IN THE UPPER TRIBUNAL **Appeal No. GIA/26/2020**
ADMINISTRATIVE APPEALS CHAMBER

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Applicant:	Mr Terry Crossland
Respondent:	The Information Commissioner
Tribunal:	First-tier Tribunal (Information Rights)
Tribunal Case No:	EA/2019/0252
Tribunal Venue:	in chambers
Decision Date:	4 November 2019

NOTICE OF DETERMINATION OF APPLICATION FOR PERMISSION TO APPEAL

The proceedings in the Upper Tribunal on the Applicant's application for permission to appeal (dated 30 November 2019 and registered on 2 December 2019) against the decision of the First-tier Tribunal (dated 4 November 2019, file reference EA/2019/0252, and any allied case management rulings) are STRUCK OUT in their entirety under rules 8(2)(a) and 8(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

REASONS

Introduction

1. Mr Crossland e-mailed an application for permission to appeal to the Upper Tribunal on 30 November 2019, which was registered on 2 December 2019. I am striking out that application for permission to appeal for the reasons that follow.

The strike out warning

2. I signed off directions explaining why I was minded to strike out this application on 9 January 2020 (issued by the office on 4 February 2020). The background to, and the reasons for, that proposal were as follows:

> **'Introduction**
> 1. This matter has a convoluted history. However, for the reasons that follow, I am not at present satisfied that any further scarce judicial resource should be devoted either to

holding an oral hearing of this application for permission to appeal or to further detailed consideration of the application itself.

2. I am therefore proposing that the application should be struck out on the basis that (i) the Upper Tribunal has no jurisdiction to determine the application; and/or (ii) the application has no reasonable prospects of success. Mr Crossland is at liberty to make representations on this proposal in accordance with the Directions that follow below.

The immediate context

3. This application relates to the appeal which is currently stayed before the First-tier Tribunal under reference EA/2019/0252. This relates to Mr Crossland's appeal against the ICO Decision Notice FS50806012. According to the summary on the ICO website:

> "The complainant has requested a copy of complaint monitoring forms and the dates when these were introduced by the council. The council applied section 14 and refused the request on the basis that it was vexatious. The Commissioner's decision is that the council was correct to rely upon section 14(1) to refuse to respond further to the request. She has however decided that the council failed to comply with section 10(1) in that it did not respond to the complainant's request within the required period of time. The Commissioner does not require the council to take any steps. Information Tribunal appeal EA/2019/0252 under appeal."

4. On 11 July 2019 Mr Crossland filed his T98 Notice of appeal against this decision (pp.20-26 of the Upper Tribunal file) with detailed grounds of appeal (pp.29-35 of the Upper Tribunal file). The file also shows over the following months there was extensive correspondence by e-mail on various matters between Mr Crossland and the FTT GRC office.

5. On 28 October 2019 Mr Crossland filed a T96 FTT application for permission to appeal to the Upper Tribunal with the FTT GRC office (pp.83-86 of the Upper Tribunal file). He cited the decisions under challenge as the case management directions (CMDs) by Judge McKenna CP for the period "09/10/19 to 25/10/19 when final clarification was obtained" (p.84 Box B). The gist of his complaint was that he had been given insufficient time to prepare for the oral hearing in the FTT appeal EA/2019/0252 (p.85 Box D), listed for 29 November 2019.

6. On 4 November 2019 Judge McKenna considered Mr Crossland's application for permission to appeal to the Upper Tribunal (pp.89-91). She refused permission to appeal (para 1) but reviewed her decision (in effect, her previous Direction), which she decided to set aside (para. 2). In her reasons, she summarised the previous correspondence about the timetable to prepare papers for the hearing and about a possible postponement for reasons of a hospital appointment (paras 3 and 4). She referred to Mr Crossland's account of his personal circumstances (para 6). The nub of her reasons for instigating a review of the Direction of 8 October 2019 (in which she had intimated that she was unwilling to extend time for compliance with the FTT's listing timetable unless and until a hospital appointment date was confirmed) is set out at para 7:

> "7. I have taken what the Applicant says into account and it seems to me that there has been a procedural irregularity in my failing to have taken his particular personal difficulties into account. I have therefore treated his application for permission to appeal as an application for a review and set aside, as permitted by rule 45. I have reviewed my communication of 8 October under rule 44 and decided to set it aside under rule 41(2)(d) as I am satisfied it is in the interests of justice to do so."

