**IN THE UPPER TRIBUNAL** **Appeal No. UA-2023-001424-GIA**
**ADMINISTRATIVE APPEALS CHAMBER** **[2024] UKUT 290 (AAC)**

On appeal from the First-tier Tribunal (General Regulatory Chamber)

**Between:**

Mr Prakash Puchooa

Appellant

- v –

The Information Commissioner

Respondent

**Before: Upper Tribunal Judge Church**

Decided upon consideration of the papers without a hearing

**Representation:**
Appellant: Unrepresented
Respondent: Remi Reichhold of counsel (written submissions only)

## DECISION

**The decision of the Upper Tribunal is to allow the appeal.**
The decision of the First-tier Tribunal (General Regulatory Chamber) (Information Rights) made on 31 July 2023 under number EA/2023/0279 to strike out the proceedings was made in error of law.
Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 (the **"2007 Act"**) I set that decision aside and remit the strike out application to be reconsidered by the First-tier Tribunal afresh in accordance with the following directions.

## Directions

1. The Respondent's strike out application in respect of these proceedings is remitted to the First-tier Tribunal for reconsideration.
2. The strike out application should be considered by a different judge from the judge who made the decision which I have set aside.
3. These Directions may be supplemented by later directions by a tribunal judge, registrar or case worker in the General Regulatory Chamber of the First-tier Tribunal.

## REASONS FOR DECISION

### Factual and procedural background

1. The background to this appeal is that Mr Puchooa has, since at least mid-2018, been concerned about anti-social behaviour (**"ASB"**) in the street where he lives. He entered into correspondence with various people at his local authority and in the Metropolitan Police Service, as he felt that his concerns weren't being addressed appropriately. Mr Puchooa received an email from the mayor's office on 6 May 2020 which he felt to be inconsistent with earlier communications with an anti-social behaviour investigator. It is fair to say that Mr Puchooa felt that he had been "fobbed off".

2. On 20 June 2022, in exercise of his rights under section 1 of the Freedom of Information Act 2000 (**"FOIA"**), Mr Puchooa made a request to his local authority for certain information concerning the investigation into his complaints about ASB, the names of the officers who concluded that there was no ASB, whether those persons were PCSOs or ASB officers, how they reached the conclusion that there was no ASB, and how they reached the conclusion that Mr Puchooa was himself an "instigator" of tension in the area (the **"Request"**). The local authority responded to say that there were no ASB officers investigating his complaint other than the one with whom he had his initial dealings, and to the extent that information was held by the local authority it was exempt under Section 40(1) FOIA. Mr Puchooa was dissatisfied with the local authority's response. After the local authority's internal review concluded that the response was factually correct and was confirmed, he made a complaint to the Information Commissioner pursuant to section 50 FOIA in relation to the local authority's handling of his Request. The main thrust of his complaint was that he believed that the local authority did hold information falling within the Request, because what he was being told was wholly inconsistent with previous communications with the council.

3. On 5 May 2023 the Information Commissioner issued Decision Notice IC-199663-K9B6 (the **"Decision Notice"**). In the Decision Notice the Information Commissioner accepted the local authority's evidence that no other ASB officer was involved in investigating Mr Puchooa's complaints of ASB and he accepted that the local authority had explained to Mr Puchooa how decisions were reached by ASB investigators, and no other information was held setting out how conclusions were reached. The Information Commissioner concluded that the local authority had discharged its obligations under FOIA and no further action was required.

4. Mr Puchooa was unhappy with this outcome and on 2 June 2023 he appealed the Decision Notice to the First-tier Tribunal (General Regulatory Chamber). On 12 June 2023 the Information Commissioner filed his response to the appeal. His response included an application for the proceedings to be struck out pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the **"FtT Rules"**).

5. Mr Puchooa was invited to file a response to the strike out application, which he duly did, and on 2 August 2023 Judge Brian Kennedy KC of the First-tier Tribunal struck out the proceedings (the **"Strike Out Decision"**). It is the Strike Out Decision that is the decision under appeal.

## The permission stage

6. The permission application came before me (the First-tier Tribunal having refused permission to appeal). Following an oral hearing I decided to grant permission. In my grant of permission I said:

> "17. In this case the Council has consistently denied holding any information which is covered by Mr Puchooa's request except to the extent that it has already been supplied to him or is his personal information. The Information Commissioner accepted the Council's account and issued a decision notice which didn't require the Council to take any further action. The Information Commissioner had to make his decision on the evidence on the balance of probabilities.
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> 18. When a decision of the Information Commissioner is appealed to the First-tier Tribunal the First-tier Tribunal must decide whether the Information Commissioner's Decision Notice is in accordance with the law. To reach that assessment the First-tier Tribunal must, where facts are in dispute, make its own assessment of the evidence and make findings of fact on the balance of probabilities. It must then apply the law to those findings of fact to reach its decision.
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> 19. Had the First-tier Tribunal decided the appeal by assessing the evidence in the same way as the Information Commissioner did and reaching the same findings that the Information Commissioner found, it would have been entitled to do so. However, that is not what happened. Rather, the Information Commissioner applied for Mr Puchooa's appeal to be struck out before it got to the hearing stage.
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> 20. For Judge Kennedy KC to be entitled to strike out Mr Puchooa's appeal, he had to be persuaded that Mr Puchooa's appeal had no reasonable prospect of success, not just that, on balance, Judge Kennedy KC would reach the same decision.
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> 21. While I certainly **don't** accept Mr Puchooa's assertion that the evidence is consistent only with his interpretation of it, and that it therefore follows that the Council holds further information to which he is entitled under section 1 FOIA, I am persuaded that it is at least arguable that his grounds for appeal against the Information Commissioner's decision were themselves arguable. It was, therefore, arguably premature for the proceedings to be struck out.
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> 22. The reasons given for the Strike Out Decision are very brief. The only ground referred to is that "the Commissioner erred in his application of the required standard of proof in coming to his decision" (see paragraph [9] of the Strike Out Decision). Mr Puchooa's grounds for appeal are set out in his T98 appeal form. His grounds amount to a spirited and detailed disagreement with the Information Commissioner's interpretation of the evidence, rather than the standard of proof which he applied. While it is clear that Judge Kennedy KC was satisfied that the Information Commissioner had "carried out a thorough investigation on the facts" (see paragraph [9] of the Strike Out Decision), it may not be adequately clear what Judge Kennedy KC's assessment of the evidence and findings of fact were. As such the reasons for the Strike Out Decision may not meet the required standard of "adequacy". That ground also justifies a grant of permission to appeal to the Upper Tribunal."

