NCN: [2026] UKUT 48 (AAC)
Appeal No. UA-2024-001841-GIRF

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

LIAM HARRON

Appellant

- v -

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

Respondent

INFORMATION COMMISSIONER

Interested Party

Before: Upper Tribunal Judge Stout
Hearing date: 16 January 2026
Mode of hearing: By video

Representation:
Appellant: In person
Respondent: Jorren Knibbe (counsel)
Interested Party: Rupert Paines (counsel)

On appeal from:
Tribunal: First-Tier Tribunal (General Regulatory Chamber) (Information Rights)
Tribunal Case No: EA/2024/0111
Judge: District Judge Moan
Tribunal Venue: On the papers
Decision Date: 18 October 2024

SUMMARY OF DECISION

INFORMATION RIGHTS – practice and procedure (93.10)

The First-tier Tribunal had not erred in law in refusing to certify a contempt for the consideration of the Upper Tribunal under section 61 of the Freedom of Information Act 2000 (FOIA) in relation to the public authority's response to substituted decision notice

issued by the First-tier Tribunal in earlier appeal proceedings. Although compliance with the substituted decision notice was a matter for the First-tier Tribunal and not the Information Commissioner (IC) (see *IC v (1) Moss; (2) Royal Borough of Kingston upon Thames* [2020] UKUT 174 (AAC)), in this case the public authority had complied with the terms of the substituted decision notice by issuing "a fresh response to the Appellant's request, not relying on section 14". The question of whether the public authority's response (which stated that the information was not 'held') complied with FOIA was a different question that could form the subject of a complaint to the IC under section 50, but was not capable of constituting a contempt of court so the First-tier Tribunal had not erred in law in refusing to certify it under section 61(4).

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the First-tier Tribunal did not involve an error of law.

REASONS FOR DECISION

Introduction

1. This appeal concerns the response by the respondent Rotherham Metropolitan Borough Council (RMBC) to a substituted decision notice issued by the First-tier Tribunal in previous proceedings (the Substituted DN). The appeal raises the issue of the dividing line between: (i) the First-tier Tribunal's jurisdiction to certify a contempt to the Upper Tribunal under section 61 of the Freedom of Information Act 2000 (FOIA) in respect of a response to a substituted decision notice; and, (ii), the Information Commissioner's (IC's) jurisdiction to deal with a complaint about such a response under section 50 of FOIA.

2. The IC was not a party to the proceedings before the First-tier Tribunal in this case (for reasons explained in *IC v Spiers and Garstang Medical Practice* [2022] UKUT 93 (AAC), [2023] AACR 3), but I granted permission for the IC to be joined as an interested party, given the bearing that the subject matter has on the IC's exercise of his statutory functions.

Factual background and the First-tier Tribunal's decision

3. Four years ago, in another case involving the present parties (case number UA-2022-000045-GIA), Judge Wikeley began a decision as follows:

> 2. For some years now, Mr Harron has been seeking to hold Rotherham MBC ('RMBC') to account for the way it has handled (or mishandled) the child

> sexual exploitation ('CSE') scandal in the area in the wake of the Jay Report. He has made a number of freedom of information (FOIA) requests to RMBC, several of which have resulted in complaints to the IC ('the IC') and some of which have then involved onward appeals to the First-tier Tribunal ('the FTT'). …

4. Since 2022, Mr Harron has made more FOIA requests to RMBC and brought more complaints to the IC and appeals to the First-tier Tribunal and Upper Tribunal. It is fair to say that Mr Harron has met with a measure of success in these various proceedings and that (in general terms) there have been a number of occasions when RMBC has not provided documents when it arguably should have done. That decision of Judge Wikeley details one such occasion.

5. Mr Harron has also made a previous application under section 61 of FOIA for the First-tier Tribunal to certify that RMBC was in contempt for failing to comply with a substituted decision notice. That application succeeded before the First-tier Tribunal, but was overturned in the Upper Tribunal by Farbey J (the then Chamber President) in *RMBC v Harron and IC* [2023] UKUT 22 (AAC) (*the 2023 case*). *The 2023 case* was the first to deal with the contempt jurisdiction under section 61 of FOIA. Farbey J held that the First-tier Tribunal had erred in law in certifying a contempt in that case because (in short) the document that RMBC had failed to disclose did not fall squarely within the terms of the substituted decision notice.

