UA-2026-000152-GIA

IN THE UPPER TRIBUNAL **Appeal No. UA-2026-000152-GIA**
ADMINISTRATIVE APPEALS CHAMBER

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Applicant:	Mr Timandeep Singh Gill
1st Respondent:	The Information Commissioner
2nd Respondent:	The Chief Constable of Kent Police
Tribunal:	First-tier Tribunal (GRC) (Information Rights)
NCN:	[2025] UKFTT 01360 (GRC)
Tribunal Case No:	FT/EA/2025/0195
Tribunal Venue:	CVP hearing
Hearing Date:	10 November 2025
Decision Date:	20 November 2025

NOTICE OF DETERMINATION OF
APPLICATION FOR PERMISSION TO APPEAL

I refuse the application for permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal.

I also record the fact that the application for permission to appeal is totally without merit ('TWM') within the meaning of rule 22(4A).

This determination is made under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rules 2, 5, 21 & 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

REASONS

Introduction

1. The Applicant has lodged an application for permission to appeal against the decision of the First-tier Tribunal (FTT). The case involves his appeal to the FTT against a Decision Notice of the Information Commissioner. That appeal concerned whether the Commissioner was correct to determine in the Decision Notice that the Appellant's FOIA request to the relevant public authority (Kent Police) was "vexatious" within the meaning of section 14 of the 2000 Act. The FTT concluded that the Commissioner was correct to conclude that the Applicant's FOIA request was indeed vexatious within the meaning of section 14. As the Applicant had not shown any error

of law in the Decision Notice, the FTT accordingly dismissed the appeal. Judge Saward subsequently refused permission to appeal on behalf of the FTT in a ruling dated 22 December 2025. I am refusing the renewed application for permission to appeal to the Upper Tribunal for the reasons that follow (although I also adopt and endorse Judge Saward's reasons for refusing permission to appeal). I am also certifying the application as being totally without merit ('TWM'). This means that there is no right of renewal before an oral reconsideration hearing.

The application for an oral hearing of the application for permission to appeal

2. The Applicant makes a conditional request for an oral hearing of his application on his Form UT13 (Box F). He states as follows: "The Appellant believes that the appeal grounds are strong on the papers. However if permission on the papers is unsuccessful, the Appellant would respectfully wish for an oral hearing to explain the basis for the case. This appeal request highlights a matter of public interest, a judgement based on a false factual premise, and governance issues at the lower tribunal".

3. I have had regard to the Applicant's request (as required by rule 34 of the UT Rules). The decision as to whether to grant an oral hearing is a matter of judicial discretion. The test I must apply in deciding whether to hold an oral hearing is whether "fairness requires such a hearing in the light of the facts of the case and the importance of what is at stake": see *R (Osborn) v Parole Board* [2014] AC 1115 at paragraph 2(i). I have also considered whether an oral hearing would be likely to assist me to understand his grounds of appeal better. I do not think that it would. The core issues in this application are essentially straightforward, for reasons that will become apparent.

4. I consider that the overriding objective of the Upper Tribunal to deal with cases fairly and justly (see rule 2 of the UT Rules, which includes "dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties" as well as "avoiding delay, so far as compatible with proper consideration of the issues"), would best be furthered by my deciding this application on the papers. This is to avoid both delay and an inappropriate use of judicial and administrative resources.

The application for permission to appeal: the test to be applied

5. An appeal to the Upper Tribunal lies only on "<u>any point of law</u> arising from a decision" of the First-tier Tribunal (section 11(1) of the Tribunals, Courts and Enforcement Act 2007). Such a further appeal is not an opportunity to re-argue the factual merits of the underlying appeal. The Upper Tribunal will give permission to appeal only if there is a realistic prospect of an appeal succeeding, unless there is exceptionally some other good reason to do so (see by analogy Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538).

6. The error of law must also be material, i.e. one that affected the outcome of the case in some relevant way. The Court of Appeal set out a summary of the main errors of law in its decision in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at paragraph [9]. Some examples of where the FTT may go wrong in law include (in plain English) situations where the tribunal (a) did not apply the correct law or wrongly interpreted the law; (b) made a procedural error; (c) had no evidence,

or not enough evidence, to support its decision; (d) failed to find sufficient facts; or (e) did not give adequate reasons.

7. In applying the above test, I must have regard to the fact that the FTT consists of a Judge and two specialist members with expertise in the field of information rights. As such, the FTT is best placed, with that broad range of expertise and experience, to decide the facts. This means the Upper Tribunal must respect and give due weight to the fact-finding role of the FTT. Therefore, I must bear in mind the cautionary approach required by Lady Hale in *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49. Giving guidance in the context of specialist tribunals more generally (that was an asylum case, but the same principle applies here too in the FOIA context), Lady Hale said as follows:

> "This is an expert tribunal charged with administering a complex area of law in challenging circumstances. To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see *Cooke v Secretary of State for Social Security* [2001]EWCA Civ 734, [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such mis-directions simply because they might have reached a different conclusion on the facts or expressed themselves differently."