7. In addition, Judge McKenna noted in her ruling that as a result of other correspondence the FTT GRC Registrar had already stayed the proceedings in EA/2019/0252 indefinitely

at Mr Crossland's request (para 5). This was a reference to the Registrar's ruling of 1 November 2019 (pp.87-88 of the Upper Tribunal file).

The application to the Upper Tribunal for permission to appeal

8. On 2 December 2019 the Upper Tribunal received Mr Crossland's UT13 Application for permission to appeal (pp.2-7 of the Upper Tribunal file). He cited the FTT reference number as EA/2019/0252 (p.4, Box C) but did not indicate the specific date of the FTT's decision under challenge. He also applied for an oral hearing of his application (p.6 Box F). His accompanying e-mail (p.1) included a host of further attachments, including a 12-page supplementary document setting out his reasons for appealing ('the UT13 Supplement').

9. On 9 December 2019 the Upper Tribunal Registrar wrote to Mr Crossland seeking clarification (given the uncertainty inherent in the UT13) as to whether he was trying to appeal the direction of 8 October 2019, the ruling of 4 November 2019 or some other decision.

10. On 16 December 2019 Mr Crossland replied to the Registrar, asserting as follows:

> "The unsatisfactory and irregular procedure by Judge McKenna means that there is not a regular CMD for the UT13 but the decisions as detailed in the UT13 Supplement paragraphs 41 to 45 … It can be seen, in summary, that when the Appellant's medical condition deteriorated further and he was placed under extreme stress, the President: -
>
> a) Would not agree /refused the Appellant's request for further extra time to collate and present his documents for his bundle (including 09/10/19 & 25/10/19) and
> b) Refused (including 09/10/19 & 25/10/19) to set back the hearing date. Instead she [reduced] the time the Appellant had to prepare for the hearing with the bundle to three weeks."

11. I have reviewed the UT13 Supplement and especially paragraphs 41-45 of that document in conjunction with the supporting documentation. It is plain from the extract above that Mr Crossland was especially concerned with the Chamber President's rulings on 9 and 25 October 2019. The former was the ruling refusing his postponement request in the absence of a definite hospital date (p.59; presumably the ruling was made on 8 October but not communicated until 9 October). The latter was an intimation that she was not minded to reconsider her refusal to allow further time to provide documents for the bundle and to prepare for the hearing and the statement that any further challenge to the case management directions had to be by way of an application for permission to appeal to the Upper Tribunal (p.79). I consider the other directions or communications made by or on behalf of the Chamber President during this period as no more than consequential upon, or incidental to, those directions.

The Upper Tribunal's provisional analysis

12. The question then arises as to whether there is anything here on which the Upper Tribunal's jurisdiction can properly bite. In my judgement, for the reasons that follow, there is no live issue for the Upper Tribunal to adjudicate upon.

13. The Chamber President's direction of 8 October 2019 (communicated on 9 October 2019) simply does not exist anymore. It was expressly set aside by Judge McKenna on 4 November 2019. It is not therefore a First-tier Tribunal decision which is capable of onward appeal.

14. The Chamber President's communication of 25 October 2019 is arguably not a decision or other ruling in any meaningful sense. It is simply a statement (or rather a restatement) of what was then the prevailing situation. In so far as it does amount to a

determination by the First-tier Tribunal, it has been overtaken by events and so effectively superseded, notably by the Registrar's stay of 1 November 2019 and Judge McKenna's ruling of 4 November 2019.

15. This leaves the Chamber President's ruling of 4 November 2019. As this was a decision by the First-tier Tribunal under section 9 of the Tribunals, Courts and Enforcement Act (TCEA) 2007 to review and set aside an earlier decision of the Tribunal, this amounts to an "excluded decision" and is accordingly non-appealable (TCEA 2017 section 11(5)(d)(i) and (iii)).

