



Neutral citation number: [2024] UKFTT 001085 (GRC)

Case Reference: EJ/2023/0008

**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

**Decided without a hearing
Decision given on: 4 December 2024**

Before

**DISTRICT JUDGE WATKIN
TRIBUNAL MEMBER SCOTT
TRIBUNAL MEMBER COOK**

Between

ALISTAIR HERBERT BLACKBURN

Applicant

and

THE ROYAL MINT

Respondent

Decision: The Application is dismissed

ORDER

UPON the Tribunal dismissing the Application

AND UPON the Tribunal considering that it was unreasonable for the Applicant to continue the Application post 5 February 2024 and the Tribunal needing to determine whether to exercise its discretion to award costs and, if so, the appropriate sum to be awarded:

IT IS ORDERED THAT:

1. By 5pm on 16 December 2024, the Applicant may provide the Tribunal with a statement setting out his financial means, including details of his income, expenditure, and capital. The statement must be signed with a statement of truth.
2. By 5pm on 16 December 2024, the Respondent must provide the Tribunal with a breakdown of the costs incurred in relation to these proceedings setting out the timeline of when the costs were incurred. The Tribunal would accept a print-out from a time recording/case management system if available.
3. The Application is to be referred to District Judge Watkin for review on 18 December 2024 (ELH – 30 minutes).

REASONS

THE APPLICATION

1. On 9 December 2023, the Applicant applied under section 61(4) of the Freedom of Information Act 2000 for the Respondent to be certified to the Upper Tribunal for contempt of court.
2. The Applicant within the application that he sought the following outcome:

“The Royal Mint should publish their Garbled Coin Policy in full on their website, including the date of implementation, with full details on how and where to redeem garbled coins for all current and past denominations since decimalisation in 1971, updated as necessary to reflect any changes in policy with dates of implementation. Visible for all members of the public and banks. Clear explanations of any restrictions and contact details for clarification requests. Expected levels of service and transparency befitting a Royal Charter.”

THE BACKGROUND

3. On 19 July 2021, the Applicant had requested the following information from the Respondent (the “**Request**”):

“Please describe fully the Royal Mint's current policy on accepting the bulk repatriation of UK coinage from outside UK, including all denominations, and the effective date of this policy.”

4. The Respondent responded on 16 July 2021, stating that its policies were updated in September 2019 to reflect that it no longer accepts the return of coins from outside the UK banking system and that this included any overseas coin return deposited via the UK banking system. An internal review subsequently took place following which the Respondent maintained its position.
5. On 28 September 2021, the Applicant complained to the Information Commissioner (“ICO”) who subsequently, issued a decision notice dated 10 July 2022 concluding that the Respondent did not hold information within the scope of the Request.

6. The Appeal was heard on 5 May 2023 and a decision of the Tribunal was promulgated on 3 October 2023. The Tribunal allowed the appeal and issued a substituted decision (the “**Substituted Decision Notice**”) which directed:

1. *The Royal Mint must reconsider its analysis of the request for information in light of the Tribunal’s Decision in case reference EA/2022/0216 and must make a fresh response to the request for information.*
2. *Unless the duty to confirm or deny does not arise in accordance with any applicable provision of the Freedom of Information Act 2000, the fresh response must confirm if further information is held within the scope of the request and either disclose it or claim any relevant exemptions to disclosure.*
3. *The Royal Mint must issue the fresh response within 35 days after the date on which this decision is promulgated.*
4. *The Royal Mint must, in connection with the fresh response, provide advice and assistance, so far as it would be reasonable to expect it to do so, in accordance with section 16 of the Freedom of Information Act 2000.*
5. *The fresh response will be subject to the rights given under section 50 of the Freedom of Information Act 2000 to make a new complaint to the Information Commissioner.*
6. *Failure to comply with this decision may result in the Tribunal making written certification of this fact pursuant to section 61 of the Freedom of Information Act 2000 and may be dealt with as a contempt of court.*

LEGAL FRAMEWORK

7. The Tribunal’s jurisdiction in relation to a contempt application is set out in section 61 FOIA:

“(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.”

