



Neutral citation number: [2024] UKFTT 971 (GRC)

Case Reference: EA/2023/0425

Decision given on: 30 October 2024

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

**Heard on: 18 June 2024**

**Further consideration on: 23 October 2024**

**Decision given on: 30 October 2024**

**Before**

**TRIBUNAL JUDGE HEALD  
TRIBUNAL MEMBER GASSTON  
TRIBUNAL MEMBER PEPPERELL**

**Between**

**CHRISTOPHER WRIGHT**

Appellant

**and**

**(1) THE INFORMATION COMMISSIONER  
(2) VALUATION OFFICE AGENCY  
(3) HIS MAJESTY'S REVENUE AND CUSTOMS**

Respondents

The Appeal was decided without a hearing as agreed by the parties and allowed by the Tribunal by rule 32(1) of the Tribunal Procedure (First -Tier Tribunal) (General Regulatory Chamber) Rules 2009

**Decision:**

- 1.His Majesty's Revenue and Customs is added as 3rd Respondent to the Appeal
- 2 A copy of this Decision is to be provided to the 3rd Respondent
- 3 The Appeal is Dismissed

## REASONS

1. This Decision relates to an Appeal brought by the Appellant pursuant to section 57 Freedom of Information Act 2000. It is in respect of a Decision Notice issued by the Information Commissioner on 26 September 2023. It concerns a request for information made to the Valuation Office Agency which became a party to the Appeal by Order of the 7 February 2024.
2. What follows is a summary only of the submissions, evidence and our view of the law. It does not seek to provide every step of our reasoning.
3. In this Decision the following definitions are adopted:-

Freedom of Information Act 2000	FOIA
Interpretation Act 1978	IA78
Local Government Finance Act 1988	LGFA
Commissioners for Revenue and Customs Act 2005	CRCA
The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009	2009 Rules
the Valuation Office Agency	VOA
His Majesties Revenue and Customs	HMRC
the Information Commissioner	the IC
Christopher Wright	the Appellant
Decision Notice dated 26 September 2023 ref IC-232437-L6X7	the DN
Upper Tribunal	UT
First-tier Tribunal	FtT
revised open bundle of 169 pages provided for the Appeal (references to page numbers in this Decision are to the Bundle).	the Bundle
revised closed bundle	the Closed Bundle

### **Background**

4. As set out in the Decision of Tribunal Judge Buckley in *Stitt- v- (1)The Information Commissioner and (2) the Valuation Office Agency [2023] UKFTT 887 (GRC)*

*"The VOA is an Executive Agency of HMRC, and its staff are officers of HMRC. It is responsible for the valuation of properties and land across England and Wales, and for some statutory and public sector valuation work in Scotland."*

5. In summary this Appeal relates to a request made to VOA for information about public houses in 2 postcode areas of Plymouth where they had been assessed by VOA to be within certain categories for non-domestic rating valuation purposes.
6. In its response to the Appeal VOA said (E109):-

*"Non-domestic rates is a tax on property, termed "hereditaments". Sections 42 and 52 of...LGFA impose duties upon Valuation Officers to prepare and maintain non-domestic rating lists. These are lists of hereditaments, identified by their addresses, and which state their "rateable value"*

*The rateable value identified for a hereditament informs the amount of non domestic rates to be paid to the local billing authority by the ratepayer. The valuation of property for the purposes of determining rateable value is subject to the rules set out in the LGFA Schedules 6-7. The touchstone of the valuation process is the statutory rating hypothesis, which involves calculating "the rent at which it is estimated the hereditament might reasonably be expected to let from year to year" (Schedule 6, paragraph 2(1))*

*Ratepayers can submit proposals in prescribed circumstances to the VOA to challenge the rateable value assigned to their property under the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations"). The 2009 Regulations provide for the VOA to disclose information in certain circumstances following a proposal. However, there is no general right to require the VOA to disclose information about other hereditaments"*

7. VOA provided some but refused to provide other information requested by the Appellant on the basis that it was prohibited from doing so by CRCA. We noted this refusal was made in the context of:-

(a) section 18(1) CRCA which states that subject to sub sections (2),(2A) and (3):-