16. My provisional view, accordingly, is that the Upper Tribunal simply has no jurisdiction to consider the purported challenges to the First-tier Tribunal decisions/communications of 8 October 2019, 25 October 2019 and 4 November 2019. As such I consider it appropriate that these proceedings be struck out under rule 8(2)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008. However, before doing so, I am required first to give the Applicant the opportunity of making representations in relation to the proposed striking out (rule 8(4)).

17. In the alternative, my further provisional view is that there is in any event no reasonable prospect of the Applicant's case, or part of it, succeeding (rule 8(3)(c)). Throughout this matter the Applicant's primary concern has been recognition that he was not in a position to comply with the First-tier Tribunal's case management directions for an oral hearing on 29 November 2019 and that that hearing should be postponed. But events have now moved on – the listing window was lost as a result of the stay directed by the Registrar on 1 November 2019. Success for the purpose of rule 8(3)(c) can only be properly measured in terms of the outcome of any decision. However, the Applicant has already secured success in those terms in having the First-tier Tribunal hearing put off. As such, the proceedings have become entirely academic and otiose. Any error of law is not material in the sense required by *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982.

18. I also bear in mind that it is not the role of the Upper Tribunal to 'micro-manage' First-tier Tribunal interlocutory decisions on appeal in a jurisdiction confined to errors of law. It is old (but still good) law that an interlocutory ruling should only be interfered with if "there are very good grounds for thinking that the judge was plainly wrong" (see e.g. Lord Templeman in *Ashmore v Corporation of Lloyd's* [1992] 1 WLR 446 at 454A-B). As Lord Roskill held in the same case (at 448H):

> "indeed in any trial court it is the trial judge who has control of the proceedings. It is part of his duty to identify the crucial issues and to see they are tried as expeditiously and as inexpensively as possible. It is the duty of the advisers of the parties to assist the trial judge in carrying out his duty. Litigants are not entitled to the uncontrolled use of a trial judge's time. Other litigants await their turn. Litigants are only entitled to so much of the trial judge's time as is necessary for the proper determination of the relevant issues."

19. I am therefore considering striking out Mr Crossland's application – and so without holding an oral hearing – under rule 8(2)(a) and/or rule 8(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698). I am considering that course of action in the light of my provisional views as set out above as to the merits of Mr Crossland's challenge.

20. I recognise that striking out an application without holding an oral hearing where one has been requested is a draconian step. However, as Upper Tribunal Judge Mitchell observed in *Dransfield v Information Commissioner* [2016] UKUT 273 (AAC):

> "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."

21. 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".

Conclusion

22. Mr Crossland may now make representations on the proposal to strike out this application without a hearing; any such representations must comply with Direction 2 below. I would normally allow 14 days for such representations, but given Mr Crossland's personal circumstances I am giving a time limit of 6 weeks from the date these Directions are issued (which will not be the same as the date they are signed).

23. Finally, I note Mr Crossland appears to be requesting a "joint case planning hearing/meeting" between the First-tier Tribunal and the Upper Tribunal to agree case management directions for the Applicant's various appeals (see pp.71 and 80). There is no provision under statute or rules for such a "joint" hearing. It follows no such joint case management conference will be convened. The First-tier Tribunal may wish to review whether the stay imposed on 1 November 2019 should now remain in place and whether a case management hearing should be convened, but it is not appropriate for me to make any formal direction to that effect.'

3. The case management directions that accompanied the strike out warning were as follows:

1. *If the Applicant wishes to make written representations as to whether or not this application should be struck out, on the basis that the Upper Tribunal has no jurisdiction and/or that the application does not have a reasonable prospect of success, any such representations must comply with Direction 2 below.*

2. *Any such representations <u>must</u> be:*

    a. *limited to no more than 6 sides of A4;*

    b. *in a size 12 font and spaced on a 1.5-line basis with 2 cm margins;*

    c. *be self-contained and include no further annexes or appendices;*

    d. *sent to the Upper Tribunal office within 6 weeks of the date on the letter accompanying these Directions.*

3. *A copy of these Observations and Directions should be sent to the Information Commissioner for information only. The Information Commissioner need not be sent a copy of the Upper Tribunal file in this application unless her representative expressly asks for a copy of the same.*

4. *Once any representations have been made (or after 6 weeks), the file is to be returned to Upper Tribunal Judge Wikeley for further directions or a ruling.*

The developments after the strike out warning

4. On 9 February 2020 Mr Crossland wrote to the Upper Tribunal making an application that he be provided with electronic copies of all documents in the proceedings, in addition to the hard copies as provided for by the Tribunal Procedure (Upper Tribunal) Rules 2008.