6. The present case arises out of a previous successful appeal that Mr Harron made to the First-tier Tribunal in respect of RMBC's failure to comply with a request for information that he made under section 1 of FOIA on 13 January 2022 ("the Original Request"). In those proceedings (appeal number EA/2023/0169), the First-tier Tribunal issued a substituted decision notice under section 58(1) of FOIA.

7. Mr Harron's Original Request was for:

> "…a copy of the communications with the Leader of [RMBC], Chris Read, about statements to the media connected to the email sent to the Chief Executive of RMBC (Sharon Kemp) at 3.44 pm on 23.8.16."

8. Mr Harron complained to the IC under section 50 of FOIA in relation to RMBC's response to his Original Request, and then appealed the IC's decision notice to the First-tier Tribunal. The Substituted DN issued by the First-tier Tribunal at the conclusion of the appeal proceedings was as follows:-

> [RMBC] is not entitled to rely on section 14 of the Freedom of Information Act 2000 to withhold the requested information. [RMBC] is to provide a fresh response to the Appellant's request, not relying on section 14.

9. RMBC provided a fresh response on 12 July 2024. Having carried out searches applying a date range of 20/08/16-02/09/16, RMBC concluded that it did not hold the information.

10. Mr Harron requested an internal review. RMBC responded to the internal review on 23 August 2024. In response to Mr Harron's request, it extended the date range for the search to 13/08/16-09/09/16, but still concluded that it held no information within the scope of the request.

11. Mr Harron considered that RMBC had still not responded properly to the Original Request. There are essentially two bases for Mr Harron's belief in this respect as follows:

12. First, because Mr Harron was previously on 3 May 2023 provided by RMBC with two emails dated 2 September 2016 (Documents 3 and 5) which he contends fall within the scope of the Original Request and thus should have been produced by RMBC in response to the Substituted DN. In this appeal, only one had been referred to by Mr Harron prior to the morning of the hearing before me. The second came as something of a surprise to counsel for RMBC. However, there was no specific objection to Mr Harron making reference to them, and for the purposes of this appeal I am prepared to assume (without deciding) that both emails do properly fall within the scope of the Original Request and thus should have been produced by RMBC in response to the Substituted DN.

13. Secondly, Mr Harron believes that this cannot be all that RMBC has failed to disclose in response to his Original Request (or the substituted Decision Notice). This is because of what he sees as RMBC's history of failure to comply, loss of trust in RMBC officers and what he regards as the inherent incredibility of there being no more material falling within the scope of the Original Request given the significance of the subject matter.

14. Mr Harron applied to the First-tier Tribunal asking it to certify under section 61 of FOIA that RMBC was in contempt of court for failing to comply with the substituted Decision Notice. The IC intervened in the First-tier Tribunal proceedings to inform Mr Harron that the correct route of challenge was for him to make a complaint to the IC under section 50 of FOIA.

15. The First-tier Tribunal gave Mr Harron an opportunity to show cause as to why his application for contempt should not be struck out. According to the First-tier Tribunal decision, Mr Harron responded to that order by sending in a 51-page submission that did not address the contemplated strike-out.

16. The First-tier Tribunal proceeded to strike out the application, giving the following reasons:

> As highlighted by the previous case management order, disagreement with a response is not a basis for a contempt application. Contempt is non-compliance with a court order. The Applicant does not submit that the Respondent has failed to comply and having been warned that his application may be struck out, has been unable to show cause why the contempt application should continue.

17. Mr Harron appealed against that decision to the Upper Tribunal, and I granted permission to appeal in a decision issued on 20 March 2025.

