Neutral citation number: [2026] UKFTT 00844 (GRC)

Case Reference: **FT/EJ/2025/0007**

First-tier Tribunal
(General Regulatory Chamber)
Enforcement

Heard on: 29th April 2026 by Cloud Video Platform
Decision given on: 5 June 2026

Before

JUDGE ARMSTRONG-HOLMES
JUDGE SAWARD

Between

THE JUDICIAL APPOINTMENTS COMMISSION

Applicant

and

PROFESSOR BARNIE CHOUDHURY

Respondent

Representation:
For the Applicant: Ms Natasha Simonsen (counsel)
For the Respondent: Mr Alexander Hutton KC (counsel)

Decision: (1) The Applicant's application for costs is refused.

(2) The Tribunal consents to the withdrawal of the Respondent's cross-application for costs under Rule 17(2), and withdrawal of the application has taken effect.

REASONS

BACKGROUND & CHRONOLOGY

1. The Tribunal is required to determine two applications for costs which are made pursuant to Rule 10 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules"). The first of those applications for costs is made by the Judicial Appointments Commission ("JAC") and arises following the withdrawal of the Respondent's application to certify an offence to the Upper Tribunal under Rule 7A of the Rules, which had been made on the basis that the JAC had not complied with the Tribunal's Substitute Decision Notice. The second application for costs is made by the Respondent in response to the JAC's application for costs.

2. The Tribunal handed down its decision in the underlying information rights appeal on 26th March 2025 (see [2025] UKFTT 00351 (GRC)). The Tribunal allowed the appeal in part and issued a Substituted Decision Notice ("SDN") requiring the JAC to disclose certain information held by it to the Respondent. The terms of that SDN were as follows:

> "*1. By 5pm on 16 May 2025, the JAC must disclose the following information held by it:*
>
> *a. All situational and other questions, specimen answers and the scoring framework utilised in the following exercises:*
>
> *i. The Deputy High Court selection exercises for 2021, 2022 and 2023.*
>
> *ii. The Specialist Circuit Judge selection exercises held in 2021, 2022 and 2023.*
>
> *b. Communications leading to the retirement of Dr Jarvis."*

3. The JAC appealed against 1(a)(i) and 1(a)(ii) of the SDN, and permission to appeal was granted by Upper Tribunal Judge Jacobs on 15th July 2025, suspending the effect of that part of the SDN. The JAC did not appeal against 1(b) of the SDN, which required the JAC to disclose "*Communications leading to the retirement of Dr Jarvis"* by 5pm on 16th May 2025.

4. The Respondent is an investigative journalist who has written a number of articles in Eastern Eye about what he considers are serious and serial failings at the JAC in judicial appointment, including "*institutional discrimination and bias in the making of judicial appointments against underrepresented groups in the judiciary.*". Dr Jarvis was the former Chief Executive Officer of the JAC, and the Respondent's information request, which led to the appeal and the above SDN, was made following his retirement.

5. The JAC avers that it complied with 1(b) of the SDN and disclosed all "*Communications leading to the retirement of Dr Jarvis*" before the 5pm deadline on 16th May 2025. The documents it provided comprised a covering email and the entirety of the closed bundle relating to that part of the SDN. The 19 pages of the closed bundle which were disclosed were redacted so as to protect the personal data of third parties and to remove information which had no relevance to this part of the SDN.

6. On 20th May 2025, the Respondent replied to the JAC regarding this disclosure by email, stating as follows:

> "*I write this response with the apt professionalism and lack of vexatiousness.*

I refer to the disclosure provided by the JAC in purported compliance with the substituted decision notice issued by the tribunal on 26 March 2025. This relates to the information I requested about Dr Jarvis' employment details and the circumstances of the cessation of that employment.

The JAC's response is an utter nonsense, and a contempt of court. It fails to comply with the order of the tribunal; the failure is both deliberate and contemptuous. I have no doubt that the JAC genuinely thought that I was so naïve that it would get away with sending me information which was not just irrelevant but almost impossible to comprehend. Please do not underestimate my intelligence, hold me in contempt, disrespect me because I happen to be of colour. Brown people can be just as bright and able as white folk.

That's before your obvious contempt of tribunal by sending me material which provides none of the information I requested.

Let me do you the courtesy of explaining why.

1. *My FOIA sought the following information from the JAC:*

   "(d) Please let me know if Dr Jarvis resigned or retired as CEO in June 2023. Please provide all communications leading to his resignation or retirement, including his letter of resignation of retirement.

   (e) Did Dr Jarvis retire or resign before his term as CEO had ended?

   (f) Does he continue to be employed or otherwise engaged (sic.) or continue to have any association (direct or indirect) with the JAC?"

2. *The JAC refused to answer the request, claiming the personal data exception.*

3. *The relevant parts of the judgment of the tribunal on this issue are in the following terms:*

"217 The JAC states that it holds no further information regarding "his notification on his retirement, including any letter of resignation or retirement". However, the wording of request 3 was: "Please provide all communication leading to his resignation or retirement, including his letter of resignation or retirement." Request 3 is not limited to information in relation to notification on retirement but is to all communication leading to his retirement. Whilst the Tribunal accepts that this does not cover all communications prior to his retirement, the Tribunal does consider that this covers all communication relating to his retirement in the period prior to his retirement.

218 Information has been provided to the Tribunal within the Closed Bundle that the Tribunal considers is "communication leading to…retirement". However, the Tribunal accepts that as the information sought relates to the terms of retirement of an individual, the information is personal data and, therefore, that the exemption as section 40(2) (personal data) needs to be considered.

229 The Tribunal therefore, requires that any information held by the JAC is disclosed and, otherwise, that appropriate advice and assistance is provided to the Respondent to enable him to make the appropriate request to any other public authority that may hold the information."

4. The information provided by the JAC is in a deliberately fragmented, disorganised, and incoherent manner. In addition, not only does it include redactions which I am not prepared to accept but also fails to produce several fundamental documents which I have requested.

5. It is discourteous, disingenuous and disrespectful for the JAC to fail to provide even a basic list of the documents disclosed by it. This is deliberately designed to make life difficult for me having to identify the relevance or importance of those documents.

6. The documents provided are as follows – my comments are beside each document set out in the list:

(a) Staff Update 6 June 2023: This is followed by several pages of redacted documents. These documents must be disclosed in full. The only redactions that I am prepared to accept are those that relate to the names and email addresses of individuals other than Dr Jarvis.

(b) Staff Update 14 February 2023: There are several pages of redacted documents. These documents must be disclosed in full.

(c) 18 January 2023, timed at 14:02, email from [redacted]; Details of the person to the person whom it was sent, or his/her designation must be provided. Please confirm that this email forwards the later email of the same date, timed at 13:57 to [redacted].

(d) The date of the letter from the SSCL to dr Jarvis is redacted. Please let me know this date.

(e) The only other document is an incomplete EMR7K. What is the significance of this form? Please supply a completed copy.

7. Please let me know whether the closed bundle included just the above documents or any other documents. If they included other documents, why have those not been provided.

8. The following documents must be disclosed:

(a) Dr Jarvis' letter of retirement.
(b) The chain of communication following the giving of the notice to retire, including full details of the benefits paid or payable to him on retirement.
(c) All the minutes of the meeting relating to Dr Jarvis' retirement.
(d) The remuneration and other benefits he received on retirement, including any ex gratia benefits and payments made to him from the Civil Service Compensation Scheme or equivalent scheme (and the full amounts of such benefits and payments, including whether or not they were tax free).
(e) The rest of the chain of communication that the various individuals had within and outside the JAC about Dr Jarvis' retirement.

9. It is worth repeating – the JAC's response is a deliberate and flagrant breach of the tribunal's order and is a contempt of this court.

I will give you until 4pm on 22nd May 2025 to provide a full response to my request.

If I do not hear from you with a satisfactory response by that time, I will invite the judge to refer the JACs default to the UT for appropriate enforcement action to be taken against it.

I reserve the right to write about this travesty and your inability to comply with a tribunal's order."