5. On 14 February 2020 I dismissed Mr Crossland's application to receive electronic copies of all documents in the proceedings. This ruling was issued by post by the Upper Tribunal office on the same date.

6. On 24 February 2020 Mr Crossland made a further application to the same effect.

7. On 26 February 2020 the Upper Tribunal Registrar wrote to Mr Crossland again, indicating that I had nothing to add to my earlier rulings.

8. On 5 March 2020 Mr Crossland sent the Upper Tribunal an 18-page document making three requests. First, he applied for permission to appeal to the Court of Appeal against my ruling of 14 February 2020 (see paragraph 5 above). That application has been dealt with in a separate ruling. Secondly, Mr Crossland applied for me to recuse myself from dealing with (a) the present matter and (b) "any future … case involving the Appellant." This was on the basis that my "conduct, including apparent bias, lack of independence and lack of intellectual honesty [was] such that any further involvement in any case of the LIP Appellant could not satisfy the necessary standards". That recusal application has also been dealt with in a separate ruling. Thirdly, Mr Crossland also sought to make a complaint of judicial misconduct on my part. That, obviously, cannot be a matter for me.

9. On 16 March 2020 Mr Crossland sent the Upper Tribunal a 6-page document making representations on the strike out issue (amongst other matters).

10. For completeness, I should add that on 25 March 2020 Farbey J., the Chamber President, issued a general stay of 21 days in all proceedings in the light of the coronavirus crisis and the consequential then complete closure of the Upper Tribunal (AAC)'s administrative office. Farbey J. has since issued further guidance for users on 16 April 2020, reiterating that the Chamber has "had to limit its administrative

operations. There will be considerable delays in deciding most appeals. Cases ready for decision will be placed before a judge as soon as practicable".

Mr Crossland's representations on the strike out proposal

11. These representations are set out in the document of 16 March 2020. Mr Crossland's representations roam far and wide, touching on several matters which are not relevant to the current consideration. In addition, it appears that Mr Crossland is labouring under a misapprehension as to the statutory function of the Upper Tribunal. For example, and notably, Mr Crossland asserts (at paragraph 2, emphasis as in the original) that "**THIS PTA IS ABOUT GRC JUDGE McKENNA'S UNFAIRNESS AGAINST A LIP and Includes a Formal Particularised Complaint about Judge McKenna's Conduct".** However, the Upper Tribunal is not some form of all-purpose judicial complaints bureau. Its jurisdiction (for present purposes) is confined to considering appeals and applications for permissions to appeal from decisions of the First-tier Tribunal. It is plain from the account above of developments in these proceedings that it has proven to be extremely difficult to obtain clarity from Mr Crossland as to precisely which First-tier Tribunal decision or decisions he was seeking to challenge. That said, the principal case management rulings which Mr Crossland seems to take issue with are those of 8 (or 9) October 2019, 25 October 2019 and 4 November 2019. They are dealt with below.

12. Mr Crossland's application for permission to appeal as originally submitted to the First-tier Tribunal identified the decisions he was seeking to appeal as "CMDs by GRC President Judge Alison McKenna – 9/10/19 to 25/10/19 when final clarification was obtained" (T96 at p.84). That application defines the scope of the request for permission to appeal. Insofar as Mr Crossland may be seeking to challenge any other case management rulings by the First-tier Tribunal, he has not applied to the First-tier Tribunal for permission to appeal such other rulings, as required by rule 21(2)(a) of the Upper Tribunal's procedural rules. For reasons that will be self-evident from this determination, I do not consider it fair and just to waive that requirement under rule 7.