18. In the meantime, Mr Harron has also, at the IC's invitation, complained to the IC under section 50 of FOIA about RMBC's response to the Substituted DN. The IC has issued a decision notice in relation to that complaint, which as I understand it required RMBC to (re-)send to Mr Harron one or both of Documents 3 and 5 that he has produced to me on this appeal. Mr Harron has appealed to the First-tier Tribunal against the IC's new decision notice. A hearing in relation to that appeal (FT/EA/2025/0084) is due to take place in March 2026.

Legal framework

Relevant provisions of FOIA

19. Part I of FOIA lays down a scheme for access to information held by public authorities. Section 1(1) confers a general right of access to the extent that any person making a request for information to a public authority is entitled: (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b), if that is the case, to have that information communicated to him or her. Part II of FOIA provides for a number of exceptions to that obligation. Where a local authority wishes to rely on any provision of Part II, it must issue a refusal notice under section 17.

20. By section 50 of FOIA any person may apply to the IC for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I of that Act. The IC may (under section 51) investigate the public authority's compliance. In cases in which the IC has decided that there has been non-compliance, the IC will serve notice of that decision on the requestor and on the public authority (section 50(3)(b)). The decision notice must specify the steps which must be taken by the public authority and the period within which they must be taken (section 50(4)). If a public authority fails to comply with "so much of a decision notice as requires steps to be taken", the IC has power under section 54(1)(c) to certify the failure to the High Court (or, in Scotland, the Court of Session), which may deal with it as a contempt of court.

21. The First-tier Tribunal's jurisdiction under ss 57 and 58 of FOIA on appeals against decision notices issued by the IC under section 50 is to consider whether the decision notice is not in accordance with the law or, to the extent that the decision notice involves an exercise of discretion, whether the IC ought to have exercised his discretion differently. The jurisdiction is one in which the Tribunal 'stands in the shoes' of the IC and conducts a full merits review, albeit by reference to the position at the time that the request for information was refused by the public authority: *Maurizi v (1) IC; (2) CPS* [2019] UKUT 262 (AAC) at [168] and [184]. If the First-tier Tribunal allows the appeal, it must issue a substituted decision notice under section 58(1): see *IC v (1) Malnick; (2) ACOBA* [2018] UKUT 72 (AAC), [2018] AACR 29 at [102]-[104].

22. As the then Chamber President, Heather Williams J, observed in *Bence v (1) Cornwall Council; (2) IC* [2025] UKUT 420 (AAC) (*Bence*) (following Farbey J in *the 2023 case*

at [21] and Judge Jacobs in *IC v (1) Moss; (2) Royal Borough of Kingston upon Thames* [2020] UKUT 174 (AAC) (*Moss*)), the First-tier Tribunal "has no power to compel a public authority to comply with a substituted decision notice and nor does it have the power to commit the authority for contempt if it has failed to comply with an order made by the [First-tier Tribunal]". However, there is a mechanism for punishing a public authority that fails to comply. It is set out in section 61 as follows:

> **61 Appeal proceedings**
> …
> (3) Subsection (4) applies where—
> (a) a person does something, or fails to do something, in relation to proceedings before the First-tier Tribunal on an appeal under those provisions, and
> (b) if those proceedings were proceedings before a court having power to commit for contempt, the act or omission would constitute contempt of court.
>
> (4) The First-tier Tribunal may certify the offence to the Upper Tribunal.
>
> (5) Where an offence is certified under subsection (4), the Upper Tribunal may—
> (a) inquire into the matter, and
> (b) deal with the person charged with the offence in any manner in which it could deal with the person if the offence had been committed in relation to the Upper Tribunal.
>
> (6) Before exercising the power under subsection (5)(b), the Upper Tribunal must—
> (a) hear any witness who may be produced against or on behalf of the person charged with the offence, and
> (b) hear any statement that may be offered in defence.
> …

Relevant case law on the contempt jurisdiction in section 61 of FOIA

23. As will be noted, section 61 does not specifically refer to compliance with substituted decision notices. It is, rather, a provision that creates a contempt regime for the First-tier Tribunal that is equivalent in scope to that of a court that has inherent jurisdiction to commit for contempt, the difference being that the role of the First-tier Tribunal in exercising that regime is limited to certifying any offence so that the Upper Tribunal may inquire into it and, if the contempt is established, punish the contemnor. Nonetheless, in *Moss*, Judge Jacobs held that failure to comply with a substituted decision notice could constitute a contempt that could be the subject of a certificate under section 61(3) and (4), and that it was for the First-tier Tribunal, and not the IC to enforce the substituted decision notice.