7. It is apparent from that email that the Respondent did not consider that the JAC had fully complied with the terms of the SDN. In its response of 23rd May 2025, the JAC rejected the suggestion that it had acted in contempt of the Tribunals SDN or had attempted to deceive the Respondent or the Tribunal or otherwise seek to evade the Tribunal's SDN. The JAC additionally rejected the suggestion that it had, in any way, taken into account the Respondent's heritage or race in responding to any of his requests. In refuting that that information had been provided in a deliberately fragmented manner, the JAC provided explanations in relation to the points raised by the Respondent at paragraph 6 of his email of 20th May 2025. These responses were as follows:

"a) Staff update 6 June 2023

The redacted portions of that document are completely unrelated and out of scope to your request. The document is a regular internal update to JAC staff. It includes, for instance, recent changes in other staff roles (not Dr Jarvis), changes to staff pay, training initiatives and similar routine material. It is not within the scope of your FOI request.

b) Staff update 14 February 2023

The redacted parts of this document are similar in nature to those described at a). They are not within the scope of your FOI request.

c) Email of 18 January 2023

The name of the recipient of the email was redacted as this information was withheld under section 40(2) of the Freedom of Information Act 2000 as it is personal information. However, in order to provide assurance and context of why the email was sent to this individual, I can inform you that the recipient of the email was [redacted], who is and was at the time of your request, a junior member of staff in the JAC Corporate Services team, who assists with recruitment. I confirm that the email was forwarding the email sent to [redacted].

d) Notification Letter from SSCL

The date of this letter has not been redacted. The only redactions made to the document are Dr Jarvis' home address and his employee number (which are personal information relating to Dr Jarvis, and withheld under section 40(2). This is a letter which is generated upon the inputting of a retirement date on the HR system used by all employees of the JAC and the wider MoJ.

e) Form EMR7K

This was annex to the letter from the SSCL and therefore that is why it was shared. It is a form completed by some public employees when leaving their employment. It is not a JAC form, and the JAC does not hold a completed version. The JAC does not know if SSCL will hold a version of the completed form, or whether it is disclosable by them."

8. In relation to the matters detailed by the Respondent at paragraph 8 of his email, which he stated were required to be disclosed, the JAC explained that "*Some of these requests are for new information not previously disclosed, and some have been answered previously or are publicly available information. We will revert to you in due course.*".

The application to certify an offence to the Upper Tribunal

9. Following that response from the JAC, and before the JAC had responded to the matters referred to above, the Respondent applied to the Tribunal to certify an offence to the Upper Tribunal under Rule 7A on 3rd June 2025. The application referred to the JAC as having made statements in its response of 23rd May 2026 which were *"palpable untruths"*, that the JAC was *"deliberately seeking to avoid its responsibilities to provide these documents and information"*, and alleging other impropriety and misconduct on the part of the JAC.

10. On 18th June 2025, the JAC wrote to the Respondent confirming that it had disclosed all of the material contained within the Closed Bundle which related to the relevant part of the SDN (i.e. 'Communications relating to the retirement of Dr Jarvis'), that it refuted the Respondent's allegations against it, and stating as follows:

> *"Contrary to the serious allegations you have advanced, the true position is that the JAC has gone to considerable lengths to provide you with information which is or may be responsive to your requests and to provide reasonable assistance to you with your enquiries. Indeed the JAC has not identified any materials falling strictly within the scope of your request for "Communications leading to the retirement of Dr Jarvis", i.e. information which cause or precipitated ("leading to") Dr Jarvis' retirement. The JAC did identify some documents which were related to Dr Jarvis' retirement in a very broad sense, including the documents listed at paragraph 2 above. All of these documents were provided to you with my letter of 16 May 2025, in order to assist you.*
>
> *In the time since your letter of 20 May 2026, the JAC has completed further checks of its records to ensure that what was provided to you on 16 May encompassed all of the materials within scope of your original FOIA request. The JAC confirms it does not hold any other information, beyond what has already been disclosed to you, which falls within the terms of your original FOIA request.*
>
> *Nevertheless, in order to provide yet further assistance to you, we now enclose copies of the 'Staff Updates' with relevance (sic.) redactions removed, in order to reassure you that the redacted material was wholly unrelated to Dr Jarvis' retirement. The only redactions which remain are those protecting the personal data of third parties (other than Dr Jarvis). The JAC reiterates that it has already provided all of the information within the scope of your original request.*

11. The JAC went on to explain in that letter that the matters set out by the Respondent in paragraph 8 of his email of 20th May 2025 *"overlapped with but were not within the scope of [the Respondent's] original FOIA request"*, but explained that insofar as there was an overlap, the JAC had already complied with its obligations and the contention that the JAC had breached the terms of the SDN was *"unarguable"*. The letter concluded with the JAC confirming that it had now provided a separate response to the further requests detailed at paragraph 8 of the Respondent's email, which it had treated as a new request, and the Respondent was invited to withdraw his application to certify an offence to the Upper Tribunal within seven days of the date of the letter. Additionally, the JAC stated that it *"reserves the right to seek its costs of the application from [the Respondent]"*.

12. The JAC's separate response, dealing with paragraph 8 and points (a) to (e) of the Respondent's email was sent out on the same date. A summary of the responses to those points are set out below:

    (a) **"Dr Jarvis's letter of retirement":** The JAC confirmed that it did not hold a 'letter of retirement', which had already been explained to the Respondent in the

context of the appeals to which the SDN related and in the original response to his request of 26th July 2023. As such, this is a repeated request. In the Staff Update of 14th February 2023, which was provided to the Respondent with the letter of 16th May 2025, Dr Jarvis explained that he had informed the Commissioners orally at a meeting the previous week of his "long-held plans" to retire.

(b) **"The chain of communication following the giving of the notice to retire, including full details of the benefits paid or payable to [Dr Jarvis] on retirement":** The JAC confirmed that it did not hold any information constituting a "chain of communication following the giving of the notice to retire". The JAC reiterated that Dr Jarvis had informed the Commissioner of his retirement plans orally in February 2023, and that he wrote to staff in two messages ("Staff Updates") which had already been provided to the Respondent, and that there was a recruitment process for a new Chief Executive. The email chain regarding that process was provided in the JAC's letter of 16th May 2025. The JAC additionally confirmed that it had checked JAC files and email accounts, but no further information had been found which was within the scope of the request for such a chain of communication.

The JAC confirmed that it did hold information regarding the benefits paid or payable to Dr Jarvis upon his retirement, but that this information was exempt from disclosure under section 21 FOIA, as it is already in the public domain and is accessible by other means. The JAC confirmed that details of the Chief Executive's remuneration are published in the JAC's annual reports. It was explained that the JAC's FOI response of 27th July 2023 pointed the Respondent to the annual report for 2022-2023, but that the latest annual report for 2023-2024, which includes details of Dr Jarvis's remuneration for the 2023-2024 period was now available online. A hyperlink was provided to that annual report in the response, and it was explained that the relevant details were on page 76 of that report.

(c) **"All the minutes of the meeting relating to Dr Jarvis' retirement":** There was not a specific meeting relating to Dr Jarvis's retirement save for him having told the Commissioners of his intention to retire at recent meetings concerning other matters (see Staff Update of 14th February 2023). The JAC confirmed that it had checked all of the minutes of the JAC Board, which are publicly available, and for the Selection and Character Committee of the JAC for the relevant period, but it has found no reference to Dr Jarvis's retirement in those minutes. No other meeting minutes *"relating to Dr Jarvis' retirement"* are held by the JAC.

(d) **"The remuneration and other benefits he received on retirement, including any ex gratia benefits and payments made to him from the Civil Service Compensation Scheme or equivalent scheme (and the full amounts of such benefits and payments, including whether or not they were tax free).":** The JAC referred the Respondent to the response provided to (b), confirming that it does hold some information as to his remuneration, but that it is exempt from disclosure under section 21 FOIA, as it is available in the published annual reports.

