Neutral Citation Number: [2026] UKUT 198 (AAC)
Appeal No. UA-2025-001698-GDPA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

ROY WARNER

Appellant

- v -

THE INFORMATION COMMISSIONER

Respondent

Before: Upper Tribunal Judge Stout
Decided on consideration of the papers

Representation:
Appellant: In person
Respondent: Oliver Jackson (counsel)

On appeal from:
Name: Mr Roy Warner
Tribunal: First-Tier Tribunal (General Regulatory Chamber) (Information Rights)
Tribunal Case No: FT/EA/2025/0083/GDPR
Judge/Panel: Judge Harris
Neutral citation number: [2025] UKFTT 01032 (GRC)
Tribunal Venue: Decided without a hearing
Decision Date: 28 August 2025

SUMMARY OF DECISION

DATA PROTECTION (93.9)

The First-tier Tribunal erred in law by striking out the appellant's case without a hearing. The appellant had expressly requested an oral hearing. The Tribunal gave no reasons for refusing that request, and nor could it otherwise be inferred that the Tribunal properly exercised its discretion as to whether to proceed without a hearing.

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 allow the appeal. Under section 12(1) and (2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007, I set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal for re-determination by a different judge of the First-tier Tribunal.

REASONS FOR DECISION

Introduction

1. The appellant appeals against the decision of the First-tier Tribunal of 28 August 2025. The decision of the First-tier Tribunal was that the appellant's application under section 166 of the Data Protection Act 2018 (**DPA 2018**) should be struck out because the Tribunal does not have jurisdiction to deal with it and/or it stands no reasonable prospect of success. The appellant had requested an oral hearing of his application, but the First-tier Tribunal dismissed the application on the papers without a hearing.

2. The appellant appealed to the Upper Tribunal on a number of grounds. I granted permission to appeal, limited solely to the ground that the First-tier Tribunal had erred in law in proceeding on the papers without giving notification or reasons for doing so.

3. The Information Commissioner has responded to the appeal and resists the appeal. The appellant in reply continues to pursue the appeal, but invites me to determine the appeal on the papers without a hearing. The Information Commissioner did not express any view as to the need for an oral hearing before the Upper Tribunal. Given the narrow nature of the appeal, and the views of the appellant, I am content that it is appropriate, fair and proportionate for me to determine the appeal on the papers, as I am permitted to do under rule 34(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008/2698 (**the UT Rules**).

The relevant rules

4. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009/1976 (**the GRC Rules**) give the First-tier Tribunal wide powers of case management which include (at rule 5(3)(f)) the power to hold a hearing to "consider any matter".

5. Rule 8 permits a party's case to be struck out on jurisdictional grounds or on the merits, provided that the party is first given an opportunity to make representations. Rule 8 provides, so far as relevant, as follows:

> **8.— Striking out a party's case**
> …
> (2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

> (a) does not have jurisdiction in relation to the proceedings or that part of them; and
> (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
> (3) The Tribunal may strike out the whole or a part of the proceedings if—
> …
> (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.
>
> (4) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

6. Rule 32 makes clear that a decision to strike out under rule 8 may be made on the papers without a hearing. Rule 32 provides, so far as relevant:

> **32.— Decision with or without a hearing**
> (1) Subject to paragraphs (1A), (2) and (3), the Tribunal must hold a hearing before making a decision which disposes of proceedings unless—
> (a) each party has consented to the matter being determined without a hearing; and
> (b) the Tribunal is satisfied that it can properly determine the issues without a hearing.
> …
> (3) The Tribunal may in any event dispose of proceedings without a hearing under rule 8 (striking out a party's case).
> …

7. Rule 2 makes provision as to the overriding objective of the GRC Rules as follows:

> **2.— Overriding objective and parties' obligation to co-operate with the Tribunal**
> (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
> (2) Dealing with a case fairly and justly includes—
> (a) 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;
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
> (d) using any special expertise of the Tribunal effectively; and
> (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—
(a) exercises any power under these Rules; or
(b) interprets any rule or practice direction.

Why I am allowing the appeal

8. The effect of the GRC Rules, in particular rules 5(3)(f) and rule 32(3), is that when considering whether to strike out a case under rule 8, the First-tier Tribunal has a discretion as to whether or not to take that decision on the papers or to hold a hearing. That is a discretion that must, by rule 2(3)(a), be exercised in a way that seeks to give effect to the overriding objective of dealing with cases fairly and justly.

9. It is well established that where a court or tribunal has a discretion as to whether or not to hold a hearing, the test is whether 'fairness requires such a hearing in the light of the facts of the case and the importance of what is at stake': *R (Osborn) v Parole Board* [2014] AC 1115 at [2(i)]. It is not a question of whether a decision can be made on the papers but whether the particular decision can fairly be made on the papers: see *BV v Secretary of State for Work and Pensions* [2018] UKUT 444 at [29]-[30] *per* Judge Poynter.

