspondence to date. He directed that he would hear a recusal application orally and gave case management directions. In identical letters dated 30 September and 2 October 2019, the applicant requested a copy of the recording of the 2018 hearing before Judge Wright for the purposes of the recusal application. He also sought a variation of Judge Wright's case management directions. On 3 October 2019, the applicant requested an electronic copy of the 30 September case management directions. On 9 October 2019, the applicant wrote again to Judge Wright on the "importance and duration of the recusal hearing." On 17 October 2019, he sent a further eight pages of correspondence on case management directions.

29. On 21 October 2019, Judge Wright gave further case management directions. He decided (generously) that the parties should be provided with an audio recording of the September 2018 hearing but not with a transcript. He refused the applicant's application for Tribunal rulings and directions to be sent in electronic form. On 18 November 2019, the applicant sent correspondence to my Private Office addressed to me, seeking to vary Judge Wright's direction that the applicant should receive documents from the Upper Tribunal by post and not electronically. By a decision dated 22 November 2019, I refused to do so and gave notice to the applicant that he should not seek to use my Private Office as a means of filing documents relating to the appeal.

30. By January 2020, the applicant had made lengthy applications for permission to appeal against Judge Wright's and my own interim decisions. The appeal generated further correspondence until I listed three of the applicant's appeals for hearing (including this one) before me in Leeds in April. The Covid-19 pandemic intervened and so the hearing had to be vacated for reasons of public health. On 16 April 2020, I gave written directions staying the applications for permission to appeal against interim matters in the Upper Tribunal on the basis that they may be overtaken by events and (in the context of the present appeal) directed the applicant to make further submissions about Judge Wright's strike out proposal. On 21 May 2020, the applicant submitted a further 25 pages of submissions in relation to a number of his appeals (including this one) together with more succinct submissions specifically in relation to this appeal.

31. The procedural issues have considerably slowed down the determination of this appeal. They have been fully considered by the Tribunal.

The applicant's submissions in relation to the proposal to strike out his application

32. In relation to the proposal to strike out his application for permission to appeal, the applicant's submissions may be summarised as follows:

    a) The GRC proposed to strike out the appeal because it had concentrated on points which the applicant did not pursue as opposed to the important points which he did wish to pursue.

    b) His case before the GRC is that the Commissioner had failed to take into consideration a number of breaches of the EIR or FOIA. The Commissioner had misapplied the relevant legislation by reliance on erroneous case law.

    c) The applicant had lodged a comprehensive legal explanation of his case which was unsuitable for a strike out.

    d) The applicant had applied for permission to appeal to the Upper Tribunal because the GRC was obstructing him from getting justice.

    e) My case management directions were wrong to focus on the procedure adopted by the GRC as opposed to the correct interpretation of section 58 of FOIA.

    f) The applicant had raised arguable points of law both in relation to the relevance of regulation 12(4)(b) to the appeal before the GRC and in relation to the proper interpretation of section 58 of FOIA.

    g) The applicant was entitled to launch an appeal to the Upper Tribunal in circumstances where the President of the GRC was using her position to victimise the applicant and to prevent him from obtaining access to justice.

33. More generally, the applicant relies on the importance of environmental information rights. He also makes lengthy and misconceived criticisms of the GRC and of this Chamber as being biased against him as a litigant in person. He objects to the fact that I transferred the case from Judge Wright to myself in April 2020 and to the fact that I set case management directions. He seeks further case management directions in relation (as far as I can understand it) to all his pending appeals.

The nature of Upper Tribunal proceedings

34. An appeal to the Upper Tribunal lies only on a point of law (section 11(1) of the Tribunals, Courts and Enforcement Act 2007). In this case, the applicant does not seek to challenge the dismissal or striking out of his appeal: the permission application relates to an interim, case management direction of the GRC that he should state why his appeal should not be struck out. The GRC is the specialist chamber of the First-tier Tribunal vested with the statutory authority to deal with information rights cases. Its case management decisions should be respected by an appellate tribunal unless they are unreasonable (*Ashmore v Corporation of Lloyd's* [1992] 1 WLR 446 at 454) or unless it is quite clear that the GRC has misdirected itself in law (*AH and others (Sudan) v*

Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening) [2007] UKHL 49, [2008] 1 A.C. 67, per Baroness Hale at para 30).

35. In case managing and in deciding appeals, judges of the Upper Tribunal are bound to apply the UT Procedure Rules. Parties are obliged to follow them. The conduct of proceedings in accordance with the Rules is integral to the overriding objective set out in rule 2 and to the wider public interest in the fair and efficient disposal of appeals. If the rules are not adhered to, there are "real consequences for the administration of justice" (*R (AB) v Chief Constable of Hampshire Constabulary)* [2019] EWHC 3461 (Admin), para 108, in the context of the Civil Procedure Rules but equally applicable in the present context).