24. In *the 2023 case* and in *Bence*, consecutive Chamber Presidents of the Upper Tribunal (Administrative Appeals Chamber) followed Judge Jacobs in accepting that failure to comply with a substituted decision notice issued by the First-tier Tribunal may properly be the subject of a certification to the Upper Tribunal to be dealt with as

a contempt of court under section 61(5). In *Bence*, Heather Williams J made clear (at [84]) that First-tier Tribunal may exercise this power on its own initiative or on application. Any application must be made in accordance with rule 7A of *The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009* (SI 2009/1976) (the FTT Rules) and must, among other things, identify the specific act or omission relied on as constituting the contempt (reg 7A(3)(b)) and the grounds of the application (reg 7A(3)(e)).

25. The purpose of the power was explained by Farbey J in *the 2023 case* as follows at [54]:

> 54. The principle that proceedings for contempt of court are intended to uphold the authority of the court and to make certain that its orders are obeyed is longstanding …. A person who breaches a court order, whether interim or final, in civil proceedings may be found to have committed a civil contempt. Given the nature and importance of the rights which Parliament has entrusted twenty-first century tribunals to determine, the public interest which the law of contempt seeks to uphold – adherence to orders made by judges – is as important to the administration of justice in tribunals as it is in the courts. There is no sound reason of principle or policy to consider that any different approach to the law of contempt should apply in tribunals whose decisions fall equally to be respected and complied with.

26. Farbey J at [55] held that the principles set out by the Court of Appeal in *Navigator Equities Limited v Deripaska* [2021] EWCA Civ 1799, [2022] 1 WLR 3656 at [82] apply equally in the tribunal context. As relevant to the present case, they include the following:

> i) The bringing of a committal application is an appropriate and legitimate means, not only of seeking enforcement of an order or undertaking, but also (or alternatively) of drawing to the court's attention a serious (rather than purely technical) contempt. Thus a committal application can properly be brought in respect of past (and irremediable) breaches;
>
> ii) A committal application must be proportionate (by reference to the gravity of the conduct alleged) and brought for legitimate ends. It must not be pursued for improper collateral purpose;
>
> vii) In order to establish contempt, it need not be demonstrated that the contemnor intended to breach an order or undertaking and/or believed that the conduct in question constituted a breach. Rather it must be shown that the contemnor deliberately intended to commit the act or omission in question. Motive is irrelevant;
>
> viii) Contempt proceedings are not intended as a means of securing civil compensation;
>
> ix) For a breach of order or undertaking to be established, it must be shown that the terms of the order or undertaking are clear and unambiguous; that

the respondent had proper notice; and that the breach is clear (by reference to the terms of the order or undertaking).

27. To those principles, may be added the following from the judgment of the Court of Appeal in *FW Aviation (Holdings) 1 Limited v Vietjet Aviation Joint Stock Company* [2025] EWCA Civ 1458 (*Vietjet*). That case was dealing with an alleged breach of an injunction against Vietjet prohibiting it from "taking possession of or operating [four identified] Aircraft either directly or indirectly or otherwise interfering with [FW Aviation's] right to possession, custody and/or control of the Aircraft". As the Court of Appeal described the situation at [2], "Vietjet subsequently sent a number of letters to public authorities in Vietnam which, at least on one view, were an attempt to interfere with the export of the aircraft from Vietnam". Contempt proceedings were brought, and the issue for the Court of appeal was "whether an injunction respondent who has not actually done anything prohibited by the injunction can be guilty of contempt of court for acting contrary to the spirit and purpose of the injunction". The Court of Appeal's answer to that question in the circumstances of that case was "No". Males LJ explained the rationale for that answer at [36]-[38] and [54]:

> 36. … Many cases have emphasised that an injunction must state clearly and unequivocally what conduct by the respondent is prohibited, so that a respondent knows precisely what it may and may not do; that such prohibitions will be strictly construed; that a heightened standard of procedural fairness is required when an applicant seeks to commit a respondent for breaching the injunction; and that breach of the injunction must be proved to the criminal standard of proof (e.g. *Pan Petroleum AJE Ltd v Yinka Folawiyo Petroleum Co Ltd* [2017] EWCA Civ 1525, para 41; *Navigator Equities Ltd v Deripaska* [2021] EWCA Civ 1799, [2022] 1 WLR 3656, para 82; *ADM International Sarl v Grain House International* SA [2024] EWCA Civ 33, [2024] 1 WLR 3262, para 80; and *Navigator Equities Ltd v Deripaska (No. 2)* [2024] EWCA Civ 268, para 47).
>
> 37. The rationale for these basic principles is obvious, not least because of the serious consequences, including committal to prison, which may follow from a finding of contempt.
>
> 38. It would be inconsistent with these principles to hold that an injunction respondent could be in contempt for doing an act which, although not prohibited by the injunction, was contrary to an undefined spirit or purpose of the injunction. As Mr Malek put it, that would be to replace certainty with impressionism. …
>
> 54. … An applicant for an injunction must therefore ensure that the conduct which it seeks to prohibit is properly defined in the terms of the order which it asks the court to make.

28. In deciding whether an order has been breached, it is for the court or tribunal to construe the order, objectively: see *Bence* at [114], applying *Buzzard-Quashie v Chief Constable of Northamptonshire Police* [2025] EWCA Civ 1397 at [70].

The role of the First-tier Tribunal and the Upper Tribunal

29. The role of the First-tier Tribunal under section 61(3) and (4) of FOIA is to decide, first, whether the act or omission is one which by its nature is capable of constituting a contempt if it had occurred in proceedings before a court or tribunal with power to commit for contempt and, second, whether it should exercise its discretion to certify the offence, having regard to its seriousness and any possible sanction: see *Bence* at [90]-[91] and [96].

30. Where an offence has been certified by the First-tier Tribunal, the role of the Upper Tribunal under section 61(5) is then to decide, first, whether a contempt has in fact been committed and, if so, what sanction to impose: see *Bence* at [95]. The Upper Tribunal when dealing with a certified contempt is able by virtue of section 25 of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007) to exercise the same "powers, rights, privileges and authority as the High Court": see *Bence* at [86]-[87].

31. Where, however, the First-tier Tribunal has refused to certify a contempt under sections 61(3) and (4), then that decision may be the subject of an appeal to the Upper Tribunal under section 11(1) of the TCEA 2007. The Upper Tribunal's jurisdiction under sections 11 and 12 of the TCEA 2007 is limited to considering whether there is an error of law in the decision of the First-tier Tribunal (see Judge Jacobs' approach in *Moss* at [38]).

The parties' arguments in this case

32. Relying on Judge Jacobs' decision in *Moss*, Mr Harron argues that the First-tier Tribunal was wrong to strike out his contempt application. He submits that Judge Jacobs in that case decided that it is the First-tier Tribunal that is responsible for deciding whether the public authority has complied with a substituted decision notice. In this case, he submits, RMBC plainly had not complied with the substituted decision notice because at least the two emails he has now produced as Documents 3 and 5 should have been provided by RMBC in response to the substituted decision notice. Moreover, for the reasons I have summarised above at [13] there is reason to be believe that RMBC may have failed to disclose other documents falling within the scope of the substituted decision notice.