(e) **"The rest of the chain of the communication that the various individuals had within and outside the JAC about Dr Jarvis' retirement**: The JAC stated that it was not clear from the request who the 'various individuals' were or what the 'rest of the chain' meant, particularly when taking into account the response given to point (a) of the request. The JAC confirmed that it could not provide the Respondent with information held by others 'outside the JAC'. However, the JAC confirmed that it does hold information within the scope of the request (to the extent that the request was understood), in that there were communications "about Dr Jarvis retirement". That information comprises of the information which was provided to the Respondent with the JAC's letter of 16th May 2025, but that in response to the Respondent's concerns about the redactions, the JAC reduced the redaction of the out of scope information so that redactions were now only applied to personal information. The JAC stated that this was done to provide transparency on the information which is out of scope of the request. Additionally, the JAC confirmed that it had disclosed four further emails in response to this request, but that personal data, including *"the email addresses of JAC staff, email addresses of Judicial Office and Ministry of Justice staff, email address of members of the judiciary and the bank details of a staff member"* had been redacted. The JAC confirmed that it had checked the JAC files and email accounts, but it did not hold any further information within the scope of the request.

13. On the same date (18th June 2025), counsel representing the Respondent at the time, Mr Meagher, responded to the JAC to request whether Dr Jarvis received *"any remuneration, payment, benefit, or gift in kind not listed in the annual report, or not provided for in the form of an annual salary payment."*. This was treated by the JAC as a request for an internal review on behalf of the Respondent.

14. The Respondent's application of 3rd June 2025 to certify an offence to the Upper Tribunal had been made on the wrong form (GRC5 rather than GRC4), and on 20th June 2025, the JAC notified the Tribunal of this issue by an emailed letter, which the Respondent was copied into. That letter additionally set out the JAC's initial position, which was that the allegations made by the Respondent were denied and considered unfounded. The JAC submitted in that letter that the Respondent had not complied with Rule 7A(3)(e) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, in that the submissions made by the Respondent in his application to certify an offence did not include *"the grounds relied on in contending that if the proceedings in question were proceedings before a court having power to commit for contempt, the act or omissions (as the case may be) would constitute contempt of court."*, and simply asserted that there were grounds.

15. The Respondent replied to that letter on the same day, acknowledging receipt of the JAC's earlier letter of 18th June 2025, but stating that he had not yet had time to consider the content of that particular email before the JAC's letter of 20th June 2025 was sent to the court. He referred to behaviour of the JAC as being *"wholly improper and unreasonable"*. He went on to state that he would not be withdrawing the application to certify an offence to the Upper Tribunal. He went on to state that *"I know I'm an immigrant, and I've only been in this wonderful country of ours for a mere 55-years. But I think – sorry, I know – it's always for a judge to decide whether you have complied [with the Rules]"*. He stated that Dr Jarvis's severance package *"was part of [his] original FOI request, because [he] intends to write about it."*.

16. On 22nd June 2025, the Respondent resubmitted his application on the correct GRC4 form. The application repeated the allegations as set out in the earlier application of 3rd June 2025.

17. On 8th and 9th July 2025, the Respondent emailed the JAC to complain about not having received the documents referenced in the SDN at 1(a), though it should be noted that the JAC had already applied for permission to appeal to the Upper Tribunal against that part of the SDN. The first of those emails stated as follows:

> *"The balance for complying with the substituted decision notice expire on 27 June 2025. I am disappointed, but unsurprised, that, once again, you have failed to heed the judge's orders. It shows how much you disrespect her office, think that the JAC can operate with impunity, and that the law and rules do not apply to it. You should now comply with the judge's orders and let me have the documents to which I am entitled – the exercises and the model answers – immediately. Unless the JAC complies fully with the substituted decision notice by 12 noon on 9 July 2025, I will request the FTT to refer this failure to the UT."*

18. As is evident from the chronology set out above, the Respondent had, by this time, already submitted the second of his two applications to certify an offence to the Upper Tribunal, though the tenor of this email is that he would submit another application to certify an offence to the Upper Tribunal in respect of the matters contained within SDN 1(a). The JAC responded on 9th July 2025 to inform the Respondent that it had applied to the Upper Tribunal for the relevant part of the SDN (i.e. SDN 1(a)) to be suspended pending a determination of its application for permission to appeal. The Respondent replied thereafter on the same date, stating as follows:

> *"Thank you for your email. Previously, you threatened costs, to which I took great exception that you would even consider threatening a journalist for something which is clearly his job and so obviously in the public interest. Not only was it bad form, but your threat reminded me of the way Russia, North Korea and China castrate the press and put down dissent. In the UK – this is my home, and I am a loyal and patriotic subject – press freedoms are the cornerstone of democracy and civilisation. So, I'm extending you a courtesy you have never seen fit to grant me. May I respectfully suggest that you apply for a stay of execution pending your application for permission to your appeal being determined. In the meantime, I am perfectly entitled to seek a referral of your client's failure to comply with the amended decision notice to the UT. I, therefore, intend to make that application, and I invite you to appeal, without the fear of legal threat from you that I am in any way incurring time and legal expenses for your client."*

19. On 9th July 2025, the JAC responded to the email it had received from the Respondent's counsel on 18th June 2025, stating that *"To the JAC's knowledge there was no other payment, severance package, benefit, gift in kind etc. Nor is any information held by JAC discussing such payments in relation to Dr Jarvis's retirement."*. The Respondent was again signposted to where he could find the details of Dr Jarvis's remuneration within the 2022-2023 and 2023-2024 Annual Reports and was provided with a hyperlink. No further information was provided beyond that with which he had already been provided.

20. On 15th July 2025, the Upper Tribunal granted the JAC permission to appeal against SDN 1(a) and the relevant part of the First-tier Tribunal's decision and suspended the effect of SDN 1(a).

21. On 7th August 2025, the parties received case management directions from the Tribunal providing a timetable for the JAC's response to the application to certify an offence to the Upper Tribunal by 4th September 2025. The JAC's evidence and response to the application were filed in compliance with that direction on 4th September 2025. The JAC submits that it incurred significant costs in preparing witness evidence and legal submissions in response to the application.

22. On the same date that it submitted its response to the Respondent's application to certify an offence to the Upper Tribunal (i.e. 4th September 2025), the JAC responded to a letter which had been sent on behalf of the Respondent by his counsel on 27th August 2025. That letter confirmed that it was not "without prejudice" correspondence, and it explained that the purpose of the letter was "*to see whether it may be possible for [both parties] to resolve [his] client's application for the JAC's default to be referred to the Tribunal.*". That letter then sought clarification in respect of a number of points and invited a full *response* "*Before further costs are incurred by the JAC at the expense of the taxpayers and by [the Respondent] out of his own pocket.*". That letter ended with counsel stating that he was "*perfectly content to discuss the matter over the telephone with a view to bringing it to a final conclusion.*". The JAC's response reiterated the previous information given to the Respondent, explaining that all remuneration paid to Dr Jarvis was published in the JAC's Annual Reports, to which the Respondent had already been pointed on several occasions, and that the JAC did not hold any other relevant information in relation to Dr Jarvis's remuneration or severance package.

23. On 15th September 2025, the Respondent wrote to the Tribunal to withdraw his application to certify an offence to the Upper Tribunal. The reasons for that withdrawal were contained within paragraphs 5-15 of the Notice of Withdrawal, which included the following:

> *"On 9 July 2025, the JAC sent most (but not all) of the outstanding information requested by the Applicant via email to the Applicant and his legal representatives, Mr Jacob Meagher. That email was in response to an email dated 18th June 2025 that Mr Meagher had sent to the JAC on behalf of the Applicant, in which Mr Meagher set out in clear terms what the Applicant needed to know so he could bring the Certification Application to a conclusion.*
>
> *The obtaining of the information requested by Mr Meagher was crucial. The Applicant had made it clear to the JAC that he intended to write several follow-up articles about the JAC. It was as much in the interest of the JAC, the GLD, and Dr Jarvis as it was in the interest of the Applicant for the follow-up articles to be accurate in all respects. His several pieces in the Eastern Eye have already resulted in Parliamentary questions being asked about how the JAC operates. He has little doubt that the JAC will come under more scrutiny as and when he publishes further articles about its operations.*
>
> *The Applicant confirms that both he and Mr Meagher received the 9 July 2025 email sent to Mr Meagher. As the JAC had forwarded a copy of that email to the Applicant, Mr Meagher neither sent nor considered the contents of the email himself as it was sent as a response to a FOIA request sent from the JAC not correspondence from the GLD. Under the terms of the Applicant's retainer with Mr Meagher, Mr Meagher assumed (as he was entitled to) that the Applicant would contact him if he needed his assistance.*
>
> *As confirmed above, the Applicant confirms that he received a copy of the 9 July 2025 email on the date and at the time it was sent to him. He had received several emails about his appeals from the FTT and various other quarters on 9 July 2025. In addition, he was also on holiday at the time.*
>
> *By what was a complete oversight, he did not look at that email. He did not realise that the JAC had responded to the 18 June 2025 letter until 4 September 2025, when he received the GLD's letter dated that day (and subsequently Ms Barling's witness statement and supporting documents, as well as the JAC's skeleton argument), that the JAC had purported to respond to the queries he had raised with it. The fact that neither Mr Meagher's email dated 27 August nor any other communication passing by or on behalf of the parties refers to the 9 July 2025 is clear evidence of this.*

The Applicant accepts total responsibility for this oversight. He unreservedly apologises for it."