8. The Tribunal considers the analysis of the law as set out in the following cases to be useful:

- a. Rotherham Metropolitan Borough Council v Harron & The Information Commissioner's Office and Harron v Rotherham Metropolitan Borough Council & The Information Commissioner's Office: [2023] UKUT 22 (AAC) (“**Rotherham**”)
- b. JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2016] EWHC 192 (Ch), (“**Pugachev**”)
- c. Edward Nield v Loveday [2011] EWHC 2324 (Admin) (“**Nield v Loveday**”)
- d. Navigator Equities Limited v Deripaska [\[2021\] EWCA Civ 1799](#) (“**Navigator**”)
- e. MD v Secretary of State for Work and Pensions (Enforcement Reference) [2010] UKUT 202 (AAC) (“**MD v Secretary of State**”)
- f. Kirk v Walton [2008] EWHC 1780 (QB) (“**Kirk v Walton**”)

9. In **Rotherham** Farbey J stated:-

“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 (for a recent restatement, see JS (by her litigation friend KS) v Cardiff City Council [2022] EWHC 707 (Admin), para 55). 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.”

10. For the purposes of contempt proceedings, the act or the failure to act, must be proven to the criminal standard of being beyond reasonable doubt. That is, the Tribunal must be sure of any fact before finding it proved. The burden lies on an Applicant to make clear and comprehensible allegations, see **Pugachev**, paragraph 41.
11. Even once an act or failure to act has been proved, the Tribunal then must consider whether to exercise the discretion to certify the contempt to the Upper Tribunal. In this regard, the circumstances will be relevant and, whether the conduct was intentional or reckless may be a factor and accidental, or unintentional non-compliance, may not carry the necessary quality of contumacy. In **Nield v Loveday**, the High Court held that that for an allegation of contempt to succeed:

“in addition to knowing that what you are saying is false, you had to have known that what you are saying was likely to interfere with the course of justice”

12. In **Navigator**, para 82, the Court of Appeal summarised the principles that must be applied in deciding whether a person alleged to be in breach of a court order should be treated as a contemnor as follows:

“The following relevant general propositions of law in relation to civil contempts are well-established:

..

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;*

...

v) *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;*

..

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)."*

13. In **MD v Secretary of State**, the Upper Tribunal said at paragraph 19:

"Tribunals must make clear in plain English what things must be done. They must also make clear the possible consequences of any failure to do what the tribunal has required. In order to make clear what may happen if the necessary things are not done we think it highly desirable, at the very least, that a statement under rule 16(4)(b) of the SEC Rules of the consequences of a failure to comply with a summons or citation should spell out the penalties that may be imposed for failure to comply. In England and Wales these include imprisonment, a fine, and sequestration of assets."

14. Finally, in **Kirk v Walton**, the position was helpfully summarised by Cox J DBE:

"29. I approach the present case, therefore, on the basis that the discretion to grant permission should be exercised with great caution; that there must be a strong prima facie case shown against the Claimant, but that I should be careful not to stray at this stage into the merits of the case; that I should consider whether the

public interest requires the committal proceedings to be brought; and that such proceedings must be proportionate and in accordance with the overriding objective.”

15. Rule 7A of the Rules deals further the certification of an office to the Upper Tribunal, in the interests of brevity, these are not repeated here, save that rule 7A(6) sets out that:

“A decision disposing of the application will be treated by the Tribunal as a decision which finally disposes of all issues in the proceedings comprising the certification case and rule 38 (decisions) will apply.

DOCUMENTS

16. The Respondent has provided the Tribunal has been provided with a 171 page hearing bundle and a document entitled Respondent’s Submissions dated 17 July 2024.
17. The Applicant has provided the Tribunal with the following documents:
- a. Applicant’s Submission (undated)
 - b. Witness statement of David Parsons dated 21 June 2024
 - c. Witness statement of the Applicant dated 21 June 2024
 - d. A 35-page hearing bundle
18. Where numbers appear in parenthesis within this decision, if they commence with an R, the reference will be to pages within the Respondent’s bundle (for example: (R23)) and where they start with an A, the reference will be to pages within the Applicant’s bundle (for example: (A11)).

EVIDENCE

19. The Tribunal had the opportunity to read the statement of, and hear evidence from:
- a. The Applicant
 - b. Mr David Parsons on behalf of the Applicant
 - c. Mr Christopher Inson on behalf of the Respondent.

The Applicant's evidence

The Applicant only gave evidence himself. Mr Parsons was not present. In any event, Mr Parson's evidence relates to the history of the matter and not the Application before the Tribunal.