33. Mr Paines for the IC and Mr Knibbe for RMBC unite in resisting Mr Harron's appeal. They submit that the First-tier Tribunal was right to strike out Mr Harron's application. They point out that the substituted decision notice required only that RMBC "provide a fresh response to the Appellant's request, not relying on section 14". Provided RMBC did that, and it had, it was not in breach of the substituted decision notice. The substituted decision notice did not require RMBC to provide a lawful response to Mr Harron's request, in the sense of a response that complies with FOIA. If, however, Mr Harron considered that the response still failed to comply with FOIA, then he could complain (again) to the IC under section 50 of FOIA as, indeed, he has done. The question of whether RMBC has carried out a sufficient search for information falling within the scope of the request is an issue that the IC judges by reference to the principles in *Bromley v IC* (EA/2006/0072) (*Bromley*) at [13] and that will also be the issue for the First-tier Tribunal at the hearing in March 2026 of Mr Harron's appeal

against the IC's decision notice on his complaint about RMBC's response to the substituted decision notice in this case.

34. Mr Paines and Mr Knibbe submit that the line between responses to substituted decision notices that fall to be dealt with by the First-tier Tribunal under section 61 of FOIA, and those that fall to be dealt with by the IC under section 50 of FOIA, is a line drawn by the law of contempt. If the response fails to comply with the terms of the substituted decision notice, then it may be appropriate to make an application to the First-tier Tribunal under section 61 to certify the failure and refer the matter to the Upper Tribunal for consideration as to whether it does constitute contempt, and for sanction. If, however, the response complies with the letter of the substituted decision notice but the requestor considers that it is still not compliant with FOIA, then the appropriate step is for the requestor to make a complaint under section 50 of FOIA.

My decision

35. I granted permission to appeal in this case because I had some sympathy for Mr Harron in his belief, reliant on Judge Jacobs' decision in *Moss*, that this was a case that was appropriate for certification under section 61(3) and (4). At [2] of *Moss* Judge Jacobs' summarised the decision in that case as follows:

> 2. The issue is this: when the First-tier Tribunal on appeal substitutes a decision notice for that of the IC, who is responsible for: (a) deciding whether the public authority has complied with that notice and (b) taking action to enforce it? The Commissioner says it is the tribunal. The tribunal says it is the Commissioner. I have decided that it is the tribunal.

36. There is no indication in *Moss* (or, indeed, in *the 2023 case* or *Bence*) of the argument that the IC and RMBC have run on this appeal, i.e. that it is in fact for the IC to decide whether a response to a substituted decision notice is compliant with FOIA. However, I am satisfied that their argument is correct for the following reasons:

37. *First*, because (as was observed in *Moss* and *Bence*), section 61(3)-(5) of FOIA do not make provision for the enforcement of substituted decision notices in that they do not provide power for the First-tier Tribunal to compel a public authority to comply with the notice. Rather, the sub-sections create a contempt jurisdiction for the First-tier Tribunal, to be operated by the Upper Tribunal upon the First-tier Tribunal certifying the offence for the Upper Tribunal's consideration. The purpose of the contempt jurisdiction is to further the administration of justice by protecting, and securing compliance with, the authority of the court or tribunal (see [25] above).

38. *Secondly*, and accordingly, where the potential contempt is breach of the Tribunal's order, the principles developed in relation to civil contempt in the ordinary courts apply. The focus is always on whether or not the order has been breached (see above [26]-[28]). As the *Navigator* principles make clear, the law of contempt does not create any secondary cause of action or open up any new substantive jurisdiction. Nor is it concerned with whether the 'spirit' of the order has been fulfilled (*Vietjet*: above, [27]). Orders that are ambiguous or otherwise unclear cannot properly form the basis of a contempt application. A person can only be held in contempt if the order is clear on

its face and the person has, by intentional act or omission, breached the order (intentional in this context meaning that the act or omission was intended: the person may be in contempt even if they did not intend to breach the order).

39. *Thirdly*, there is no provision in section 61 (or elsewhere in FOIA) giving the First-tier Tribunal primary responsibility for determining whether a public authority has complied with FOIA. The primary responsibility for determining whether a public authority has complied with FOIA lies with the IC under section 50: the First-tier Tribunal's jurisdiction is a secondary, appellate role (albeit one in which it 'stands in the shoes' of the IC once the appeal is before it).