24. The Respondent's reasons explained further that as the he and Mr Meagher both wrongly believed that a response to Mr Meagher's email of 18th June 2025 was still outstanding when they received the Tribunal's directions of 7th August 2025, they waited until 27th August 2025 to see if that response would be received. On 27th August 2025, Mr Meagher then wrote to the JAC, on the Respondent's instructions, inviting the JAC to provide the information that both believed was still outstanding. The Respondent stated that if the JAC had responded to the 27th August 2025 email, *"the Certification Application would have been resolved by agreement."*. The Respondent maintained that the information he had requested was still not complete, and that the terms of the SDN had still not been properly complied with, but that *"the information now provided by the JAC allows [him] to write his follow-up articles about the JAC, with sufficient accuracy and clarity."*.

25. On 15th October 2025, having received the consent required by Rule 32(1)(a) from both parties for the matter to be determined without the need of a hearing, the Tribunal gave its consent to the withdrawal of the Respondent's application under Rule 17(2). The parties were provided with written notification under Rule 17(5) that the withdrawal had taken effect on 16th October 2025.

26. The JAC's application for costs was submitted to the Tribunal on 30th October 2025. The application submits that it has incurred costs of £14,270.70 in responding to the Respondent's application to certify an offence to the Upper Tribunal.

27. The Respondent's response to the JAC's application for costs was received by the Tribunal on 12th December 2025. The Response invites the Tribunal to dismiss the JAC's application, and the Respondent makes his own application for costs in the amount of £15,510 which, it is submitted, arises from the need to respond to the JAC's application. Both applications are premised on the basis that the other party's conduct has been unreasonable within the meaning of Rule 10(1)(b). Both applications are opposed by the respective parties.

THE LAW

28. The Tribunal's general power to award costs is provided by section 29 of the Tribunals, Courts and Enforcement Act 2007 ("the Act"), which provide as follows:

> **"29. Costs or expenses**
>
> (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.
>
> (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
>
> (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.
>
> (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may –
>
> (a) Disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

(5) In subsection (4) "wasted costs" means any costs incurred by a party –

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it unreasonable to expect that party to pay.

(6) In this section "legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf."

29. The applicable Tribunal Rules referred to in section 29(3) of the Act are those of the General Regulatory Chamber, namely The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, and specifically Rule 10, which provides as follows:

Rule 10: Orders for Costs

(1) Subject to paragraph (1A) the Tribunal may make an order in respect of costs (or, in Scotland, expenses) only –

…

(b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings; or

…

(2) The Tribunal may make an order under paragraph (1) on an application or on its own initiative.

(3) A person making an application for an order under this rule must –

(a) Send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and

(b) Send or deliver a schedule of the costs or expenses claimed with the application.

(4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends –

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings;

(b) notice under rule 17(5) that a withdrawal which ends the proceedings has taken effect; or

(c) notice under rule 17(8) that the proceedings have been treated as withdrawn.

(5) The Tribunal may not make an order under paragraph (1) or (1A) against a person ("the paying person") without first –

(a) giving that person an opportunity to make representations; and

(b) if the person paying is an individual, considering that person's financial means.

(6) The amount of costs or expenses to be paid under an order under paragraph (1) may be ascertained by –

(a) a summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses ("the receiving person"); or

(c) assessment of the whole or a specified part of the costs or expenses, including the costs or expenses of the assessment, incurred by the receiving person, if not agreed.

30. Whenever the Tribunal exercises any power conferred by the Rules, or interprets those Rules, it is required by Rule 2(3) to give effect to the overriding objective. It is therefore relevant to consider the content of Rule 2, which provides 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 cases 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 the 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.

(4) Parties must –

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally."

31. The power of this Tribunal to award costs is therefore granted by section 29 of the Act, with the costs of all proceedings being at the discretion of the First-tier Tribunal, which has full power to determine by whom and to what extent the costs are to be paid, subject to the restrictions imposed by the 2009 Rules. Those restrictions prohibit the making of an order for costs save for in the circumstances set out in Rule 10(1).

32. In this instance, the applications are made by both parties under Rule 10(1)(b) which permits the Tribunal to exercise its discretion only if it considers that a party has acted unreasonably in bringing, defending or conducting the proceedings. Whilst the Tribunal may ascertain the

amount of costs or expenses to be paid under an order by summary assessment (Rule 10(6(a)), it may not do so unless it has given the paying person an opportunity to make representations, and it has considered that person's financial means (Rule 10(5)).

Unreasonable behaviour

33. It is accepted by both parties that the leading authority in relation to costs orders in the First-tier Tribunal is **Willow Court Management Co (1985) Ltd v Alexander** [2016] UKUT 290 (LC) ("Willow Court"). Although that matter was heard in the Upper Tribunal (Lands Chamber) on appeal from the First-tier Tribunal (Property Chamber), the Upper Tribunal gave guidance on the First-tier Tribunal's discretion to award costs as a consequence of a party's unreasonable behaviour. It therefore has general application to the question of what amounts to unreasonable behaviour in the First-Tier Tribunal (General Regulatory Chamber), and the exercise of the Tribunal's discretion in awarding costs.

34. The Upper Tribunal followed the approach set out by the Court of Appeal in **Ridehalgh v Horsefield** [1994] 3 W.L.R. 462 ("Ridehalgh"), despite the slightly different context, which is the leading authority on wasted costs within the civil courts. The term 'unreasonable' was defined by Sir Thomas Bingham, Master of the Rolls (as he was at the time), in ***Ridehalgh*** at 232E as follows:

> *"Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable."*

35. In confirming that it saw no reason to depart from the Court of Appeal's decision in ***Ridehalgh***, the Upper Tribunal in ***Willow Court*** commented, at paragraph 24, that "*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.*". The Upper Tribunal went on to comment that "*unreasonable conduct includes conduct which is vexatious, and designed to harass the other side, rather than advance the resolution of the case.*", and that "*It is not enough that the conduct leads in the event to an unsuccessful outcome.*". The Upper Tribunal confirmed that the question to be addressed was "*Would a reasonable person in the position of the party have conducted themselves in the manner complained of?*", or adapting Sir Thomas Bingham's 'acid test', "*Is there a reasonable explanation for the conduct complained of?*".

36. The Upper Tribunal in Willow Court went on to state that it is not possible to prejudge certain types of behaviour as reasonable or unreasonable out of context (at para. 25), and that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event (at para. 26).

The exercise of the Tribunal's discretion

37. As the Upper Tribunal identified in ***Willow Court***, the language used in Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, is permissive and conditional in its use of language, stating that "*the Tribunal may make an order in respect of costs*

only…if a person has acted unreasonably…". That permissive and conditional language is echoed by Rule 10(1) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory chamber) Rules 2009, with unreasonable conduct being an essential precondition of the power to order costs under the Rule. Once that precondition has been established, it then remains a matter for the discretion of the tribunal as to whether to make an order for costs.

38. The applicable test to be applied is therefore firstly, as the Upper Tribunal in ***Willow Court*** identified (at paragraph 28), whether a person has acted unreasonably, which requires "*the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.*". Should that threshold be met, the Tribunal moves to the second stage of the test, where it will need to consider "*whether, in light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not.*". Only if that second stage is met, should the Tribunal go on to consider what the terms of that order should be at the third stage.