8. Likewise, Carr LJ (as she then was, now Carr LCJ) in *Walter Lilly & Co Ltd v Clin* [2021] 1 WLR 2753 has stressed the proper approach of an appellate tribunal in deciding whether to grant permission from a fact-finding first instance tribunal:

> "83. Appellate courts have been warned repeatedly, including by recent statements at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The reasons for this approach are many. They include:
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> i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed;
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> ii) The trial is not a dress rehearsal. It is the first and last night of the show;
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> iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case;
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> iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping;

v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence);

vi) Thus, even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

…

85. In essence the finding of fact must be plainly wrong if it is to be overturned. A simple distillation of the circumstances in which appellate interference may be justified, so far as material for present purposes, can be set out uncontroversially as follows:

i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support;

ii) Where the finding is infected by some identifiable error, such as a material error of law;

iii) Where the finding lies outside the bounds within which reasonable disagreement is possible.

86. An evaluation of the facts is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and appellate courts should approach them in a similar way. The appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the trial judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.

87. The degree to which appellate restraint should be exercised in an individual case may be influenced by the nature of the conclusion and the extent to which it depended upon an advantage possessed by the trial judge, whether from a thorough immersion in all angles of the case, or from first-hand experience of the testing of the evidence, or because of particular relevant specialist expertise."

9. Thus, as Leveson LJ held in *Secretary of State for Work and Pensions v Roach* [2006] EWCA Civ 1746 (at paragraph 31), "assuming that the fact finder's analysis was open to him or her, an appellate court or tribunal can only intervene in that process based upon an error of law which is not the same as pointing to a different analysis of the evidence."

The proposed grounds of appeal in this case: discussion and analysis

10. The Applicant's proposed grounds of appeal against the FTT's decision are set out in his UT13 notice. The grounds of appeal and the associated supporting documents run to just under 300 pages. Accordingly, it is quite unrealistic for the Upper Tribunal to address every point that is made in support of the application. I simply focus on the main reasons for refusing permission to appeal.

11. In substance the proposed grounds of appeal amount to a spirited disagreement with the FTT's assessment of the evidence before it. However, the FTT clearly did not share the Applicant's view of the evidence. The FTT had a broad discretion as to how to evaluate the evidence before it, what weight to give each piece of evidence and how to resolve any conflicts of evidence. The FTT also had a broad discretion when it came to making findings of fact based on the evidence as it assessed it. The facts were for the FTT to find, and as noted above the Upper Tribunal is generally (and properly) slow to interfere with that role. In short, the Applicant argues for a different analysis of the evidence rather than identifying any error of law as such.

12. I have considered whether the FTT failed to give adequate reasons. The relevant case law authorities about the adequacy of a tribunal's reasoning were reviewed by a three-judge panel of the Upper Tribunal in *Information Commissioner v Experian Ltd* [2024] UKUT 105 (AAC) in the following passage:

> 63. There are many appellate authorities on the adequacy of reasons in a judicial decision. In this chamber of the Upper Tribunal, the principles were summarised in, for example, *Oxford Phoenix Innovation Ltd v Information Commissioner & Medicines and Healthcare Regulatory Agency* [2018] UKUT 192 (AAC) at [50-54]. At its most succinct, the duty to give reasons was encapsulated at [22] in *Re F (Children)* [2016] EWCA Civ 546 (one of the authorities cited there), as follows:
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> > 'Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable.'
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> 64. As is well-known, the authorities counsel judicial "restraint" when the reasons that a tribunal gives for its decision are being examined. In *R (Jones) v FTT (Social Entitlement Chamber)* [2013] UKSC 19 at [25] Lord Hope observed that the appellate court should not assume too readily that the tribunal below misdirected itself just because it had not fully set out every step in its reasoning. Similarly, "the concern of the court ought to be substance not semantics": per Sir James Munby P in *Re F (Children)* at [23]. Lord Hope said this of an industrial tribunal's reasoning in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 at [59]:
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> > '… It has also been recognised that a generous interpretation ought to be given to a tribunal's reasoning. It is to be expected, of course, that the decision will set out the facts. That is the raw material on which any review of its decision must be based. But the quality which is to be expected of its reasoning is not that to be expected of a High Court judge. Its reasoning ought to be explained, but the circumstances in which a tribunal works should be respected. The reasoning ought not to be subjected to an unduly critical analysis.'
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> 65. The reasons of the tribunal below must be considered as a whole. Furthermore, the appellate court should not limit itself to what is explicitly shown on the face of the decision; it should also have regard to that which is implicit in the decision. *R v Immigration Appeal Tribunal, ex parte Khan* [1983] QB 790 (per Lord Lane CJ at page 794) was cited by Floyd LJ in *UT (Sri Lanka) v SSHD* [2019] EWCA Civ 1095 at [27] as explaining that the issues which a tribunal decides and

> the basis on which the tribunal reaches its decision may be set out directly or by inference.

