IN THE UPPER TRIBUNAL **Upper Tribunal case Nos. GIA/1718/2016**
ADMINISTRATIVE APPEALS CHAMBER **GIA/1719/2016 & GIA/1721/2016**

Before: Judge Nicholas Wikeley, Upper Tribunal (Administrative Appeals Chamber)

Decision: The proceedings in the Upper Tribunal on the Applicant's applications for permission to appeal against the decisions of the First-tier Tribunal (7 April 2016, file reference EA/2013/0150, /0152 and /0173) are **STRUCK OUT** in their entirety under rule 8(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

REASONS

Introduction

1. Mr Martyres has applied to the Upper Tribunal for permission to appeal against the First-tier Tribunal (FTT)'s three decisions dated 7th April 2016. Upper Tribunal Judge Markus QC has already refused permission on the papers. Mr Martyres then applied for the three applications to be reconsidered at an oral hearing. For the reasons that follow, I am striking out his applications on the basis that they have no reasonable prospects of success.

Background

2. On 7 April 2016 the FTT dismissed Mr Martyres's three appeals in a lengthy and detailed decision. On 9 May 2016 the FTT Judge refused permission to appeal to the Upper Tribunal. On 10 August 2016 Judge Markus QC refused permission to appeal in the following terms:

> 1. Mr Martyres applies for permission to appeal against the decision of the First-tier Tribunal dated 7 April 2016 under case numbers EA/2013/150, EA/2013/151 and EA/2013/173.
> 2. The First-tier Tribunal had struck out all three appeals on 13 November 2013. Mr Martyres appealed to the Upper Tribunal. On 28 September 2015 I allowed his appeal in relation to EA/2013/150 and EA/2013/151 and I remitted those cases to be reconsidered by the First-tier Tribunal. I dismissed the appeal against the decision in EA/2013/173. The current application for permission to appeal relates to the First-tier Tribunal's decision following remittal.
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> 3. This application relates to EA/2013/173 in the First-tier Tribunal. As I had dismissed Mr Martyres' appeal in that case, that appeal could not have been and was not remitted to the First-tier Tribunal by me.

Those proceedings were at an end. The Registrar's case management note of 7 October 2015 (page 139 of the First-tier Tribunal bundle) made it clear that only EA/2013/150 and EA/2013/151 were before the First-tier Tribunal. The written submissions of the parties only addressed those two appeals.

4. Despite that, the First-tier Tribunal purported to determine EA/2013/173. It had no jurisdiction to do so. When I first considered the application for permission to appeal, it appeared to me that the Upper Tribunal also had no jurisdiction to consider the application for permission to appeal and, pursuant to rule 8(4) of the Tribunal Procedure (Upper Tribunal) Rules 2008, I gave Mr Martyres an opportunity to make representations in relation to a proposal to strike out the proceedings. Mr Martyres sent written representations dated 28 July 2016 and some supporting documents. His representations did not address the strike out proposal nor the basis of that proposal, ie the First-tier Tribunal's lack of jurisdiction, but instead addressed his substantive complaints underlying the appeals and other matters, none of which is relevant to the proposed strike out or jurisdictional question.

5. Despite this, on reflection it seems to me that striking out this application is not the correct course. The Upper Tribunal has jurisdiction on appeal against a decision of the First-tier Tribunal made without jurisdiction: *Calvin v Carr* [1980] AC 574. There is no other basis for striking out the application under rule 8.

6. I have decided that I should refuse permission to appeal. Even if the First-tier Tribunal's substantive decision on this appeal was erroneous in law, there could be no different outcome. The First-tier Tribunal should not have determined the appeal, because there was no appeal. The only decision which the Upper Tribunal could make on any successful appeal would be to replace the First-tier Tribunal's decision with a decision that the First-tier Tribunal had no jurisdiction. On any basis, the result would be that the Information Commissioner's decision would remain undisturbed.

7. Having said that, it may also be helpful if I explain that, even if the First-tier Tribunal had had jurisdiction, I would have refused permission to appeal on the merits of the decision which was properly made on the facts and Mr Martyres has not advanced any arguable error of law in respect of it.

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8. These applications relate to cases EA/2013/150 and EA/2013/151 in the First-tier Tribunal. The issue before the First-tier Tribunal in those two appeals concerned the Chief Constable's refusal of Mr Martyres' requests for information, pursuant to section 14 FOIA. The Commissioner had upheld the Chief Constable's refusal on that basis and the First-tier Tribunal unanimously dismissed the Appellant's appeal.