39. As the Tribunal is exercising judicial discretion at both the second and third stages of that test, it must have regard to all of the relevant circumstances which exist in any particular matter when exercising that discretion. As the Upper Tribunal set out, "*The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant.*".

EVIDENCE & ISSUES

40. The JAC's application of 30th October 2025 was accompanied by 6-pages of written submissions, a costs bundle comprising of 435 pages, and a Schedule of Costs as required by Rule 10(3). The Respondent's Response to the JAC's application and submissions in support of his own application for costs against the JAC accompanied are contained within a 29-page document. In compliance with Rule 10(3), the Respondent provided the Tribunal with a Schedule of Costs at the time of submitting his application. The Tribunal was additionally provided with a hearing bundle of 542 pages in advance of the hearing, and skeleton arguments on behalf of both parties.

41. The Tribunal has read and considered all of the documents referred to above in considering the two applications, in addition to the matters raised at the oral hearing, which took place on 29th April 2026 by video. No witness evidence was heard at the oral hearing.

42. It had been submitted at an earlier stage by the JAC that the Respondent's application for costs was made out of time, on the basis that Rule 10(4)(b) requires that an application for an order for costs must be made within 14 days of the date when the Tribunal sent "*notice under rule 17(5) that a withdrawal which ends the proceedings has taken effect.*". That point was not pursued by counsel for the JAC at the hearing, but in any event, the Tribunal takes the view that the JAC's own application for costs commenced new proceedings, and therefore the Respondent was entitled, as Rule 10(4) states, to make an application for costs "*at any time during the proceedings…*". The Tribunal concludes therefore that it has jurisdiction to consider the Respondent's application.

SUBMISSIONS

43. As the Tribunal is required to determine two applications for costs, consideration will be given to each application in turn, beginning with the JAC's application.

JAC application for costs of 30th October 2025

A summary of the JAC's written and oral submissions in support of its application for costs

44. In summary, the JAC advanced the following arguments in support of its application for costs being granted:

(i) That the JAC has incurred costs totalling £14,270.70 in responding to the Respondent's application to certify an offence to the Upper Tribunal.

(ii) That the Respondent acted unreasonably in making and pursuing the application to certify an offence to the Upper Tribunal. There was no proper basis for the Respondent making the application, which appears to have stemmed from the Respondent's refusal to accept that the JAC had provided all relevant information in compliance with SDN 1(b).

(iii) The JAC had provided all relevant information, including the entirety of the Closed bundle which related to the relevant request (i.e. "Communications leading to the retirement of Dr Jarvis") on 16th May 2025.

(iv) The only information provided after 16th May 2025 was either irrelevant to the SDN and was provided solely to allay the Respondent's concerns, however misplaced or misguided they may have been. Any further information beyond that was provided in response to the further requests set out by the Respondent in his email of 20th May 2026, following the JAC's compliance with the SDN.

(v) That the JAC's response of 18th June 2025 broke down and dealt with the Respondent's additional requests of 20th May 2025 (i.e. 'a' to 'e'), in an effort to assist the Respondent with his enquiries and to explain and address his concerns. The JAC's response of 9th July 2025 was seeking to do the same. There were no new revelations in the 9th July 2025 letter; it was simply another confirmation that there was nothing further to disclose.

(vi) There was no proper basis for the Respondent maintaining his application for certification following the JAC's further responses being provided on 23rd May, 18th June and 9th July 2025. It was objectively unreasonable, and particularly so given that the Respondent was legally represented.

(vii) Had the Respondent withdrawn his certification application within a reasonable period of 9th July 2025, the costs incurred by the JAC in providing evidence and submissions in response to the certification application (due on 4th September 2025) would have been avoided.

(viii) Given the seriousness of an allegation of contempt, and the severity of the potential consequences, the JAC was required to and did incur significant legal costs responding to the application by the required date of 4th September 2025. This included the preparation of detailed submissions, and it was necessary to obtain witness evidence to refute the Respondent's allegations.

(ix) The Respondent has advanced serious allegations of deliberate untruths, racism and impropriety against the JAC without proper foundation. The accusations made were not designed to advance the case and have a real impact upon the

person(s) they are directed towards. The Respondent's conduct in these proceedings has not been consistent with the overriding objective and is itself unreasonable.

(x) On the Respondent's own account, both he and his counsel failed to read relevant correspondence from the JAC in a timely manner. Had either the Respondent or his counsel read the letter of 9th July 2025, the application would have been resolved at an earlier stage, without the JAC having to incur the cost of filing evidence and submissions on 4th September 2025. An Respondent seeking to pursue such a serious application can be expected to open and read relevant correspondence with reasonable promptness.

(xi) That the JAC never made any threat in respect of an application for costs. In its letter of 18th June 2025, the JAC simply reserved its right to seek costs in opposing the application to certify an offence against it, having invited the Respondent to withdraw the application which it considered to be without merit. This was a prudent and appropriate statement to have made.

(xii) There has been and is no conspiracy to silence the Respondent or indeed the press. The JAC has, at all times, sought to assist the Respondent and respond to his enquiries following the JAC's compliance with the SDN.

(xiii) The Respondent has acted unreasonably, and the Tribunal should exercise its discretion to order costs against the Respondent in the amount sought.

A summary of the Respondent's written and oral submissions in response to the JAC's application for costs

45. In response to the JAC's application for costs, the following submissions were advanced on behalf of the Respondent:

(i) That the Respondent is seeking disclosure for the purposes of journalism, as he believes there is a public interest in exposing anything untoward. It isn't the case that public institutions always act properly, and journalists have exposed such matters.

(ii) That the Respondent had ad hoc assistance from counsel, Mr Meagher, and his response of 20th May 2025 to the JAC's email of 16th May 2025 was written by himself and not a lawyer. From the Respondent's perspective, he was amazed that there was no information about the financial remuneration to be paid to Dr Jarvis.

(iii) That by 3rd June 2025, which is the date when the Respondent first submitted his application to certify an offence to the Upper Tribunal, the JAC had failed to provide all of the information which was directed by the SDN to be provided to the Respondent.

(iv) That applying for certification was the only effective way for the Respondent to seek compliance with the part of the SDN which had not been appealed to the Upper Tribunal. It was a reasonable step to take to seek enforcement of the SDN, particularly when he had asked for the outstanding document in his email of 20th

May 2025 and had still not received a response to the matters requested in paragraph 8 of his email by 3rd June 2025.

(v) That when the Respondent subsequently filed his application to certify an offence on the correct form on 22nd June 2025, he remained of the view that the SDN had not been complied with.

(vi) That from the purported compliance with the SDN by the JAC on 16th May 2025, the Respondent and counsel representing him chased the JAC to comply with the SDN and sought to clarify the drip-feed of information that the JAC had provided. It was not helpful that the JAC treated the matters set out at paragraph 8 of the Respondent's email of 20th May 2025 as a new information request when the Respondent and his counsel were seeking to establish whether the JAC had complied with the SDN or not.

(vii) That the JAC's response of 9th July 2025 to the request made by the Respondent's counsel, Mr Meagher, on 18th June 2025 provided new information that wouldn't have been provided if the JAC had not been chased by the Respondent and his instructed advocate.

(viii) That it was only after the application to certify an offence had been issued that the JAC provided more information to the Respondent on 9th July 2025.

(ix) That the letter which counsel, Mr Meagher, sent on behalf of the Respondent to the JAC on 27th August 2025, seeking a resolution, was not responded to until 4th September 2025, which was the date when the JAC filed its evidence and submissions in response to the application to certify an offence to the Upper Tribunal. Had the JAC taken up Mr Meagher's offer to speak on the telephone, it may equally have been possible to resolve matters at that stage of the proceedings.

(x) Upon receipt of the JAC's response of 4th September 2025 to the Respondent's application for certification, when both the Respondent and his counsel read and considered the contents of the JAC's letter of 9th July 2025, the Respondent, far from acting unreasonably, subsequently withdrew his application on 15th September 2025. This was even though the letter of 9th July 2025 did not provide all of the information that the SDN stated should be provided.