13. Applying those principles, I am not persuaded that the FTT's reasons in the instant case are in any way legally inadequate. A tribunal's reasons do not have to address every point that is made by the parties in the course of litigation – rather, the reasons must explain why the FTT came to the decision it did. It is always possible for there to be more reasons, but the test is one of adequacy or sufficiency. Upper Tribunal Judge Poole QC (as she then was) helpfully explained the nature of the test in *DS v SSWP (ESA)* [2019] UKUT 347 (AAC). There, she said that the question is whether the FTT "deal with the substantial questions in an intelligible way, leaving the informed reader in no real and substantial doubt as to the reasons for the decision and what material considerations were taken into account" (at paragraph [9]). The FTT's decision in this case comfortably meets that threshold. It is perfectly clear why the FTT found that the high hurdle imposed by section 14 was satisfied on the facts of this case.

14. Stepping back, I am satisfied that the FTT properly applied the test for section 14 of FOIA as set out by the Court of Appeal and the Upper Tribunal in the leading case of *Dransfield v The Information Commissioner & Devon CC* [2015] EWCA Civ 454. Having directed itself correctly as to the relevant legal principles underpinning section 14, the FTT carried out a careful fact-finding exercise. Having done so, the FTT reached a conclusion that was reasonably open to the panel, based on the evidence and submissions before it. The fact that the Applicant may happen to disagree with that factual conclusion does not elevate it into an error of law. The grounds of appeal are, at heart, an impermissible attempt to re-argue the weight to be accorded to the various aspects of the section 14 test, which were quintessentially issues of fact for the FTT to determine, and which do not disclose any arguable error of law. I therefore find that the grounds of appeal more generally substantially consist of re-argument and development of the Appellant's previous arguments which the Tribunal properly considered in reaching its decision.

15. For all the reasons above, I conclude that none of the grounds of appeal is arguable with any realistic prospect of success. Nor am I persuaded there is, exceptionally, any other good reason to grant permission to appeal. So, I refuse permission to appeal to the Upper Tribunal. The application to suspend the effect of the FTT decision necessarily falls away and suffers the same fate as the application for permission to appeal.

Consideration of the 'totally without merit' (TWM) test in this case

16. I now turn to consider whether this application for permission to appeal is "totally without merit" (TWM) in the legal sense of that term. If the application is so certified, there is no right to renew the application at an oral hearing before the Upper Tribunal.

17. Rule 22(4A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698, 'the 2008 Rules'), as inserted by rule 3(4)(b) of the Tribunal Procedure (Amendment) Rules 2022 (SI 2022/312), provides as follows:

> "(4A) Where the Upper Tribunal considers the whole or part of an application to be totally without merit, it shall record that fact in its decision notice and, in those circumstances, the person seeking permission may not request the

decision or part of the decision (as the case may be) to be reconsidered at a hearing."

18. The concept of an application which is "totally without merit" is not defined by the 2008 Rules but has been authoritatively considered in the case law in the context of the Civil Procedure Rules (CPR). Thus, detailed guidance on the approach to be taken to the TWM rules was given by the Court of Appeal in *R (Wasif) v Secretary of State for the Home Department (SSHD)* [2016] EWCA Civ 82; [2016] 1 WLR 2793, especially at [13] to [22]. I have had regard to the whole of that guidance, the essence (though not the totality) of which is that a case should only be recorded as TWM where, on careful consideration, it is "bound to fail" and no possible purpose would be served by allowing the appellant in question an opportunity to make further submissions at an oral hearing.

19. In the present case I am satisfied that the proposed appeal is not just unarguable but that it is bound to fail for the reasons I have set out above. No purpose whatsoever would be served by allowing the Applicant to renew his application at an oral hearing. Put baldly, he would be wasting his own time and wasting the Upper Tribunal's time.

20. I remind myself that the Court of Appeal in *R (Wasif) v SSHD* acknowledged that "some judges may find it a useful thought-experiment to ask whether they can conceive of a judicial colleague taking a different view about whether permission should be granted" (paragraph 17(4)). Applying that thought experiment, I simply cannot conceive of any Upper Tribunal judge granting permission to appeal on the grounds advanced by the Applicant or indeed on any other potential ground of appeal.

Conclusion

21. As well as refusing permission to appeal, I therefore record the fact that this application for permission to appeal is **totally without merit** within the terms of rule 22(4A).

RULE 22(4A) OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008 APPLIES. THE APPLICANT MAY NOT REQUEST THAT THE DECISION TO REFUSE PERMISSION TO APPEAL BE RECONSIDERED AT A HEARING.

Nicholas Wikeley
Judge of the Upper Tribunal

(Approved for issue on) **20 February 2026**