*"Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs. "*

(b) section 19(1) CRCA namely:-

*"A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity*

*(a)is specified in the disclosure, or (b) can be deduced from it."*

## **FOIA**

8. FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing if that information is held (section 1(1)(a) FOIA) and if that is the case to be provided with that information (section 1

(1)(b) FOIA). These entitlements are subject to exemptions including that provided for by section 44 FOIA which states:-

*(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it – (a) is prohibited by or under any enactment*

9. By section 2(3)(h) FOIA section 44(1) is an absolute exemption.

### **CRCA**

10. In this Appeal the exemption at section 44 FOIA refers to sections 23(1) and 18(1) CRCA. These state that

*"Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs." (section 18(1)*

and at section 23(1)

*"(1) Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (c. 36) (prohibitions on disclosure) if its disclosure*

*(a) would specify the identity of the person to whom the information relates, or (b) would enable the identity of such a person to be deduced."*

11. Section 5 and schedule 1 to IA78 provide that the meaning of person "includes a body of persons corporate or unincorporate. [1889]"

### **Role of the Tribunal**

12. By section 58 FOIA:-

*(1) If on an appeal under section 57 the Tribunal considers –*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or  
(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.*

*(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based*

13. In *Peter Wilson -v- The Information Commissioner* [2022] UKFTT 0149 it was held that:-

*"30...the Tribunal's statutory role is to consider whether there is an error of law or inappropriate exercise of discretion in the Decision Notice. The Tribunal may not allow an appeal simply because it disagrees with the Information Commissioner's Decision. It is also not the Tribunal's role to conduct a procedural review of the Information Commissioner's decision making process or to correct the drafting of the Decision Notice."*

14. In *NHS England -v- Information Commissioner and Dean* [2019] UKUT 145 (ACC) the UT said:-

*"10. The First-tier Tribunal 'exercises a full merits appellate jurisdiction and so stands in the shoes of the IC and decides which (if any) exemptions apply..."*

**Evidence and matters considered**

15. The Tribunal first considered this Appeal on 18 June 2024. Directions were then given for the parties to set out their cases in skeleton arguments and to seek to agree issues, to provide a revised bundle and for a gist to be provided. The Tribunal gave further consideration to the Appeal on 23 October 2023 by which time included in the Bundle were for example:-

(a) a skeleton argument prepared by the Appellant dated 25 June 2024 (E154-E160)

(b) a skeleton argument prepared by VOA of the 5 July 2024 (E162-E166)

(c) a table prepared by VOA in an email of the 10 July 2024 (E167) showing VOA's view on the position of the parties.

16. We also had the Closed Bundle and a gist of the closed material. A copy of the gist was sent to the Appellant with Directions dated 24 October 2024 to enable him to make submissions on it, if he wished to do so. He responded on 28 October 2024 indicating he had no comment to make.

**Request, Response, Complaint and DN**

17. On 8 March 2023 (C75) the Appellant made the request to the VOA as follows:-

*"We have been told the bands and categories for a small number of pubs in the PL5 and PL6 postcode area, this information was not available to us previously but was revealed to us as the result of a Challenge to the RV of a public house for which we act as an agent. The pub we act for is being compared to other pubs but without access to the bands and categories of other pubs cannot make fair comparisons. The types of premises we are interested in fall under the VOA SCAT codes 226 and 227*

*The available Categories for wet sales are;*

*Category 1 – Primary Licensed Trade Areas*

*Category 2 – Destination Houses*

*Category 3 – Community & Rural Houses*

*Food sales will fall within either Band A (Multiple outlet standard premium priced menu operations with large volumes and not requiring specialist personnel) or Band B.*

*Under an FOI we therefore request confirmation of the names of all pubs in the PL5 and PL6 postcode areas and their respective Categories and Bands for each site"*

18. On 4 April 2023 VOA (C76) provided some information but refused to provide all that had been requested relying on section 44 (1)(a) FOIA and section 23(1) CRCA.