40. *Fourthly*, it follows from my second and third points that, unless the substituted decision notice states in terms that the public authority must provide a response that 'complies' with FOIA, there is no mechanism by which the First-tier Tribunal may become responsible for making that assessment on an application for certification of contempt under section 61. I agree with Mr Knibbe and Mr Paines that there is ordinarily no room in the law of contempt for implying into an order a requirement that the body to whom the order is directed should provide a "lawful" or "reasonable" response (or similar). Doing so in most cases would introduce uncertainty as to the order's effect that will render it unsuitable as a basis for a contempt application. It would also cut across the scheme of the Act, which places the primary responsibility for determining whether a public authority has complied with FOIA on the IC.

41. *Fifthly*, if (notwithstanding my fourth point) a First-tier Tribunal were to specify in a substituted decision notice that the public authority must provide a response to the request that complies with FOIA, then in principle a response that failed to comply with FOIA could be made the basis of an application under section 61(3) and (4). However, a First-tier Tribunal could only properly certify a contempt in relation to a substituted decision notice in such terms if it was satisfied: (i) that the order was sufficiently clear in its effect as to be capable of forming the basis of a contempt application; and (ii) the First-tier Tribunal was, as a matter of discretion, satisfied that it was appropriate to certify the case for the consideration of the Upper Tribunal (see [29] above).

42. *Sixthly*, a substituted decision notice is still a decision notice (see *Moss* at [25] and [35]). It is relatively common under the FOIA regime for the IC (and, in turn, the First-tier Tribunal) to determine (as happened in this case) that the public authority's initial reliance on a particular exception in Part II of FOIA, or on section 14 (vexatious or repeated requests), was not compliant with FOIA and to direct the public authority to provide a fresh response to the request not relying on that exception or section 14. In such cases, the public authority's revised response may rely on (other) exceptions in Part II of FOIA or otherwise raise issues that are wholly different to those that were considered by the IC or the First-tier Tribunal when considering the lawfulness of the public authority's initial reliance on section 14. In cases where the IC's initial decision notice has not been appealed, there is plainly no difficulty with the IC considering a complaint under section 50 in relation to the public authority's revised response: the public authority's response to the initial IC decision notice remains a response to a request made under section 1 of FOIA. In cases where the IC's initial decision is appealed and the First-tier Tribunal issues a substituted decision notice, then that is

also 'just' a decision notice, and the response to it also remains a response to a request made under section 1 of FOIA. It follows that there is no difficulty in principle with the IC considering a complaint under section 50 in relation to the response to that substituted decision notice. Indeed, that will normally plainly be the appropriate route given that the public authority's revised response will be relying on an exception that the First-tier Tribunal has not dealt with at all so as a matter of principle it is unlikely that the revised response could constitute a contempt of the Tribunal. It is only if, and to the extent that, the public authority fails to comply with the terms of First-tier Tribunal's order, such that it is appropriate to treat it as a contempt of the First-tier Tribunal, that section 61 certification becomes a way of dealing with the situation (or *the* appropriate way of dealing with the situation if the public authority fails to respond at all).

43. In the present case, I am satisfied that the First-tier Tribunal did not err in law in refusing Mr Harron's application under section 61. The First-tier Tribunal's Substituted DN required only that RMBC issue "a fresh response to the Appellant's request, not relying on section 14". RMBC did that on 12 July 2024. It was therefore open to the First-tier Tribunal to conclude that RMBC had complied with the terms of its order and that this was not therefore a case that was capable of constituting a contempt so as to make it appropriate even to consider exercising the discretion to certify (see [29] above). The question of whether RMBC complied with FOIA in thus responding, and in particular whether it made an adequate search (applying the *Bromley* principles) was a matter that Mr Harron could make the subject of a complaint to the IC under section 50 of FOIA. And it will now be a matter for the First-tier Tribunal when Mr Harron's appeal against the IC's new decision notice is heard in March 2026.

Conclusion

44. For all these reasons, Mr Harron's appeal is dismissed.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 2 February 2026