10. Although Judge Poynter in *BV* was considering the power of the First-tier Tribunal (Social Entitlement Chamber) to proceed with a hearing in a party's absence under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008/2685 (**the SEC Rules**), the same principles apply since in both situations the question for the tribunal is whether it is fair and just to proceed on the papers. The fact that rule 31 of the SEC Rules (which is in the same terms as rule 36 of the GRC Rules) expressly directs the tribunal to consider whether it is in the interests of justice to proceed with a hearing, whereas rule 32(3) of the GRC Rules (which has its equivalent in rule 27(3) of the SEC Rules) does not set out the requirement to consider the interests of justice does not make any difference. Rule 2 still applies, as do the principles of natural justice, as explained in *Osborn*.

11. It is also important to appreciate that the decision whether or not hold a hearing is not answered simply by considering whether or not a hearing might make a difference to the substantive outcome: see [88] of *Osborn*. Rather, it is necessary to consider the party's legitimate interest in being able to participate in a decision with important implications for them (see [82]). The Tribunal needs to consider the nature of the case, fairness to the parties and the wider interests of justice, including participation and the open justice principle: see the guidance I gave in my judgment in *SC v SSWP (PIP)* [2025] UKUT 390 (AAC) at [26]-[32].

12. The Information Commissioner does not dispute these general principles, but argues that in this case it can be inferred from the fact that the First-tier Tribunal made the decision on the papers that the First-tier Tribunal properly considered its discretion and decided that it was fair to proceed on the papers. Accordingly, the Information Commissioner submits that the First-tier Tribunal did not err in law or, alternatively, if the failure to give reasons constituted an error of law, it

was not material because the First-tier Tribunal was entitled to conclude that this was a decision that could fairly be made on the papers.

13. I do not accept those submissions. The general principles applicable to the requirement to give reasons, and the approach that the Upper Tribunal should take to reasons challenges on appeal, are encapsulated in the *Practice Direction from the Senior President of Tribunals: Reasons for decisions* of 4 June 2024.

14. The decision whether or not to proceed on the papers without a hearing is a "procedural decision" for which, in accordance with [7] of the Practice Statement, only brief reasons are required. However, the reasons must do more than simply state that the rules permit the decision to be made on the papers. To be adequate, the reasons must explain why the tribunal considered it was appropriate to decide this particular case on the papers. As Judge Poynter put it in *JP v SSWP* [2011] UKUT 459 (AAC) at [12]-[14]:

> 12 The statement shows the tribunal knew that, even in the light of those requests, it had to hold a hearing unless it considered that it was able to decide the matter without one (see rule 27(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 ('the Rules') and the recent decision of Judge Mesher in MM v SSWP (ESA) [2011] UKUT 334 (AAC)). I am satisfied that the tribunal consciously exercised its discretion to proceed without a hearing.
>
> 13 However, whether the tribunal has given adequate reasons for the exercise of that discretion is a more difficult issue.
>
> 14 The effect of rules 2 and 27(1)(b) of the Rules is that the tribunal could not have proceeded on the papers unless it "felt that [it was] able to deal with the appeal fairly and justly in accordance with the overriding objective". For the tribunal to say, without more, that that is the case is to re-state its decision to proceed in different words, rather than to explain it. It amounts to saying that the tribunal decided to proceed because it formed the view that the criteria which permit it to do so are satisfied. However, in my judgment, what is required by the decision in MM v SSWP (ESA) is an explanation, however brief, of why the tribunal concluded those criteria are satisfied.

15. Judge Poynter was there dealing with rule 27(1) of the SEC Rules, which is in the same terms as rule 32(1) of the GRC Rules. I recognise that rule 32(3) does not spell out the requirement to consider whether it is fair and just to strike out the case on the papers but, as I have already noted above, these are nonetheless the principles that the First-tier Tribunal must apply and the requirement to give reasons is the same.

16. In this case, the First-tier Tribunal gave no reasons at all. That is an error of law.

17. I am further satisfied that it is a material error in this case because, first, the appellant had specifically requested an oral hearing. The making of the request itself indicates that the appellant considered he would benefit from an oral

hearing. The Tribunal needed to consider whether it agreed with the appellant about the benefit to him of being able to participate at an oral hearing, even if the Tribunal considered the outcome would likely be the same. The failure to give any reasons for rejecting the appellant's request suggests that the request was overlooked. This is not therefore a case where I can safely infer that the Tribunal considered the request, but decided it was nonetheless fair to proceed on the papers.

18. Secondly, the judge's answer to this ground of appeal when considering whether or not to give permission to appeal was simply to point out that the rules permit a strike-out decision to be made without a hearing. However, as set out above, the rules are the beginning and not the end of the question as to whether a hearing should be held.

19. Thirdly, in my experience the fact that rule 32(3) (and its equivalent in other First-tier Tribunal rules) does not spell out that fairness and justice need to be considered when deciding whether to strike out on the papers without a hearing does mean that tribunals sometimes overlook the need to consider this. It is not (yet) part of the "normal currency of information rights litigation", to borrow the phrase from Judge Wikeley's decision in *DWP v IC and FZ* [2014] UKUT 0334 (AAC) at [27] on which the Information Commissioner relies.

Conclusion

20. I therefore allow the appeal, set aside the decision of the First-tier Tribunal and remit the case for re-determination by a different judge. It will be a matter for the First-tier Tribunal, applying the law as set out in this judgment, to decide whether it proceeds on the papers or holds an oral hearing.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 18 May 2026