9. Having been refused permission to appeal against its decision by the First-tier Tribunal, Mr Marytres has applied to the Upper Tribunal for permission. He also sent emails dated 5 and 29 June and some

documents which are copies of some of the documents in the First-tier Tribunal file.

10. Mr Martyres submits that the Chief Constable, Information Commissioner and First-tier Tribunal failed to consider requests for disclosure under sections 38, 39 and 40 FOIA. There was no error of law in that respect: as the requests were refused under section 14, and so there was no need to consider disclosure under the other sections.

11. Mr Martyres advances a number of other grounds. These relate to asserted impropriety of the issuing of Police Information Notices by the Constabulary, alleged failings by the police and other agencies, the validity of the wills and other issues relating to the family disputes with which Mr Martyres is concerned, and his wish to obtain evidence from a variety of individuals and bodies in connection with the background matters connected to those disputes. He does not identify how any of these matters demonstrate an arguable error of law by the First-tier Tribunal and I conclude that they do not. In raising these matters he is attempting to reargue his submissions to the First-tier Tribunal in which he had relied on these matters to justify his requests. The First-tier Tribunal considered Mr Martyres' submissions carefully and rejected them. Indeed, Mr Martyres' continued reliance on these matters in this application for permission to appeal reinforces the First-tier Tribunal's conclusions at paragraphs 17-20. This is further reinforced by his email to the Upper Tribunal dated 5 June 2016 in which he says that he needs answers to questions as to the property and wills disputes from, amongst others, the Upper Tribunal.

12. I have considered the First-tier Tribunal's decision and reasons in order to identify whether there is any other arguable error of law which Mr Martyres has not identified. There is not. The First-tier Tribunal's approach to section 14 was in accordance with the decision of the Court of Appeal in *Dransfield v Information Commissioner and Devon CC* [2015] EWCA Civ 454 which confirmed the guidance of the Upper Tribunal in *Information Commissioner v Dransfield* [2012] UKUT 440 (AAC).

13. The decision of the First-tier Tribunal was reached fairly. An oral hearing took place before the tribunal. Mr Martyres was present but the Respondents were not. It is clear from the tribunal's written reasons that Mr Martyres was able to address the tribunal fully on his submissions, that the tribunal explored with him the relevant issues and gave him an opportunity to explain his position on disputed matters of fact and give evidence. He was also permitted to send further documents after the hearing along with written submissions. The tribunal's findings were supported by the evidence, its decision was rational and it provided a clear explanation for its decision.

14. Therefore I refuse permission to appeal because there is no realistic prospect that Mr Martyres will be able to show that the First-tier Tribunal made an error of law, and there is no other reason for giving permission.

3. On 25 August 2016 Mr Martyres applied for that refusal of permission to be reconsidered at an oral hearing. I then issued Observations and Directions on these three applications on 31 August 2016. I include the Observations in full below:

> "1. This matter has a lengthy history. For the reasons that follow, I am not at present satisfied that any further scarce judicial resource should be devoted to holding an oral renewal hearing of these so far unsuccessful applications for permission to appeal. I am therefore proposing that all three applications should be struck out on the basis that they have no reasonable prospects of success. Any party is at liberty to make representations on this proposal in accordance with the Directions that follow below (at p.4).
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> 2. The full background to these applications will be familiar to those involved and need not be repeated here in detail. Suffice to say that Mr Martyres appealed against three decision notices issued by the Information Commissioner in July and August 2013. On 13 November 2013 Judge Warren CP of the First-tier Tribunal (FTT) issued a ruling striking out all three appeals as having no reasonable prospects of success. On 16 April 2014 Judge McKenna gave Mr Martyres permission to appeal to the Upper Tribunal. On 28 September 2015 Judge Markus QC allowed the appeals in relation to cases EA/2013/150 (UT reference GIA/894/2014) and EA/2013/152 (UT reference GIA/899/2014), which I call the "section 14 appeals". However, Judge Markus QC dismissed the appeal in relation to case EA/2013/0173 (UT reference GIA/900/2014), which I call the "section 40 appeal". She remitted the two section 14 appeals to the FTT for hearing.
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> 3. The new FTT hearing took place before a full panel in Cambridge on 9 March 2016, presided over by FTT Judge Ryan. For reasons that are not entirely clear the FTT regarded itself as seized of both the two section 14 appeals *and* the section 40 appeal. I return to this confusion later. Be that as it may, the FTT dismissed both/all the appeals before it.
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> 4. Mr Martyres applied for permission to appeal from the FTT decision to the Upper Tribunal. On 9 May 2016 Judge Ryan refused permission to appeal. Mr Martyres then applied direct to the Upper Tribunal. On 10 August 2016 Judge Markus QC refused permission to appeal on the papers. This ruling was sent out on 11 August 2016 with a standard letter from the Upper Tribunal office advising Mr Martyres of his right to apply (within 14 days) for that decision to be reconsidered at an oral hearing. On 25 August 2016 Mr Martyres e-mailed the Upper Tribunal office applying for Judge Markus QC's decision to be reconsidered.
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> 5. I should explain at the outset that the right for an application to be reconsidered at an oral hearing following a refusal on the papers (see Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698), rule 22(3)-(5)), is *not* an absolute right. It is subject to the provisions of the Rules more generally, and they include the power for a case to be struck out: see Judge Mitchell's decision in *Dransfield v Information Commissioner* [2016] UKUT 0273 (AAC). It is plain that Mr Martyres is unhappy with the decision of the FTT. However, that is not enough to justify permission to appeal. He needs to identify an error of law in the Tribunal's decision.