13. The essence of Mr Crossland's case appears to be as follows (as set out in this document of 16 March 2020):

> **"14**. The Appellant notes that the subject of the PTA as described and detailed in the UT13: *'This UT13 relates to the pattern of behaviour by GRC President Judge Alison McKenna, in this and previous cases involving this LIP Appellant, and her systematically issuing CMD's which appear to be plainly unfair and wilfully deprived the LIP Appellant of key elements necessary for a fair hearing."* Is a very serious matter relating to a pattern of behaviour by Judge McKenna in her CMDs which deprive the LIP of his rights to justice and cause him detrimental stress. This appeal therefore falls within the jurisdiction of the PTA to the UT AAC procedure."

14. These representations are wholly misconceived. The Upper Tribunal does not consider complaints about a "pattern of behaviour" by a First-tier Tribunal Judge. Its jurisdiction is confined to determining whether there is an arguable error of law in a First-tier Tribunal's decision. Thus, an appeal to the Upper Tribunal lies on "any point of law arising from a decision" of the First-tier Tribunal (section 11(1) of the Tribunals, Courts and Enforcement Act (TCEA) 2007). 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: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538. The most fundamental difficulties with Mr Crossland's application for permission to appeal, as set out in my Observations of 9 January 2020, are three-fold. The first is that Mr Crossland has failed to identify any currently operative decision by the First-tier Tribunal over which the Upper Tribunal now has jurisdiction. The second is that in any event case management decisions are quintessentially matters for the judgment of the trial judge, and an appellate court or tribunal will need to have very good reasons to interfere in such rulings. The third is that the First-tier Tribunal acceded to the applicant's request for the hearing in the substantive matter to be postponed. The latter two issues are both relevant to the question of whether a case has reasonable prospects of success. However, Mr Crossland's representations do not begin adequately to address any of those three fundamental difficulties.

The reasons for striking out the application for permission to appeal

15. Mr Crossland purportedly sought to challenge Judge McKenna's case management decisions in EA/2019/0252 which refused him extra time to prepare his documents for the hearing bundle and refused to set back the FTT hearing date. The following 'decisions' in particular were identified, namely those of 9 October 2019, 25 October 2019 and 4 November 2019. I take these in reverse order for convenience.

16. *The 'decision' of 4 November 2019* – The Upper Tribunal has no jurisdiction to consider this decision by Judge McKenna. This is for two reasons. First, inasmuch as this determination reviewed and set aside her earlier case management ruling of 8 (or 9 October), it is an "excluded decision" and accordingly non-appealable (TCEA 2017 section 11(5)(d)(i) and (iii)). The Upper Tribunal cannot act outwith its jurisdiction. Second, inasmuch as it was a refusal of permission to appeal, it is well established that there is no right of appeal as such against a decision to grant or refuse permission to appeal in the absence of express statutory authority (see e.g. *SSWP v Morina* [2007] 1 WLR 3033).

17. *The 'decision' of 25 October 2019* – I readily accept that a judicial determination including a case management ruling can be conveyed by way of an e-mail sent on the Judge's behalf by an administrative officer of HMCTS. However, as has already been noted, the e-mail in question is simply a statement (or rather a re-statement) of what

the then prevailing situation was. The clue is in the PA's opening statement in that e-mail, namely that "Judge McKenna … has nothing to add to the case management decision that has been communicated to you" (p.79). This does not amount to a "decision" for the purposes of section 11(1) of the TCEA 2017 and so there is no jurisdiction.

18. *The 'decision' of 8 (or 9) October 2019* – as previously noted, this case management ruling simply does not exist anymore. It was expressly set aside by Judge McKenna in her ruling of 4 November 2019. It is not therefore a First-tier Tribunal decision which is capable of onward appeal to the Upper Tribunal under TCEA 2007.

19. Mr Crossland has no effective answer to any of these points in his various submissions. I accordingly conclude that the Upper Tribunal has no jurisdiction to consider the purported application for permission to appeal. As there is no question of any transfer to any other court or tribunal under rule 5(3)(k)(i), it follows that I must strike out the whole of the proceedings under rule 8(2).