19. On 14 April 2024 the Appellant responded saying (C82):-

*" So, for the avoidance of doubt, we hereby request a review of request 7 as we consider that the information, we seek was solely related to the hypothetical assessment of the types of trade the VOA consider fair, in their opinion. It is not (and never has been) the actual trade of any actual operator. In disclosing the hypothetical assessments of categories and bandings for pubs in the PL area it does not identify any person as the information is merely an opinion the VOA valuers express at RV assessment date and therefore the exemption does not apply."*

20. On 11 May 2023 VOA replied (C83) saying:-

*"I uphold the VOA's decision not to disclose any information which would identify a 'person' under section 44 of the FOIA. I have set out the reasons for my decision below and addressed the points you made on page four "*

21. On 11 May 2023 the Appellant asked further questions (C88) but we saw no reply to that and in any event noted that on that day the Appellant made a complaint to the IC by section 50 FOIA (D89). This said:-

*"We wish to raise a complaint against the Valuation Office Agency for failing to hand over data under our FOI request. We made multiple requests which they mostly answered and without cause for complaint, but one issue remains unresolved and we are at deadlock.*

*In essence the service holds information on hypothetical assessments of trade which their service carried out under their statutory duty but for no good reason then refuses to disclose to us when asked. The VOA class the information they hold as confidential (i.e., personal) and or state that it relates to an actual person we could identify when clearly it does not as it only identifies hypothetical trade for a business that does not exist.*

*Furthermore, one of their officers has (unprompted) already given us sight of some of the information so it is absurd that we are being denied access to more. If that is not the case and the information is somehow confidential and could identify people, then the officer has acted outside of their remit in showing us the information and that is a data breach.*

*They can't have it both ways, but in any event as we have proven (to any reasonable man) that the information, we request sight of is hypothetical. So, we look to the FOI to rule in our favour and ensure the information is released."*

22. On 26 November 2023 the IC issued the DN (A4-A8). In summary this said:-

*"The Commissioner's decision is that the Valuation Office Agency was entitled to rely on section 44 to withhold requested information."*

## **Appeal**

23. On 4 October 2023 the Appellant filed his Appeal (A9-A16). This was supported by a bundle of documents (A17-149). The outcome sought (A14) was:-

*"To overturn the ICO's decision and rule that the information we seek is not confidential and with that, that the VOA was wrong to withhold it. To apologise for misleading the applicant with use of unsuitable cases and for the delays.*

*Further, to pay our costs and time that we have been put to. We claim 8 hours at the rate of £19 per hour. Total £152.00"*

24. On 29 November 2023 the IC responded to the Appeal (A50-A61) to which the Appellant replied on 4 December 2023 (A62-A72). On 19 March 2024 VOA responded (E108-E116) to which the Appellant replied on 20 March 2023 (E125-E127). There then followed a number of further submissions including:-

(a) VOA's rebuttal of 2 April 2024

(b) the Appellant's reply to the rebuttal of 3 April 2024

(c) VOA's 2nd rebuttal of 7 May 2024

(d) Appellants reply to the 2nd rebuttal of 13 May 2024

25. Directions were given for the parties to set out their positions in skeleton arguments and where able to indicate what issues were agreed. Thus in our further deliberations had the benefit of:-

(a) the Appellant's skeleton of 25 June 2024 (E154-E160)

(b) VOA's skeleton of 5 July 2024 (E163-E166)

(c) an email of the 10 July 2024 from VOA to the Tribunal and copied to the parties (E167) setting out areas of agreement and disagreement. We could not see that this had been formally agreed by the Appellant and proceeded on that basis.

### **Scope**

26. The question for us to decide is whether, as concluded in the DN, sections 23(1) and 18(1) CRCA apply to the information in dispute and thus the exemption at section 44 FOIA has been properly applied.

27. In the Directions given on 18 June 2024 (E150) a number of specific questions were put to the parties. The questions which derive from section 23(1) were:-

(a) how is VOA and not HMRC a party to the Appeal and is it a proper public authority for FOIA and this Appeal.

(b) on what basis is it said that sections 23(1) and 18(1) CRCA (and thus section 44 FOIA) apply to VOA and its activity.

(c) on what basis is it said that the information requested by the Appellant is "Revenue and customs information"

(d) on what basis is it said that the information requested by the Appellant relates to a person.

(e) to explain the basis upon which it is said that a disclosure of the information requested would "specify the identity of the person to whom the information relates, or would enable the identity of such a person to be deduced."

### **The public authority**

28. VOA became a party to the Appeal by paragraph 4 of an Order made on 7 February 2024. For the reasons that follow on 24 October 2024 HMRC was added as 3rd Respondent.