6. This is because an appeal to the Upper Tribunal lies only on "any point of law arising from a decision" (section 11(1) of the Tribunals, Courts and Enforcement Act 2007). So an appeal to the Upper Tribunal is not an opportunity simply to re-argue a point on its factual merits. Moreover, the Upper Tribunal has a discretion as to whether to give permission. It will be exercised positively only if there is a realistic prospect of an appeal succeeding, unless there is exceptionally some other good reason to do so: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

7. From my review of the files I am inclined to the view that these applications have no reasonable prospects of success. I have re-read Mr Martyres's original application, which did not find favour with Judge Markus QC. He raises a number of issues there which are completely outwith and irrelevant to the jurisdiction of the FTT (and also the Upper Tribunal), e.g. the validity of certain family members' wills. Given the content of that application, it is difficult to see how Judge Markus QC could have come to any other decision than the one she did.

8. I have also considered Mr Martyres's subsequent communications. In his e-mail of 29 June 2016 he states that "the main issue is the inability" of various police forces to investigate alleged probate fraud "that have caused significant distress, ill health and financial loss to the Appellant and his wife over the last 27 years". If that is the main issue, it is of no concern to the FTT, the role of which is confined to deciding whether the Information Commissioner's decision notices have correctly applied the law, e.g. under FOIA.

9. I turn to the three appeals actually in issue. First I consider the section 40 appeal. As Judge Markus QC noted, the FTT should not even have considered this appeal in any event as the original appeal had been dismissed (see paragraphs 3-7 of her ruling on GIA/1721/2016). It follows that the FTT technically erred in law. However, the only decision that the FTT could properly have come to in relation to the section 40 appeal was that it had no jurisdiction. There was no live appeal. The matter had been dealt with when Judge Markus QC had previously dismissed the appeal in GIA/900/2014. It therefore follows that there is no reasonable prospect of any substantive success in relation to that appeal. Nothing in Mr Martyres's request for an oral renewal of his application addresses that point.

10. Second, I turn to the two section 14 appeals. The FTT chaired by Judge Ryan considered these appeals at some length. The FTT applied the relevant law as set down in the *Dransfield* case in the Upper Tribunal [2012] UKUT 440 (AAC) and Court of Appeal [2015] EWCA Civ 454. For the reasons Judge Markus QC gives in her ruling of 10 August 2016, I also can see no arguable error of law in the FTT's decision and reasons. In Mr Martyres's e-mailed request for an oral renewal of his application he makes three points. None of those three points even begins to address the reasons given by Judge Markus QC in her ruling at paragraphs 11-14.

11. Mr Martyres's first point on renewal is that the Chief Constable holds the requested information. Assuming for the present that that claim is true, it is irrelevant. A public authority can hold information but need not disclose it if the request is vexatious. The Information Commissioner and the FTT both found that Mr Martyres's requests were vexatious. Mr Martyres has not shown how the FTT wrongly applied the law on section 14; rather, he disagrees with its factual

conclusions as to e.g. his obsessive conduct. However, that does not point to an error of law.