20. Whilst the Applicant gave evidence, it was unfortunate that he had not been able to connect to the hearing other than by telephone which meant that he could not be seen. Nonetheless, he came across clearly. He had indicated that he was content to proceed with the hearing and with giving evidence on this basis.
21. Most of the content of the Applicant's statement also concerned the background history. The supporting documents provided by the Applicant also predate the Substituted Decision Notice, save for Attachments 7 and 8. The significance of these documents was not clear initially. However, the Applicant explained in his evidence that these show which coins would be accepted by the Respondent, and which would not. However, as it was accepted by the Applicant (and the Tribunal) that the Respondent had provided a fresh response, as required by the SDN, these were not considered to be relevant to the Tribunal's determination.
22. The Applicant's evidence, therefore, comprised only an opening statement from him, whereby he indicated that:

"The complaint surrounds the transparency of a government agency...This campaign is about clarity for the public, the banks and the post offices with devolved powers....If the Tribunal finds against me, it allows them to continue to operate in the shadows".

The Respondent's Evidence

23. A witness statement has been provided by Mr Christopher Inson. Mr Inson is legal counsel to the Respondent. Again, this deals with a large amount of background which is not wholly relevant for the purposes of the Application.

24. Mr Inson explains that the Substituted Decision Notice did not come to his attention until 22 December 2023 when, despite having already missed the date, Mr Inson diarised to take action on return from Christmas vacation. He accepted that the Respondent had been served with the SDN By the Tribunal on 22 December 2024.
25. On his return, on 3 January 2024, Mr Inson wrote to the Tribunal suggesting that a response would be provided within a further 35 days but does not make an application to the Tribunal for an extension of time or indicate why he could not have responded earlier.
26. In oral evidence, Mr Inson was unable to explain why he arbitrarily set a new date for a response in place of either asking the Tribunal for permission or even seeking to comply as soon as he possibly could. Eventually, he stated that he was inexperienced in matters concerning the Tribunal procedure and it did not cross his mind that he should do otherwise. He stated that he was trying to be cooperative and helpful. He accepted that with hindsight it may have been preferable for him to have calculated the time period for compliance from 22 December 2024.
27. Mr Inson appeared to be more concerned about why he had not received the SDN than with the importance of complying. He stated: "it felt like we had been prejudiced by the system". He added that he was more focused on responding to the directions set out by Judge Griffin in the order of 22 December 2023 than he was with complying with the SDN.
28. Mr Inson was also asked to explain why the policy disclosed had been redacted but the Tribunal agreed that this is largely of no consequence as the appropriateness of that is not a matter for the Tribunal on this occasion.
29. Mr Inson explained that he had not provided advice and assistance to the Applicant as required by the SDN as he believed that would only be necessary if he had not been

able to provide the policy and, thereby, comply with the Request. He considered this to be reasonable.

SUBMISSIONS

Applicant's Submissions

30. The main part of the Applicant's written submission deals with matters that predate the Substituted Decision Notice. It also deals with a further complaint to the ICO which is not under consideration by the Tribunal.
31. However, the Applicant also emphasised that the terms of the Substituted Decision Notice were clear and unambiguous. He also contends that the Respondent's officers were aware of these proceedings due to them having been aware of the ongoing legal action and that they had multiple opportunities to submit further information prior to the Substituted Decision Notice and that their failure to do so infers that they wilfully withheld information.
32. The Applicant considers that the response now provided is not sufficient. His main complaint appears to be that the policy provided is substantially redacted and, he believes, that the redacted content would contain policy detail that has caused him financial catastrophe. He suggests that the Respondent has never provided either the ICO or the Tribunal with an unredacted copy of the policy by way of closed material or at all.
33. The Applicant stresses that the evidence is that the response is incomplete by as it fails to provide further information that falls within the scope of the request. It is for this reason that he requests that the Respondent is certified to the Upper Tribunal in contempt.

Respondent's Submissions

34. The Respondent's submissions are provided in a written note by Ms Milligan of counsel, these also outline the background to the Application.
35. In relation to the Substituted Decision Notice, it is suggested that the Respondent only became aware of the Substituted Decision Notice on 22 December 2023, after the Applicant had made the Application to the Tribunal on 9 December 2023 and after the order of the Tribunal dated 22 December 2023.
36. The Respondent avers that it could not have been expected to comply with the Substituted Decision Notice until it became aware of it. However, very little explanation was offered to explain why, on becoming aware of the Substituted Decision Notice, immediate action was not taken to provide a response. Instead, it was further delayed by 11 days, (over the Christmas period), at which point the Respondent suggested that it should not be obliged to respond for a further 35 days.
37. Ms Milligan sets out that the Respondent should not be held in contempt in circumstances where, by no fault of its own, the Respondent was not aware of the order that it was required to comply with. Whilst it is accepted by the Tribunal that the Respondent was not aware of the decision until 22 December 2023, this does not explain why it was not complied with immediately, or within 35 days of it being received (which would correspond with the Tribunal's intentions). Instead, without any application to the Tribunal, the Respondent sought to set its own timetable.
38. Ms Milligan also, however, raises the issue that the Respondent was not a party to the proceedings. Whilst the Respondent was aware of the proceedings and had been given the opportunity to become a party, this raises an interesting technical point. Ms Milligan highlights that this was dealt with in the case of ***Moss v Royal Borough of Kingston-upon-Thames [2023] EWCA Civ 1438*** ("Moss") in which the Court at first instance held that, even though Kingston had been given an opportunity to join the proceedings, no application had been made for it to join, and no order had been made to add it as a respondent. Whilst Kingston had received a copy of the decision, it had