29. Section 3 FOIA sets out the meaning of "public authority " for FOIA. Section 3(1) says:-

*"In this Act "public authority" means –*

*(a)subject to section 4(4), any body which, any other person who, or the holder of any office which (i)is listed in Schedule 1, or..."*

30. VOA say in their skeleton (para 3 E164):-

*"The VOA is the proper public authority for this appeal. It was stated (correctly) as the public authority in the decision notice of the Information Commissioner. The information requested is held by the VOA. Although it is an Executive Agency of HM Revenue & Customs ("HMRC"), the VOA is a distinct organisation, with its own staff and record systems"*

31. The Appellant in his skeleton argument (E158 para 22) says:-

*"The VOA were granted their party status by (Judge Worth) GRC directions issued on 9th Feb 2024"*

32. The IC in the DN had in fact said (A5):-

*"The [VOA] is not listed as a separate public authority in schedule 1 of FOIA because it is an executive Agency of HM Revenue & Customs. However as it has its own FOI unit and the complainant has corresponded with the VOA during the course of the request and complaint the Commissioner will refer to the VOA for the purposes of this notice- although the public authority is ultimately HMRC (emphasis added)*

33. The ICO have guidance about executive agencies of government departments as follows (emphasis added):-



"The definition of government departments is not limited to ministerial departments such as the Department for Education or the Home Office. Section 84 of FOIA states that the term includes Northern Ireland departments and any body exercising statutory functions on behalf of the Crown. Therefore, the term 'government departments' extends to:

- non-ministerial departments headed by civil servants and which usually have a regulatory or inspection function, such as Crown Prosecution Service, HM Revenue & Customs and Ofsted; and
- non-departmental public bodies, ie all those bodies which operate at arm's length from ministers, albeit having a role in the process of national government, such as the Advisory, Conciliation and Arbitration Service (ACAS) and the British Council.

The term 'government department' also includes executive agencies established to carry out specific executive functions. Examples of executive agencies include the Crown Commercial Service, the Planning Inspectorate and the Driver and Vehicle Licensing Agency (DVLA).

If you are an executive agency, your parent department is responsible for dealing with requests for information that you receive. They are the public authority for the purposes of FOIA. This is because, although administratively distinct, executive agencies usually have no independent legal status of their own. If you are an executive agency and you have your own staff who handle information requests, you can deal with information requests directly. If you do not have an information access team, it is particularly important that you train your staff to recognise information access requests. They can then promptly redirect them to the relevant staff in the parent department."

34. In our view while no prejudice has been caused to any party by VOA and not HMRC being added at the public authority in fact on the basis of schedule 1 FOIA and as set out in the ICO Guidance HMRC is the relevant public authority for the purposes of the request made.
35. In this Decision we will continue to refer to VOA.

**On what basis do sections 23(1) and 18(1) CRCA (and thus section 44 FOIA) apply to VOA and its activity?**

36. The Appellant (E158) sates that he cannot answer this question. In its skeleton (E164) VOA set out their answer which we accept. It stated as follows:-

(a) VOA's functions are "function[s] of the Revenue and Customs, and its officers are "Revenue and Customs officials", as defined in 18(4) of the CRCA

(b) section 18(1) CRCA provides:-

(a) a reference to Revenue and Customs officials is a reference to any person who is or was –  
(i) a Commissioner,

(ii) an officer of Revenue and Customs,

(iii) a person acting on behalf of the Commissioners or an officer of Revenue and Customs, or

*(iv) a member of a committee established by the Commissioners,*

(c) section 5(2) CRCA vests within "the Commissioners" the functions vested previously in the Commissioners of Inland Revenue.

(d) section 61 LGFA *"vested in the Commissioners of Inland Revenue the function of appointing valuation officers, who have the function of compiling and then maintaining valuation lists..."*

(e) Section 7 CRCA and schedule 1 para 19 *"vests the particular function of "rating lists" upon an officer of Revenue and Customs, i.e. the staff of the VOA. Therefore, officers of the VOA as set in s10 exercise a particular function as officers of Revenue and Customs."*

**Is the information requested by the Appellant "revenue and customs information"?**

37. In his skeleton (159) the Appellant indicates that he cannot answer this question

38. Section 23(3) CRCA provides:-

*"In subsection (1) "revenue and customs information relating to a person" has the same meaning as in section 19"*

39. Section 19(2) CRCA provides:-

*"In subsection (1) "revenue and customs information relating to a person" means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others)."*

40. Section 18(4)(c) CRCA states:-

*"a reference to a function of the Revenue and Customs is a reference to a function of –  
(i) the Commissioners, or  
(ii) an officer of Revenue and Customs,*

41. In our view the information requested is information which is about and acquired and, in any event, clearly "held" by HMRC in connection with its functions.