20. If I am mistaken on any of the matters above relating to the application of rule 8(2), I have in any event also concluded that there is no reasonable prospect of the applicant's case, or any part of it, succeeding in relation to any of these determinations (rule 8(3)(c)).

21. *The decision of 4 November 2019* – there is no reasonable prospect of the case succeeding in respect of this determination for the reasons set out in paragraph 12 above. Moreover, throughout this whole matter the applicant's primary concern has been recognition that he was not in a position to comply with the First-tier Tribunal's case management directions (for an oral hearing on 29 November 2019) and that that hearing should be postponed. However, the listing window was lost as a result of the stay directed by the Registrar on 1 November 2019. Success for the purpose of rule 8(3)(c) can only be properly measured in terms of the outcome of any decision. But, as noted, Mr Crossland has already secured success in those terms in having the First-tier Tribunal hearing put off. As such, the proceedings have become entirely academic and otiose. Any error of law is not material in the sense required by *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982. In addition, an analogy may be made with the general rule in civil litigation, namely that a successful party in civil proceedings cannot appeal to a higher court or tribunal against a substantive decision in their favour. This principle has been established in case law: see e.g. *Lake v Lake* [1955] P 336; *Osaji-Umeaku v National Foundation For Teaching Entrepreneurship Inc* [1999] EWCA Civ 837 and Social Security Commissioner's Decision *R(I) 68/53*. There are some very narrow exceptions to that principle, but none applies here. By analogy, the same principle can apply to success in procedural case management determinations.

22. *The decision of 25 October 2019* – In so far as this communication does amount to a section 11 decision by the First-tier Tribunal, which I conclude it does not for the reasons above, it has in any event been overtaken by events. As a result, it has effectively been superseded, notably by the Registrar's stay of 1 November 2019 and Judge McKenna's ruling of 4 November 2019. As such, there are no reasonable prospects of success. I also bear in mind the well-established reluctance of appellate courts and tribunals to interfere in trial judges' case management rulings.

23. *The 'decision' of 8 (or 9) October 2019* – there is no reasonable prospect of the case succeeding in respect of this determination for the reason set out in paragraph 14 above.

24. Mr Crossland has no effective answer to any of these points in his various submissions. I accordingly conclude that, leaving issues of jurisdiction aside, there is no reasonable prospect of his case, or part of it, succeeding. In those circumstances it follows that I may strike out the proceedings under rule 8(3)(c).

25. It follows that rule 8(3) vests me with a discretionary power, a discretion which is absent when making my findings as to jurisdiction under rule 8(2). As such, in considering rule 8(3) I must seek to give effect to the overriding objective (see rule 2(3)(a)). This requires consideration of the various factors detailed in rule 2(2), along with any other relevant matters.

26. In accordance with the principles established in the case law, I have also asked myself whether exercising the power to strike out this application would be for a legitimate case management purpose. The overriding objective under rule 2 requires me to deal with cases fairly and justly, including in particular "dealing with the case in ways which are proportionate to the importance of the case" and "ensuring, so far as practicable, that the parties are able to participate fully in the proceedings". Mr Crossland has had ample time to make his written representations. However, these proceedings have already consumed a quite disproportionate amount of public resources in terms of judicial and administrative time, not least bearing in mind that Mr Crossland has already secured the case management outcome that he was arguing for (namely a stay of proceedings in the substantive FTT appeal). Satellite litigation such as the present application is wholly inconsistent with the overriding objective of dealing with *all* cases fairly and justly (and within a reasonable timeframe). As Lord Roskill observed, "Litigants are not entitled to the uncontrolled use of a trial judge's time. Other litigants await their turn. Litigants are only entitled to so much of the trial judge's time as is necessary for the proper determination of the relevant issues" (*Ashmore v Corporation of Lloyd's* [1992] 1 WLR 446 at 448H). I have considered whether the exercise of some other case management power would be a fairer and more just way to proceed. But there is no case management power potentially in play

that could convert this application for permission to appeal into a case with even the faintest glimmer of arguable merit.

27. It follows this application for permission to appeal is struck out.

(Signed on the original)

Nicholas Wikeley
Judge of the Upper Tribunal

(Dated) **4 May 2020**