not been formally served. As such, at first instance, it was held that the non-compliance was not sufficient to constitute a contempt of court.

39. Ms Milligan then provides an analysis of the relevant law and contends that a case for contempt could not be made out and that it is not in the public interest for a Tribunal to find a non-party in contempt of court for failings that were not of its own making and were caused by a lack of service. In respect of the position after service of the SDN on 22 December 2024, she acknowledged that the Respondent, (subject to being bound by the Order at all, due to not being a party) then would have had an obligation to comply within a reasonable time. She contends that it did so by the response dated 5 February 2024.

DECISION

40. It is accepted that the Respondent did not become aware of the Substituted Decision Notice until 22 December 2023. However, it had been aware of the proceedings for a significant time and a decision had been made by it that it would not apply to become a party, despite knowing that the proceedings could well result in an order being made against them. Whilst the Tribunal considers that greater diligence could have been exercised by the Respondent to ensure that it was aware of the outcome of the proceedings, this does not alter the fact that the SDN was not served on the Respondent until 22 December 2023 and, as such, that the officers of the Respondent were not previously aware of the SDN.
41. On becoming aware of the Substituted Decision Notice, in place of immediately either applying for an extension of time in which to comply or even complying, the Respondent took no action for 9 days. Thereafter, the action taken was to write to the Tribunal to suggest that they be provided a further 35 days, without providing any clear reason for needing the additional time and without applying for permission to extend the time period.

42. The Tribunal considers that the Respondent should then have either applied for an extension of time in which to comply or immediately complied. In the absence of taking either of those steps, the Tribunal considers that the Respondent should, at the very least, have then complied with the SDN within a reasonable time.
43. As the Tribunal had, within the SDN, set the time for compliance at 35 days from the date of promulgation, therefore, publication, the Tribunal considers that compliance within 35 days of the notice having been received would be sufficient to amount to compliance within reasonable time. However, the Tribunal also considers that if the Tribunal, on making the order had been aware the 35 days period was likely to fall over Christmas, it may well have extended the time for compliance for between 7 and 14 days.
44. The Respondent responded to the Substituted Decision Notice on 5 February 2024. Whilst the Applicant is not content with the response, the response did amount to compliance with the substance of the Substituted Decision Notice, in that the Substituted Decision Notice required only that a fresh response be provided. The Tribunal does not need to consider, for the purpose of this Application, whether the response was adequate for the purposes of FOIA. If the Applicant wishes to challenge the adequacy of the response, he must apply to the Information Commissioner and follow the appropriate procedure.
45. On balance, therefore, the Tribunal considers that whilst the Respondent did not follow best practice by applying to the Tribunal for an extension of time, or complying swiftly, it did act reasonably and, as such, the Tribunal do not conclude that the conduct of the Respondent amounted to a breach of the order that was not served prior to the expiration of the time for compliance. Alternatively, if it is considers that the non-compliance amounted to a technical breach despite non-service, the Tribunal considers that, in other circumstances, relief from sanction would be granted pursuant to the test set down in ***Denton v TH White Ltd (Practice Note) [2014] EWCA Civ 906; [2014] 1 WLR***

3926 as whilst the breach would be considered serious and significant, there were good reasons for the non-compliance.