12. Mr Martyres's second point on renewal is that the Chief Constable has breached the DPA and FOIA and his Article 8 rights. The DPA issue was not before the FTT because of the fate of the section 40 appeal. The FTT found that the Information Commissioner (and by extension the Chief Constable and the police authority) had applied FOIA properly. Simply asserting that the police have breached FOIA does not make it so. The FTT has no jurisdiction to consider freestanding Article 8 claims against the police, which are a matter for the civil courts. Again, no discernible error of law on the part of the FTT is identified.

13. Mr Martyres's third point on renewal refers to what he asserts to be the distress and injustice endured by his family over three decades. Again, this does not explain where the FTT erred in law in any respect.

14. I am therefore considering striking out each of Mr Martyres's three applications – without holding an oral renewal hearing – under rule 8(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698). This would be on the basis that they have no reasonable prospects of success. I am considering that course of action in the light of my provisional views as set out above as to the merits of the grounds of appeal upon which Mr Martyres seeks to rely.

15. I recognise that striking out applications without an oral hearing is a draconian step. However, as Judge Mitchell observed in the *Dransfield* case:

> "42. However, the case management consequence of a decision to strike out an application for permission to appeal is not something I am obliged to avoid, especially where an application does not have even a remote prospect of success. The Upper Tribunal does not have unlimited resources. A hearing incurs financial and other costs and also delays the hearing of some other case. I also take into account that the Upper Tribunal's rules anticipate the possibility of striking-out an application which, if simply refused on the papers, would allow the applicant to seek an oral reconsideration. The rules do not disapply the power to strike out in a case where, had permission to appeal been refused on the papers, the Appellant would have the right to seek an oral reconsideration. For certain immigration decisions, rule 34(3) requires a hearing before "disposing" of the case. And so the makers of the Rules identified certain categories of case where a hearing would always be required. But the Rules do not, in the same way, treat as a special case an application for permission to appeal against an information rights decision of the First-tier Tribunal."

16. I also bear in mind, by reference to Court of Appeal authorities, that the strike out power under rule 8 must be used for legitimate case management purposes, not for some other purpose. It should also not be exercised unless the tribunal has considered whether its other case management powers could be used to arrive at a more just result. Finally, since it is a method of "final disposal", it should only be used as a "last resort".

17. Mr Martyres (and any other party) may now make representations on the proposal to strike out this application without a hearing; any such representations must comply with Directions 1 and 2 below.

The Directions

4. The Directions linked to those Observations invited representations to be made within one month of the date of issue (6 September 2016). No representations have been received by the Upper Tribunal by today's date (24 October 2016), whether from Mr Martyres or indeed any other party.

The legal framework on strike out applications

5. The relevant legal framework as to the principles governing strike outs was helpfully set out by Judge Mitchell in *Dransfield v Information Commissioner* [2016] UKUT 0273 (AAC) at paragraphs 31-37. I need not repeat it here.

The reasons for striking out Mr Martyres's applications to the Upper Tribunal

6. I have decided to strike out Mr Martyres's applications for permission to appeal under rule 8(3)(c), and to do so without directing a renewal hearing. I do so as the proposed appeals are entirely without merit, for the reasons given in the earlier Observations (above). Even if permission were granted, any such appeals would be bound to fail. His proposed grounds of appeal do not have even a remote prospect of success. As the proposed appeals are entirely without merit, the applications have no reasonable prospects of success under rule 8(3)(c) and so the applications should all be struck out.

7. In accordance with the principles established in the case law, I have asked myself whether exercising the power to strike out these applications would be for a legitimate case management purpose. Furthermore, I have considered whether it would be in accordance with the overriding objective under rule 2 of dealing with cases fairly and justly, including in particular "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" and "ensuring, so far as practicable, that the parties are able to participate fully in the proceedings". I appreciate that the issues relating to the underlying family dispute are important to Mr Martyres. However, these proceedings relating to freedom of information requests have already consumed a quite disproportionate amount of public resources in terms of judicial and administrative time. I have also considered whether the exercise of some other case management power would be a more just way to proceed. But there is no case management power that could convert these hopeless applications into a case with even the faintest glimmer of arguable merit.

Conclusion

8. For all the above reasons, I refuse to direct a renewal hearing of Mr Martyres's applications and, having found that there is not a reasonable prospect of his case succeeding, I decide under rule 8(3)(c) to strike out the proceedings on his applications for permission to appeal in their entirety.

Signed on the original
on 24 October 2016

Nicholas Wikeley
Judge of the Upper Tribunal