7. I issued Case Management Directions for the parties to make submissions on the appeal and to indicate their preference as to mode of hearing, which they duly did.

**The parties' positions**

8. Counsel for the Information Commissioner resisted the appeal, arguing that:

   a. it was open to the First-tier Tribunal judge on the evidence before him and as a matter of law, to conclude that Mr Puchooa's appeal had no reasonable prospect of success and to strike it out; and

   b. it was open to the First-tier Tribunal judge to place reliance on the Information Commissioner's findings in the reasons he gave for striking out the appeal and, while his reasons for striking out the proceedings were brief, when read with the case put by the Information Commissioner with which he clearly agreed, his reasons achieve the required standard of adequacy.

9. Mr Puchooa made very extensive submissions on the appeal, but these focused in large part on the underlying merits of his dispute with his local authority (and indeed extraneous matters) rather than identifying errors of law in the First-tier Tribunal's strike out decision.

**Why there was no oral hearing of this appeal**

10. The Information Commissioner did not request an oral hearing. Mr Puchooa did request an oral hearing, and I took his preference into account. However, while I have no doubt that Mr Puchooa has much that he would like to say, I think an oral hearing of the appeal is unlikely to result in a significant improvement in my understanding of Mr Puchooa's case **to the extent relevant to whether the First-tier Tribunal had erred in law and its decision should be set aside**. The overriding objective is best served by this appeal being determined on the papers to avoid further delay.

**Why I have allowed this appeal**

11. At the permission stage I had to be satisfied only that the grounds for which permission was given were "arguable". At this stage I must be satisfied that the Strike Out Decision did involve a material error of law.

12. Despite the attractive submissions made by counsel for the Information Commissioner, I am satisfied that the reasons given by the First-tier Tribunal judge for the Strike Out Decision were inadequate. Reasons need not be extensive, as long as they are clear and they inform the reader how and why the tribunal resolved the main points in issue. A court or tribunal's judgment or reasons must be read as a whole and having regard to its "context and structure" (per Munby P in *Re F (Children)* [2016] EWCA Civ 546 at [22]), and it was open to the First-tier Judge to place reliance on the Information Commissioner's findings in the reasons he gave for the Strike Out Decision (see *DfE v IC &* Whitmey [2018] UKUT 348 (AAC), per Judge Jacobs at [17]-[18]. However, in this case the very sparse reasons of the First-tier Tribunal simply require the reader to import too much from extraneous sources.

13. It is apparent from his reasons that the First-tier Tribunal judge broadly accepted the Information Commissioner's case. However, this was a strike out application and the striking out of the proceedings required the First-tier Tribunal judge to satisfy himself that Mr Puchooa's case had no reasonable prospect of success. In this context, I consider that, in order to clear the hurdle of 'adequacy', the judge's reasons had to grapple with that higher standard and to provide Mr Puchooa

with some explanation of **why** the Information Commissioner's submissions were preferred over his, and so why he lost. They didn't.

14. While it may have been open to the First-tier Tribunal judge in law and on the evidence before him to strike out the proceedings, his explanation of how and why he decided as he did falls short of the standard of 'adequacy' in a second respect because his reasons don't permit an appellate court to assess whether the determination was sustainable (*Re F (Children)* at [22]-[23]).

**Disposal**

15. It is in the nature of an inadequacy of reasons that we cannot know whether the correct tests were applied, or if they were, whether they were applied correctly. As such, the error of law must be considered to be material. In all the circumstances the interests of justice require me to exercise my discretion under section 12(2)(a) of the 2007 Act to set aside the erroneous decision.

16. Because the First-tier Tribunal is the most appropriate forum for determining this matter I exercise my discretion under section 12(2)(b)(i) of the 2007 Act to remit the Respondent's strike-out application to be re-heard by a different judge of the First-tier Tribunal (General Regulatory Chamber).

**End note**

17. I appreciate the irony of my giving such very brief reasons for this decision on the topic of adequacy of reasons. These proceedings have already generated a huge, and I suggest disproportionate, amount of paper. I am loathe to add materially to it, hence the brevity of this appeal notice. I hope I have said enough.

**Thomas Church**
**Judge of the Upper Tribunal**
Authorised for issue on 14 September 2024