46. Therefore, irrespective of the issue as to whether the order was binding on the Respondent due to them not having been made a party, either the Respondent complied by responding within a reasonable time, or the Respondent should be granted relief from sanction due to having done so. Therefore, the Tribunal does not consider it appropriate for the Respondent to be certified to the Upper Tribunal.
47. As such, either there was noncompliance with the order due to it not having been served in time, in which case, there cannot have been the necessary elements of mens rea or actus reus present, (which would be required for the Tribunal to consider certifying the Respondent for contempt) or there was an obligation for the Respondent to comply within a reasonable time, which the Tribunal find that it did.
48. Therefore, whilst the Tribunal does consider that the Respondent could have acted more diligently on becoming aware of the Substituted Decision Notice, by applying for an extension of time and requesting permission to extend the time set out in the SDN, the Tribunal does not consider that Mr Inson wilfully avoided complying with the order. The Tribunal accepts that he was simply not aware of the appropriate course of action to take in circumstances where a Court or Tribunal imposed a deadline that had already been missed. In any event, the approach taken is not sufficiently serious to warrant certification to the Upper Tribunal for contempt and the application is refused.

COSTS

49. In the event of the Application being dismissed, which has now occurred, the Respondent has indicated an intention to pursue an application for the costs 'of and associated with' the application to be paid by the Appellant pursuant to rule 10 of the 2009 Rules. The Applicant was informed of this by the Respondent's submissions dated 17 July 2024 and was given an opportunity to respond. The Applicant's response was

only that he would leave the matter to the Tribunal. Only on being asked whether he objected, during the hearing, did he confirm that he objected.

50. Pursuant to rule 10, *"the Tribunal may make an order in respect of costs only...if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings"*.
51. The use of the word "may" indicates that the Tribunal has discretion where a party has acted unreasonably. Therefore, the starting point must be for the Tribunal to consider whether the Applicant acted unreasonably in making the application. This is an objective test met by applying an objective standard to the facts.
52. The question of unreasonableness was considered in the case of ***Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC) (21 June 2016)***, ("***Willow Court***"), in which the Upper Tribunal stated:

"24. An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ, but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. ... "Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or on Sir Thomas Bingham's "acid test" is there a reasonable explanation for the conduct complained of?

25. ... For a professional advocate to be unprepared may be unreasonable (or worse) but for a layperson to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable.

26. *We consider that tribunals ought not to be overzealous in detecting unreasonable conduct after the events and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings.... Rule 3 (4) entitles the FTT to require that the parties cooperate with the tribunal generally and help it to further that overriding objective (which will almost invariably require that they cooperate with each other in preparing the case for hearing). Tribunals should therefore use their case management powers actively to encourage preparedness and cooperation, and to discourage obstruction, pettiness and gamesmanship."*

53. The Upper Tribunal highlighted that where there is no reasonable explanation for conduct, it would be proper for it to be adjudged unreasonable and the threshold for making an order would have been crossed. The Upper Tribunal stressed that whilst other circumstances will also be relevant, the nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be considered.

54. In the case of ***Lea v GP Ilfracombe Management Company Limited [2024]EWCA Civ 1241***, Lord Justice Coulson suggested at paragraph 15:

"A practical rule is for the Tribunal to ask: would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue?"

55. Once the threshold has been crossed, at that point, the Tribunal must determine whether a costs order should be made considering the overriding objective. Therefore, even where there has been unreasonable conduct, it does not follow that an order for the payments of the other parties' costs would necessarily be appropriate and, in doing so, the Tribunal must have regard to the overriding objective at rule 2:

“(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 and of the Tribunal.*
- (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.”*

56. ,The Tribunal is also mindful that, pursuant, to rule 10(5), Tribunal may not make an order, under paragraph one, without first giving that person an opportunity to make representations and, *“if the paying person is an individual, considering that person's financial means.”*

Decision on Costs

57. An allegation of contempt of court is extremely serious and should not be made lightly. Pursuant to s.61(3), the Tribunal may only certify an offence to the Upper Tribunal where “a person does something or fails to do something”.

58. This application was made due to the Respondent having failed to comply with the Substituted Decision Notice made by the Tribunal dated 3 October 2023. It was not known to the Applicant that the Respondent had not been served with the Substituted Decision Notice at the date the application was made. Furthermore, on an objective basis, the Applicant, or a reasonable Applicant, cannot and could not be expected to know of the technical arguments made by Ms Milligan in relation to the Respondent not having been made a party. Therefore, the Tribunal does not consider

that the Applicant acted unreasonably in making the Application. He wanted to enforce the order due to non-compliance and there was no other way for him to do so.