(xi) Even after the Tribunal had notified the parties that the withdrawal had taken effect on 16th October 2025, it was open to the Respondent to apply to set aside the Tribunal's withdrawal order. He did not do so because his only aim is to expose the serious failures of the JAC to the public, and not to run a vendetta against the JAC in the same way as the JAC has decided to do against him for writing articles which he accepts may appear to be unflattering to the JAC, its officials and its legal advisers.

(xii) That the 9th July 2025 correspondence from the JAC did not attach all the information, despite counsel's email of 18th June 2025 setting out what the Respondent required to bring the certification application to a conclusion. This was whether Dr Jarvis received *"any remuneration, payment, benefit, or gift in kind not listed in the annual report, or not provided for in the form of an annual salary payment."*.

(xiii) That the information requested by the Respondent is still not complete and the SDN has still not been properly complied with. By way of example, the annual reports referred to in the 9th July 2025 email set out the salary and benefits to which Dr Jarvis was entitled, including when he ceased employment, within a band or range, but neither the accounts nor any other documents provided by the JAC provide specific amounts. Additionally, if the information requested was included in the JAC's Annual Accounts, it must have been in the possession of the JAC much earlier and therefore should have bene provided in compliance with the Tribunal's SDN. Another example is the wholesale redaction of the contents of certain documents (which make disclosure given meaningless).

(xiv) The information provided by the JAC with its letter of 9th July 2025 was adequate to enable the Respondent to write his follow-up articles about the JAC with sufficient accuracy and clarity.

(xv) That it is accepted that it is perfectly proper for the JAC to have given a warning about reserving its position in respect of any potential application for costs in legal proceedings. However, the Respondent's reaction to that position being adopted by the JAC was not unreasonable in the circumstances.

(xvi) Some of the language used by the Respondent is intemperate, but it doesn't make him unreasonable. He is a campaigning journalist who has to fight hard to get information out of public authorities. His take is that there is an element of institutional racism at play.

(xvii) The JAC's application for costs is unfair and not justified. It is important that journalists are entitled to challenge public bodies like the JAC to request further information. The Respondent's conduct comes nowhere near the high test for a costs order being made.

(xviii) If a costs order is to be made, it should be very narrow.

The Respondent's cross-application for costs of 12th December 2025

A summary of the Respondent's written and oral submissions in support of his application for costs against the JAC

46. The Respondent's application for costs was advanced by Mr Hutton KC at the hearing on the basis that it would be maintained only if the Respondent was found to have acted reasonably by the Tribunal. The application is advanced on the basis that it was unreasonable conduct of the JAC to make their application for costs in circumstances where:

(i) Having failed to comply with the SDN, the JAC drip-fed disclosure only after the certification application was made.

(ii) A costs application lacking merit was advanced in order to prevent the JAC from being held accountable to the public through the work done by the Respondent, an investigative journalist, for which he received an award.

A summary of the JAC's written and oral submissions in response to the Respondent's application for costs against the JAC

47. A summary of the JAC's response to the Respondent's application are as follows:

    (i) That there has been no unreasonable conduct on the part of the JAC. The JAC acted in compliance with the SDN, responded to the Respondent's and Mr Meagher's further and follow-up requests within a reasonable timeframe

    (ii) The cross-application makes serious allegations without any proper basis, wrongly asserting that the JAC's application has been brought for an improper purpose.

    (iii) The repetition of unfounded allegations against JAC staff personally, and against the institution they work for, has been a source of immense personal distress. Despite this, the JAC and its legal representatives have remained courteous and professional at all times.

    (iv) The fact that information was initially withheld in a mistaken belief that it was exempt under FOIA is not evidence of bad faith or deliberate concealment, neither is the fact that an error was made in relation to Qualified Person authorisation, in a separate FOIA case, evidence of bad faith. The fact that mistakes may be made in relation to exemptions under FOIA is unsurprising given the complexity of the regime. The Information Commissioner and the Tribunal are there to correct those mistakes where appropriate, and it is not reckless, negligent or dishonest for a public authority to rely on an exemption which the Information Commissioner and/or the Tribunal subsequently find does not apply.

DISCUSSION & CONCLUSIONS

The JAC's application for costs

48. Dealing firstly with the JAC's application for costs, this arose following a protracted disagreement between the Respondent and the JAC about whether term 1(b) of the SDN of 26th March 2025 had been complied with, and followed the Respondent's withdrawal of his application to certify an offence to the Upper Tribunal, which he had made in order to have the terms of the SDN enforced. That is the only mechanism by which a party may seek to enforce a First-tier Tribunal's SDN in relation to an information rights appeal. Should an offence be certified by the First-tier Tribunal, section 25 of the Tribunals, Courts and Enforcement Act 2007 provides the Upper Tribunal with the contempt powers of the High Court. The Upper Tribunal would, upon an offence being certified to it, then be required to determine whether the failure to comply with the order constituted a contempt, and if it decides that it did, whether to impose any sanction upon the relevant party. However, the application was withdrawn by the Respondent and the JAC's application for costs followed.

49. The JAC submits that it complied with term 1(b) of the SDN on 16th May 2025, and that thereafter, the only information it disclosed was either in response to what it treated as new requests for information contained within paragraph 8 of the Respondent's email of 20th May 2025, or to allay the Respondent's concerns in relation to the disclosure provided in compliance with the SDN. The JAC submits that its correspondence of 18th June 2025 responded to each of the Respondent's new requests ('a' to 'e') in turn, explained that the JAC had gone to considerable lengths to assist the Respondent and respond to his requests, explained that it did not hold any further information which the SDN required to be

disclosed, and invited the Respondent to withdraw his application, reserving the JAC's position in respect of costs, which the Respondent now accepts was perfectly proper and not untoward. The JAC further submits that it should have been evident, at that stage, that the JAC had nothing further to disclose, but that the letter sent on 9th July 2025 made it abundantly clear that the JAC had complied with the SDN and had nothing further to disclose.

50. Although that letter of 9th July 2025 was received by both the Respondent and his counsel, it is submitted by the Respondent that it was not read and considered by him until the JAC submitted its evidence and written submissions opposing his certification application on 4th September 2025. It was then that he decided to withdraw his application, though he still maintained that term 1(b) of the SDN had not been complied with. His position at that time was that the information he had been provided with would allow him to write his follow-up articles about the JAC, and he submits that had the JAC responded to his counsel' earlier email of 27th August 2025 sooner, the matter could have been resolved at an earlier stage, though this was of course only 8 days before the deadline for the JAC to submit its evidence and submissions. The JAC ultimately responded to that email on 4th September 2025.

Has the Respondent acted unreasonably?

51. The JAC submits that the Respondent acted unreasonably in making the application to certify an offence to the Upper Tribunal, and effectively argues that his behaviour was unreasonable in four respects. Firstly, that there was no proper basis for the Respondent to bring the application to certify an offence to the Upper Tribunal in circumstances where he had been provided with all of the information required to be disclosed to him on 16th May 2025. Secondly, the JAC submits that it was unreasonable for the Respondent to maintain his application after 18th June 2025, when the JAC responded to the new requests and invited him to withdraw his application, having pointed out that his application had been submitted on the wrong form. However, rather than withdraw his application at that stage, he resubmitted his application on 22nd June 2025 on the correct form. Thereafter, it is submitted that the JAC's email of 9th July 2025 made this position even more unreasonable, though the Respondent has of course provided an explanation as to why that letter was not considered before 4th September 2025. The JAC contends that had the email of 9th July 2025 been read and considered properly by the Respondent and/or his legal team within a reasonable period of receipt, and the application been withdrawn at that time, the costs incurred by the JAC in responding to the application would have been avoided. Thirdly, the Respondent has conducted the proceedings unreasonably by levelling and maintaining very serious and wholly unfounded allegations against officer of the JAC and its legal advisors. Fourthly, the Respondent's conduct has been unreasonable because, on his own account, he failed to read and consider the email of 9th July 2025 in a timely manner. In support of that proposition, it is submitted that it is common ground between the parties that the application would have been resolved at an earlier stage.