36. It is in the interests of the administration of justice that appeals proceed in an orderly way. Attempts by a party to undermine the orderly progress of an appeal cause unnecessary and distracting satellite litigation. The overriding objective - which includes dealing with a case in ways which are proportionate to the complexity of the issues – is undermined. In this appeal, the single and narrow issue is whether the GRC exercised a discretion unreasonably. The satellite issues raised unilaterally by the applicant have meant that the Upper Tribunal has expended a disproportionate amount of time and resources in disposing of this narrow issue.

37. The applicant complains that he cannot be expected to prepare legal documents or to be the subject of directions and orders because he is a litigant in person. Both the GRC and judges of this Chamber have for all material purposes explained to him what he has to do and how he has to do it. He has rejected those attempts to assist him, asserting that they are indicators of pre-judgment and bias. I do not agree. The applicant's notion that a judge who sets out the issues is pre-disposed towards a particular outcome is misconceived.

38. The applicant's status as a litigant in person is incapable of justifying the way in which he has conducted this litigation. Many parties in appeals before this Chamber are not legally represented – either because they cannot afford lawyers or because they decide to take advantage of the Chamber's flexible procedures which are designed both to promote active judicial oversight and to enable non-lawyers to take an effective part in proceedings. Being a litigant in person cannot on its own provide a good reason for failing to comply with rules, directions and orders. Otherwise, the administration of justice would cease to function efficiently as more and more litigants in person were allowed to disregard the rules by which represented parties are bound (*R (Kigen) v Secretary of State for the Home Department* [2015] EWCA Civ 1286, [2016] 1 WLR 723, para 15).

39. The applicant claims (without producing medical or other evidence) that he is disadvantaged by age and/or physical ill health. This Chamber deals with very many people who are vulnerable in the sense of suffering from serious physical illness or from serious mental health problems. Where a vulnerable party tries but is ultimately unable to comply with the Chamber's directions and orders, it will generally be unjust for judges to insist on procedural formalism. The overriding objective means that judges will avoid

unnecessary formality and seek flexibility in the proceedings (rule 2(2)(b) of the UT Procedure Rules). The Upper Tribunal will ensure that, so far as practicable, the parties are able to participate fully in the proceedings (rule 2(2)(c) of the UT Procedure Rules).

40. There is however no reason why any judge or member of this Chamber should permit conduct from any party that is vexatious and has the effect of undermining the procedures and processes of the Chamber.

41. This Chamber has a number of tools at its disposal to prevent vexatious conduct. It may, for example, strike out the whole or part of the proceedings if an applicant has failed to co-operate with the Chamber to such an extent that the Chamber cannot deal with the proceedings fairly and justly (rule 8(3)(b) of the UT Procedure Rules). It may give directions which state that failure by an applicant to comply with the directions could lead to the striking out of the proceedings or part of them (rule 8(3)(a) of the UT Procedure Rules). Judges of this Chamber are entitled to bear these provisions in mind when considering the overriding objective in cases where a party (i) raises multiple satellite issues with a view to impeding the progress of an application or appeal; or (ii) makes repetitious interim applications that cause the Tribunal to expend disproportionate time and resources on interim, case management issues.

42. The Administrative Appeals Chamber is from time to time faced with individuals who seek improperly or unreasonably to influence the allocation of their application or appeal towards or away from a particular judge. Such conduct undermines the rule of law and breaches the overriding objective. Rule 2(4) of the UT Procedure Rules stipulates that the parties are under a duty to help the Tribunal to further the overriding objective and to co-operate with the Upper Tribunal generally. Judges of this Chamber may regard this sort of conduct as such a wholesale assault on the overriding objective that the application (and other any part of the proceedings flowing from it) should be struck out under rule 8(3)(b).

43. With these observations in mind, I turn to the issues raised by the present appeal.

Recusal application

44. The applicant asks me to recuse myself on the basis that I cannot fairly decide this appeal. He submits that my case management direction of 16 April 2020, which afforded him a further opportunity to make written submissions, shows an unlawful predisposition against him. That submission lacks merit. By the date of my direction, this Tribunal had already given the applicant ample opportunity to explain why his application for permission to appeal should not be struck out. As a matter of fairness to him as a litigant in person, I provided him with a further opportunity to say anything else he wished to say before considering his appeal. That does not amount to any predisposition against him.

45. In other submissions, the applicant launches a wholesale assault against my treatment of his cases to date (though he also attacks the GRC and those other judges of this Chamber who have played a part in considering his various appeals). These submissions do not bear repetition here: they are largely misconceived and rake over the previous history of proceedings in this and the applicant's other appeals. The main points seem to be that (i)

I have lacked transparency in case managing the latter part of the proceedings – which is not correct; and (ii) I have made some previous case management decisions adverse to the applicant – which is correct. I regard his submissions as breaching rule 2(4) of the UT Procedure Rules and as undermining the administration of justice. There is no merit in the recusal application which I reject as vexatious.