**Does the requested information relate to a person?**

42. Section 23(1) CRCA refers to *"Revenue and customs information relating to a person..."* and as set out above:-

(a) section 19(2) CRCA also requires the information to relate to a person and

(b) "person" by IA78 includes *"a body of persons corporate or unincorporate."*

43. In its skeleton (para 8) VOA says:-

*"That "function" arises in respect of persons, i.e. the person(s) who pay the business rates liability, and the person(s) who occupy or own the property in question."*

44. The Appellant in his skeleton says *"there is no basis I can find"*

45. Having considered the party's cases set out in a number of the documents provided and having viewed the disputed material in the Closed Bundle we concluded that the information did relate to a person for the reasons set out by VOA.

**On what basis would the disclosure of the information requested specify the identity of the person to whom the information relates, or would enable the identity of such a person to be deduced?"(section 23 (1) CRCA)**

46. In its skeleton VOA says (E165):-

*"The disclosure of the names of the pubs would enable the identity of persons to be deduced. The address of the pub could be identified, using an internet search or by reference to a business directory. By cross-referencing the addresses against other publicly available datasets (for example, the Land Register, websites or business directories) it would be easy to identify the persons about whom the information relates, namely the business operators and /or titleholders in respect of each of the pub"*

47. In answer to this question the Appellant says that *"there is no basis I can find."*

48. However we were able to review the disputed material in the Closed Bundle. From that review our conclusion was that if this was disclosed we agreed with VOA that it would enable the identity of the person (as defined) to whom it relates to be deduced.

### **Other matters raised**

49. The Appellant stated in his view the band and category given to each public house is "hypothetical" and so could not be linked to individual business owners. He said

*"... the VOA is re-labelling hypothetical information created by its valuers as confidential information."*

50. He also said in his skeleton (E154):-

*"This is a binary dispute between the parties regarding the failure to provide, on reasonable request, the hypothetical banding and category information which accompanies hypothetical pub trade valuations created by the VOA in the course of its statutory duties. "*

51. However in our view by reference to the wording of CRCA even if the information is "hypothetical" it remains at the very least information which

(a) is held *"in connection with the exercise of a function of the Revenue and Customs in respect of the person"* and

(b) from which a person (as defined) could be deduced.

52. He also stated that (E125):-

*"The lists of hereditaments put up on the VOA public website identified pubs by their addresses, and state the name of the pub. The VOA response fails to mention this salient fact they have already identified the names and locations of thousands of pubs on their public facing website"*

53. VOA's in its response (E128) to which the Appellant also responded was that:-

*"The public database referred to is published by the VOA pursuant to paragraph 8 of Schedule 9 to the [LGFA]. The VOA provides the public with access to the Non-Domestic Rating Lists via the GOV.UK website pursuant to these provisions. The database does not record the band and category assigned to pubs that are in the valuation lists, hence Mr Wright's FOI request"*

54. The Appellant also in his skeleton says (E154):-

*" The request concerned a small number of pubs and was made to the VOA over a year ago now. Since then the VOA have supplied the information I sought in this matter (albeit for different pubs) in another Check Challenge Appeal (CCA)."*

55. In its skeleton (E165) VOA refers to the issue raised by the Appellant of the availability of other information such as a data base and as provided for by the 'Check, Challenge, Appeal' process. VOA says its answer to this is:-

(a) the valuation lists referred to do not publicly display all the information held about a property

(b) the information the VOA has published or provided to Mr Wright was provided pursuant to LGFA and under the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 and that

*"This is irrelevant to the question under s44(1)(a) of the Freedom of Information Act 2000, namely whether disclosure of the withheld information is "prohibited by or under any enactment", i.e. by the CRCA"*