52. It is apparent from the correspondence exchanged between the parties that the Respondent held a genuine belief that the JAC had not complied with term 1(b) of the SDN and was withholding information that he considered had been ordered to be disclosed to him by the Tribunal following his successful appeal. Equally, it is evident from the Respondent's submissions and the correspondence he sent following the 9th July 2025, including his reasons for withdrawing his application to certify an offence to the Upper Tribunal, that he still maintains that the JAC has not fully complied with the SDN insofar as term 1(b) requires it to do. Whatever the merits of that view held by the Respondent, the nature of his

arrangement with his previously instructed counsel, Mr Meagher, has been described by present counsel Mr Hutton KC as being "ad-hoc" with Mr Meagher having been instructed on a direct access basis. The reality was therefore that the Respondent did, on some occasions, seek the guidance of counsel, but this was not always the case, and this is perhaps best illustrated by the fact that the Respondent would sometimes write directly to the JAC or its legal representatives, and sometimes Mr Meagher would be corresponding directly himself.

53. Although some guidance was given by the Upper Tribunal in ***Willow Court*** as to the approach to be taken to unrepresented parties in proceedings when considering the question of whether a party has acted unreasonably, the situation in respect of the Respondent in the present proceedings seemingly jumps between the two worlds of someone being represented on occasion, but then acting without seeking legal advice on another. Nevertheless, the Upper Tribunal's comments at [32] to [34] are of some assistance in relation to the approach to be taken to unrepresented parties, and are as follows:

> *"When considering objectively whether a party has acted unreasonably or not, the question is whether a reasonable person in the circumstances in which the party in question found themselves would have acted in the way in which that party acted. In making that assessment it would be wrong, we consider, to assume a greater degree of legal knowledge or familiarity with the procedures of the tribunal and the conduct of proceedings before it, that is in fact possessed by the party whose conduct is under consideration. The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings.*
>
> *We also consider that the fact a party who has behaved unreasonably does not have the benefit of legal advice may be relevant, though to a lesser extent, at the second and third stages, when considering whether an order for costs should be made and form that order should take."*

54. In considering whether the Respondent acted unreasonably in making the initial application to certify an offence to the Upper Tribunal, it is noted that his application was drafted by counsel, Mr Meagher, and he therefore had the benefit of independent legal advice and assistance at that time. Nevertheless, as has already been indicated above, we are satisfied that the Respondent held a genuine belief that the JAC had failed to comply with the terms of the SDN, and his legal representative would have been acting upon his instructions in drafting the application. Being of that mind, the only available means for him to seek enforcement of that order was to make an application to certify an offence to the Upper Tribunal. Applying the objective test identified in ***Willow Court***, we do not consider that it was unreasonable for the Respondent to have made that application. Similarly, in respect of the Respondent having maintained his position after the JAC's correspondence of 18th June and 9th July 2025, his firm belief was that the JAC was still withholding information from him in breach of the SDN, and this is a position which he maintained when he sent his notice of withdrawal to the Tribunal on 15th September 2025. His view that the JAC was still withholding information from him was based upon his own experiences as an investigative journalist in seeking information from public authorities, and perhaps a degree of journalistic instinct, whether rightly or wrongly, was involved in the adoption of that position. The fact that he had the benefit of ad hoc legal representation at various points of the proceedings, did not, in our view, serve to extinguish his belief that the JAC was in breach of the order. It is not a question of whether that belief was reasonably held, but instead we must ask ourselves whether that belief amounts to a reasonable explanation for maintaining the application following the correspondence of 18th June and 9th July being sent. We are satisfied

that it did amount to a reasonable explanation for maintaining the application after those dates.

55. The JAC further contends that the Respondent's conduct has been unreasonable by failing to read and consider the correspondence of 9th July 2025 in a timely manner. The explanation provided for this proposition is that it is common ground between the parties that the certification application would have been resolved at an earlier stage, without the JAC having incurred the expense of obtaining witness evidence and preparing written submissions, had that correspondence been acting upon at an earlier stage. Whilst it is accepted that this email, addressed to Mr Meagher, was read by him upon receipt, he did not consider it in any great detail at the time, and in any event did not recognise its significance at the time. The Respondent did not read it when he received it, as he was on holiday, and it was not read and considered properly until the JAC's correspondence of 4th September 2025 alerted him to its contents. Despite this, the Respondent did not change his view that information was still being withheld by the JAC in breach of the SDN, but his notice of withdrawal followed thereafter. By that time, the JAC had incurred considerable legal costs in preparing the evidence and written submissions which the Tribunal had directed it to provide. The contention is really that the Respondent, had he read and considered the correspondence of 9th July 2025 upon receipt, or within a reasonable period following receipt, and had then withdrawn the appeal, that the JAC would not have incurred those costs.

56. In ***Willow Court***, one of the cases considered by the Upper Tribunal (Stone) related to the awarding of costs against the owner of a property who had delayed in withdrawing proceedings until after a time when it should have been clear to him that he had achieved as much by concession from the management company concerned as he could realistically expect to obtain from the Tribunal by proceeding to a hearing. In considering how to approach the issue of costs following the withdrawal of claims in the property chamber, the Upper Tribunal, at [35], noted the following:

> *"It is important that parties in tribunal proceedings, especially unrepresented parties, should be assisted to make sensible concessions and to abandon less important points of contention or even, where appropriate, their entire claim. Such behaviour should be encouraged, not discouraged by the fear that it will be treated as an admission that the abandoned issues were unsustainable and ought never to have been raised, and as a justification for a claim of costs."*

57. One of the cases which the Upper Tribunal in ***Willow Court*** referred to was the decision of the Court of Appeal in ***McPherson v BNP Paribas*** [2024] EWCA Civ 569, which concerned rule 14 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2001 (permitting the making of an order for costs where a party, or its representative, has acted vexatiously, abusive, disruptively or otherwise unreasonably). In that case, Mummery LJ noted that in civil litigation under the Civil Procedure Rules the discontinuance of claims was treated as a concession of defeat or likely defeat, and commented at [28] as follows:

> *"In my view, it would be legally erroneous if, acting on misconceived analogy with the CPR, tribunal took the line that it was unreasonable conduct for Employment Tribunal claimants to withdraw claims and that they should accordingly be made liable to pay all of the costs of the proceedings. It would be unfortunate if claimants were deterred from dropping claims by the prospect of an order for costs on withdrawal, which might well not be made against them if they fought on to a full hearing and failed. As Miss MacAtherty, appearing for the Applicant, pointed out, withdrawal could lead to a saving of costs. Also, as Thorpe LJ observed during argument, notice of withdrawal might in some cases be the dawn of sanity and the*

Tribunal should not adopt a practice on costs which would deter applicants from making sensible litigation decisions."

58. Whilst the aforementioned matters related to appeals against decisions and not applications to certify an offence to the Upper Tribunal, we consider that a similar approach should be taken, particularly when taking into account the fact that seeking certification is the only means by which a successful Respondent may seek to enforce a decision of the Tribunal. The Respondent's decision to withdraw the application was taken once he, and perhaps his counsel, had reflected upon the contents of the 9th July 2025 correspondence, and he then, having considered his position, took the view that he had received sufficient information to enable him to write follow-up articles about the JAC. He did not resile from his position that he thought the JAC were still withholding information in breach of the Tribunal's SDN, but he then took a pragmatic approach to matters, determining to withdraw his application. That, of course, negated any need for there to be a hearing in relation to that matter, which would otherwise have caused the JAC, and himself, to have incurred further expense. Mr Meagher's emails of 18th June 2025 and 27th August 2025 to the JAC provide evidence that the Respondent was, through his counsel, seeking a resolution of the matter by obtaining the information that he sought and believed he was entitled to. The correspondence sent by the Respondent himself, although different in tone, was similarly seeking to achieve the same outcome, though we will come to that aspect of the Respondent's correspondence in due course.

59. Considering the question of whether the Respondent acted unreasonably in failing to read and consider the JAC's correspondence of 9th July 2025, we have regard to the views of the Upper Tribunal and the Court of Appeal, as referred to in ***Willow Court***, and find that this was an unfortunate oversight by the Respondent. He was on holiday at the time of receiving that correspondence, and it was acted upon once he had properly read and considered its contents, albeit when it was brought to his attention again by the filing of the JAC's evidence and submissions in response to the application. We consider that the pragmatic withdrawal of the application was both sensible and should not be discouraged by the Tribunal in such circumstances. We do not therefore find that the Respondent acted unreasonably in this regard.