Request for further case management directions

46. The applicant makes an extensive request for seven further case management directions. First, he seeks an electronic recording in relation to the earlier appeal heard by Judge Wright in September 2018. Although Judge Wright directed that this be done, it later transpired (as I understand it) that HMCTS do not have the technical ability to separate a recording of the applicant's hearing from others that were in Judge Wright's list on the same day. Irrespective of any solution to that problem, proceedings in September 2018 are now irrelevant. I do not need (and decline) to stay these proceedings for any reason related to the September 2018 hearing.

47. Secondly, the applicant seeks an electronic recording of a hearing before Judge Ryan in an unrelated GRC case. There is no reason for me to stay the decision in this appeal for that purpose. Thirdly, the applicant seeks electronic copies of all the decisions, orders and other documents issued by this Chamber. This repetitious request has already been considered by the Tribunal.

48. Fourthly, I am asked to provide a statement setting out my reasons for allocating this appeal to myself as the applicant would have preferred to pursue his recusal application against Judge Wright. It is fundamentally contrary to the independent adjudication of appeals that a party be able to select his judge. This Tribunal will be astute to resist any attempts to do so.

49. Fifthly, the Tribunal is accused of procedural failings and asked to explain them and to adhere to some sort of timetable which the applicant seeks to impose on the Tribunal. The applicant fails to justify such a request which is misconceived. Sixthly, I am asked to set aside my directions of 16 April 2020. This appears to be on the basis that they are biased against the applicant. There are no grounds for setting aside the directions. Seventhly, I am asked to refer the case to the Equality and Human Rights Commission. That request reveals a misunderstanding of the Tribunal's jurisdiction – which is to decide appeals. The EHRC has nothing to do with it.

50. Finally, in relation to this application, the applicant seeks a stay of proceedings pending the resolution of preliminary issues – in particular, the proper interpretation of section 58 of FOIA and the relevance of regulation 12(4)(b) of the EIR – and pending a personal complaint about me. In my judgment, the applicant has been given every reasonable opportunity to put his case but has chosen tactically to bombard the Tribunal with recusal requests and complaints, thereby causing delay in the resolution of proceedings.

51. For these reasons, the application for further case management directions is refused as being vexatious.

Analysis and conclusions

52. The appeal before me concerns the decision of Judge McKenna. She decided to uphold the GRC Registrar's decision to seek the applicant's representations on whether his appeal to the GRC should be struck out. The decision that the applicant should send his views about strike out was a case management decision taken as a matter of the tribunal's discretion. As such the Upper Tribunal will not interfere unless the decision was unreasonable. The question is not whether another tribunal would or could have taken a different decision but whether the tribunal exercised its case management powers reasonably in the circumstances of this case.

53. What are the relevant circumstances? I have set out above the Commissioner's decision which was the subject of appeal. The decision is (in short terms) that the Council does not hold further information that would fall under the terms of the EIR but that the time limit for compliance with the applicant's requests was breached. The GRC was therefore reasonable to form the provisional or preliminary view that the focus of the appeal was whether the Council held further information within the scope of the applicant's requests. The applicant submits that the scope of the appeal should be cast in wider terms. It was not unlawful for the GRC to consider that the applicant might not properly advance his appeal in relation to legal provisions on which the Commissioner's decision did not turn, and so to ask him to make written submissions on why the appeal should not be struck out. If he has a different view, he is able to advance his submission on the scope of the appeal to the GRC: that is what he was asked to do. His submissions would then fall to be considered in a decision as to whether the appeal should or should not be struck out. That procedure – which is in accordance with the GRC Procedure Rules - cannot possibly be characterised as either unreasonable or unfair Nor may it properly be characterised as biased. There are no properly arguable grounds of appeal.

54. In my judgment, there is no reasonable prospect of the applicant's application for permission to appeal succeeding. I have considered whether in these circumstances I should exercise my discretionary case management powers to strike out the application. I have considered the overriding objective of the UT Procedure Rules which is to enable the Upper Tribunal to deal with cases fairly and justly. Dealing with a case fairly and justly includes dealing with the case in ways which are proportionate to the importance of the case and the complexity of the issues (rule 2(2)(a)). This application relates to the interim case management decision of a specialist tribunal which has now consumed disproportionate resources of this Chamber. The Upper Tribunal must also ensure so far as practicable that the parties are able to participate fully in the proceedings (rule 2(2)(c)). The Tribunal has extended ample opportunity to the applicant to say why his application should be allowed to proceed.

55. I have taken into consideration the interests of justice and fairness but conclude that there is no proper reason for the application for permission to appeal to proceed and no proper reason why the applicant should be entitled to argue points which are in my view bound to fail. The application for permission to appeal is struck out under rule 8(3)(c).

56. For the avoidance of doubt, the appeal before the GRC remains extant. I have in a different decision allowed the applicant's appeal in relation to GIA/438/2019 mentioned above. That decision has no bearing on this decision or on the more general observations which I have made.

THE HON MRS JUSTICE FARBEY
Chamber President
AUTHORISED FOR ISSUE ON: 2 September 2020