59. By way of alternative, it could be suggested that the Applicant could have written to the Respondent to request compliance with the Substituted Decision Notice. However, the Tribunal considers that the costs of complying with the Substituted Decision Notice are unlikely to be greater due to him making the Application, at least until after 5 February 2024.
60. Thereafter, the Applicant received the letter dated 5 February 2024 together with the redacted policy. The Tribunal considers that this was sufficient to amount to compliance with the Substituted Decision Notice – the Substituted Decision Notice requiring only that a *“fresh response to the request for information”* is provided and, if reasonable, advice and assistance given. Irrespective of whether the Applicant was content with the response, there had been compliance with the Substituted Decision Notice.
61. In the circumstances, the Tribunal considers that the Appellant should then have considered discontinuing the Application. However, instead, on 16 March 2024, the Applicant renews his application indicating that the information was provided 125 days after the Substituted Decision Notice was issued and 90 days later than directed. He was also not satisfied with the response provided by the Respondent on 5 February 2024 indicating that it fails to clarify the policy and complaining about the length of the process to obtain the information.
62. The Tribunal has considered whether, at this point, having received a fresh response, it was reasonable for the Applicant to continue. The Substituted Decision Notice had, by now been complied with, albeit, late but it was late due to it not having come to the attention of the Respondent until 22nd December 2023.
63. Whilst it may have been reasonable for the Application to have been issued in circumstances where the Applicant believed that the Respondent was in breach,

within the Application, the Applicant indicated that the outcome he was seeking from the Tribunal was not compliance but an alternative outcome. Within the Application, he stated:

The Royal Mint should publish their garbled coin policy in full on their websites, including the date of implementation with Full details on how and where to redeem garbled coins for all current and past denominations since decimalisation in 1971, updated as necessary to reflect any changes in policy with dates of implementation period visible for all members of the public and banks. Clear explanations of any restrictions and contact details for clarification. Requests. Expected levels of service and transparency befitting a Royal Charter."

64. At the commencement of the final hearing in this matter, the Applicant was invited to address the Tribunal. He used this as an opportunity to express his disappointment that the Respondent's policies are not available online. He referred to his course of action as a "campaign" and indicated that he had pursued the course of action to achieve clarity for the public, banks and post offices who have devolved powers. He stated:

"If the Tribunal finds against me, it allows them to continue to operate in the shadows".

65. The Tribunal does not consider that it is reasonable (or that any other reasonable person would consider it reasonable) for an application for a party to be certified to the Upper Tribunal for contempt of court to be used as part of a campaign to encourage greater transparency. If greater transparency is sought by the Applicant, there may be other methods of achieving this, but an application of this nature is not the appropriate approach.
66. Equally, the Tribunal does not consider that it was reasonable for the Applicant, or for any reasonable person in the position of the Applicant to request that the Tribunal considers certifying the Respondent to the Upper Tribunal for contempt of court due to having failed to comply with an order where they had complied but had done so

late due to not previously being aware of the order.

67. In light of this conclusion, the Tribunal needs to consider whether to exercise its discretion to make a costs order by reference to the overriding objective. In doing so, the Tribunal is mindful that, in a contempt case, the applicant is seeking the enforcement of an order of the Court or Tribunal and, thereby, progressing the administration of justice and not just acting for his own benefit. The Tribunal is also mindful that the Respondent did apply for the Application to be struck out and was refused. However, the application to strike out turned on its own merit and it was not argued that *"certification would inevitably be disproportionate and/or not in the interests of the administration of justice"*.
68. Whilst it is correct that the Tribunal may have considered that the question of contempt should still have been considered by the Tribunal even if the Applicant had sought to withdraw, the Tribunal considers that it is likely that the Tribunal would have given permission for the proceedings to come to an end if the Applicant had does so.
69. The Tribunal considers that the obligation to deal with cases fairly, justly, and proportionately in circumstances where the Applicant accepts that he was in appropriately pursuing a "campaign" for other purposes and where the chances of success in relation to the Tribunal actually certifying the contempt may be limited may justify the making of a costs order against the Applicant. However, as the Applicant was not invited to provided details of his financial means for the purposes of rule 10(5), prior to further consideration, the Tribunal will provide the Applicant with an opportunity to provide details of his financial means.
70. Furthermore, there no breakdown of the costs according to the period in which they were incurred on the Statement of Costs that has been provided to the Tribunal. Therefore, it would not be possible for the Tribunal to make a costs order in relation to a specific period in any event.
71. The Tribunal, therefore, adjourns the Respondent's application for costs for it to be

reconsidered once further information has been received in accordance with the directions set out above.

APPEAL

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, General Regulatory Chamber. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 42 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

District Judge Watkin

Date: 2 December 2024