60. Turning lastly to the JAC's submission that the Respondent has conducted the proceedings unreasonably by levelling and maintaining very serious and wholly unfounded allegations against officer of the JAC and its legal advisors. The question for the Tribunal is whether, in all the circumstances of the case, the Respondent has acted unreasonably in the conduct of the proceedings. The ad hoc nature of his arrangement with counsel, Mr Meagher, was such that he did not always have the benefit of legal advice and assistance when he sent some of his correspondence to the JAC. He did have the benefit of such assistance when he submitted his initial application to the Tribunal on 3rd June 2025 however, when he accused the JAC of having stated *"palpable untruths"* and alleged impropriety and misconduct on the part of the JAC, including the statement that the JAC was *"deliberately seeking to avoid its responsibilities to provide these documents and information"*. Prior to that point, the Respondent had written directly to the JAC by email on 20th May 2025, in response to its disclosure of 16th May 2025 (see paragraph 6 above), seemingly being unrepresented at that stage, but referring to the JAC's response as *"utter nonsense"* and accusing the JAC of a deliberately failing to comply with the Tribunal's SDN, providing the information in a *"deliberately fragmented, disorganised, and incoherent manner"*, and suggesting that the JAC's response was influenced by racism when he stated *"Please do not underestimate my intelligence, hold me in contempt, disrespect me because I happen to of [sic.] colour. Brown people can be just as bright and able as white folk."*.

61. Thereafter, the Respondent replied to the JAC's correspondence to the Tribunal of 20th June 2025, setting out its position opposing the Respondent's application to certify an offence to the Upper Tribunal, in what can only be described as another unnecessarily combative email. In that email, the Respondent suggested that the JAC was "*adept at delaying and obfuscating*", that it was "*treating a fair and legal request as some sort of game and testing of wills*", and stating that "*I know I'm an immigrant, and I've only been in this wonderful country of ours for a mere 55-years*" when confirming that he was not minded to withdraw his application as had been suggested by the JAC.

62. In the response to the JAC's costs application, dated 12th December 2025, the Respondent, who was again assisted by counsel, Mr Meagher, reiterated allegations of dishonesty and other impropriety on the part of the JAC, and stated that the costs application was "*brought for an unlawful, vindictive or oppressive purpose, designed either to deter [the Respondent] from writing other articles about the JAC or in retaliation for writing article which have brought the JAC (and its staff) under immense scrutiny and criticism.*".

63. It is recognised by the Tribunal that the perceived lack of compliance by the JAC with the terms of the SDN was an issue which the Respondent took very seriously, and that the manner and tone of his communications with the JAC, following the disclosure on 16th May 2025, were perhaps influenced by his frustrations. However, the allegations which he made against the JAC were not confined to occasions when he was not legally assisted, and we consider that we must take a holistic approach to his behaviour in the conduct of the proceedings. The allegations are serious in nature, alleging dishonesty, impropriety, misconduct and racism on the part of the JAC. Those allegations are not supported by evidence and are therefore considered to be unfounded.

64. It has been submitted on his behalf by Mr Hutton KC, that the Respondent expressed himself in a sometimes 'intemperate' manner, but that this doesn't make him unreasonable, as he was simply trying to get the information which he believed the JAC was withholding from him. We disagree. There is no reasonable explanation for the conduct that not only involved intemperate language, but also unfounded allegations of the most serious kind. It is undoubtedly the case that the repeated allegations of impropriety, misconduct and racism, which were directed towards JAC staff and those acting on its behalf, would have caused distress and/or harassment. That is not how proceedings should be conducted and even allowing for the fact that the Respondent was legally represented on an ad hoc basis, the allegations were not confined to instances where he was sending communications himself without the benefit of legal advice and assistance.

65. When considering the seriousness and nature of the allegations directed towards the JAC, and the circumstances of this case in the whole, including the fact that the Respondent's engagement with his legal representative was ad hoc, we do not consider that a reasonable person in the Respondent's position would have conducted themselves in the manner he did. We therefore have no hesitation in finding that he acted unreasonably in the conduct of the proceedings when applying the objective standard to the facts of the case. However, whilst that high threshold has been met, the Tribunal must go on to consider whether in light of the unreasonable conduct found it should make an order for costs.

Should the Tribunal exercise its discretion to make an order for costs against the Respondent?

66. In light of the findings we have made in respect of the unreasonable behaviour of the Respondent, which refused all but one of the grounds advanced by the JAC, the Tribunal

must decide whether or not to exercise its discretion to make an order for costs. Once the power to make an order for costs is engaged, there is no equivalent of CPR 44.2(2)(a) which stipulates that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. Instead, the only general rules are detailed in section 29(2) to (3) of the 2007 Act, which are that "*the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid*", subject to the Tribunal's procedure rules. The Tribunal's procedure rules include the overriding objective in Rule 2, which is to enable the tribunal to deal with cases fairly and justly. That includes "*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.*".

67. As the Upper Tribunal commented in ***Willow Court***, at [30], when the Tribunal is exercising a judicial discretion, "*it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant.*". As has already been referred to above, the deliberately combative approach taken by the Respondent in his communications, which essentially amounted to attacks on the characters of JAC staff and those acting on its behalf, albeit with the aim of obtaining what he wanted, would undoubtedly have caused the recipients of that hostility distress and harassment. Whilst it may not have been a deliberate tactic employed by the Respondent, that unreasonable conduct was of such a nature that it can only be described as serious. He was, however, unrepresented, or at least not benefitting from legal advice when he wrote two of his emails to the JAC on 20th May and 20th June 2025, when he referred to his race as being a factor in his treatment by the JAC.

68. The Upper Tribunal in ***Willow Court*** provided some guidance as to the approach to be taken to the exercise of discretion when a party is unrepresented, at [33], which was as follows:

> *"We also consider that the fact that a party who has behaved unreasonably does not have the benefit of legal advice may be relevant, though to a lesser extent, at the second and third stages, when considering whether an order for costs should be made and what form that order should take. When exercising the discretion…the tribunal should have regard to all of the relevant facts known to it, including any mitigating circumstances, but without either "excessive indulgence" or allowing the absence of representation to become an excuse for unreasonable conduct."*

69. The Respondent is of course an investigative journalist, who seeks information from public authorities, and in this instance the JAC, to enable him to write articles about issues which he considers should be placed into the public domain. However, whatever his motives, it does not provide him with an excuse for acting unreasonably, and good sense should always prevail, even when a party is frustrated by another party's perceived intransigence. Engaging in accusatory language and making allegations which are unsupported by evidence serves only to harass the other side, rather than to advance the resolution of the matter, and as Sir Thomas Bingham commented in ***Ridehalgh***, "*it makes no difference that the conduct is the product of excessive zeal and not improper motive.*".

70. Although the JAC has incurred costs in responding to the Respondent's application to certify an offence to the Upper Tribunal, those costs did not arise as a result of the manner in which the Respondent conducted himself in correspondence with the JAC. Those costs arose in complying with the Tribunal's direction to file evidence and submissions by 4th September 2025, and for the reasons set out above, we did not find that the Respondent's behaviour was unreasonable in relation to the application itself, the maintaining of his application following

the further exchange of correspondence, or the oversight in failing to read and consider the correspondence of 9th July 2025 when it was received.

71. We bear in mind that the costs regime is not intended to be a punitive measure for the Tribunal to impose, and having carefully considered all of the relevant circumstances present in this case, we do not consider that it is appropriate or proportionate to make an order for costs against the Respondent in this instance. We therefore decline to exercise our discretion to make an order for costs. There is therefore no need to move to the third stage of the test identified in ***Willow Court***, which relates to the terms of an order. The application is refused.

The Respondent's application for costs

72. As we have found that the Respondent acted unreasonably in his conduct of the proceedings, it is understood that the Respondent's application is no longer pursued against the JAC and notice of the withdrawal has been given orally at the hearing pursuant to Rule 17(1)(b). The Tribunal consents to the withdrawal under Rule 17(2) and withdrawal of the application has taken effect.

Signed: Judge Armstrong-Holmes Date: 4th June 2026