56. It was also useful to have in mind the decision in *Stitt* in which it was said:-

*"70 Mr Stitt argues that it is necessary for the tribunal to resolve a perceived conflict between the statutory prohibition in the CRCA and the duties of listing officers under section 28 LGFA. The short answer is that, in the tribunal's view, section 28 LGFA has no impact on the question of whether the request was dealt with in accordance with FOIA.*

57. We were not entirely certain whether the Appellant was saying he now had all the disputed material. Even if that is the position it does not alter the outcome of this Appeal because:-

- (a) CRCA and its obligations and penalties still apply to those at VOA dealing with the request
- (b) the request and exemption claimed still had to be resolved by FOIA
- (c) the Appeal had not been withdrawn.

### Costs

58. During the Appeal process the Appellant referred to costs. For example:-

(a) on 20 March 2024 (E127):-

*"I claim for a further 3 hours at £19 per hour to be added to my other costs in answering the submission made by the VOA."*

(b) para 27 of his skeleton (E159) *"27. The Appellant claims a further 3 hours at £19 per hour."*

(c) on 4 March 2024 (E130) *"I claim a further 2 hours of my time at £19 per hour."*

(d) on 13 May 2024 (E147) *"6. I claim a further 2 hours of my time at £19 per hour."*

59. VOA on 28 June 2024 when making an application suggested that costs should be in the Appeal.

60. Section 29 Tribunal, Courts and Enforcement Act 2007 provides as follows:-

*(1)The costs of and incidental to –*

*(a)all proceedings in the First-tier Tribunal, and*

*(b)all proceedings in the Upper Tribunal,*

*shall be in the discretion of the Tribunal in which the proceedings take place.*

61. The relevant part of rule 10(1)(b) 2009 Rules provides that:-

*(1)...the Tribunal may make an order in respect of costs.. only – (b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings;*

62. In *Kirkham v Information Commissioner (Recusal and Costs)*: [2018] UKUT 65 (AAC) the UT held:-

*"Decisions on the award of costs are always discretionary. The starting point is that the information rights jurisdiction in tribunals is a costs-free zone. The onus is on the person making the costs application. Costs...are very much the exception rather than the rule, and should be reserved for the clearest of cases.."*

63. We also had regard to *Ridehalgh -v- Horsefield & Isherwood* [1994] 3 WLR 462 in the Court of Appeal, *Cowley v Secretary of State for Environment, Food and Rural Affairs*

[2023] UKFTT 438 para 14) and *Scnee -v- IC Mark Sneer v IC (Freedom of Information Act 2000)* [2014] UKFTT 2013-0005 (GRC) (09 May 2014).

64. The UT in *MG v Cambridgeshire County Council (SEN)* [2017] UKUT 172 (AAC) as well as saying "*The general rule in this jurisdiction is that there should be no order as to costs.*" and referred to the need for "*considerable restraint.*" MG set out a three part test summarised as follows:-

(1) did the party against whom an order for costs is sought act unreasonably in bringing, defending or conducting the proceedings? This is not a matter of the use of a discretion. Appropriate findings must be made on an objective basis.

(2) if it did, should the Tribunal as a matter of discretion make an order for costs, having considered all the circumstances for example, the nature of the unreasonable conduct, how serious it was, and the effect of it.

(3) if so, what is the quantum of those costs?

65. It was not entirely clear whether VOA and/or the Appellant was making a claim for costs by rule 10(3) 2009 Rules but in our view in any event no party in this Appeal acted in a way that would mean stage 1 of the MG test was passed and no order for costs is made by either rules 10(2) or 10(3) 2009 Rules.

### **Decision**

66. In his skeleton at para 26 (E159) the Appellant concluded by saying:-

*"The Appellant feels that there is no mechanism that allows for a technical legal argument how ever so constructed, to over-ride the rights and intentions of the act. The application for disclosure of non-confidential hypothetical information related to bandings and categories was measured and reasonable, it should not have been denied by either of the Respondents at any stage."*

67. However having reviewed the various statutory provisions in particular of CRCA and considered the parties' submissions and for the reason set out above our Decision is that the DN was in accordance with the law and the IC should not have exercised its discretion differently.

68. Accordingly the Appeal is dismissed.

**Signed: Tribunal Judge Heald**

**Date: 29 October 2024**

**Promulgated on: 30 October 2024**