IN THE UPPER TRIBUNAL **UT ref: UA-2022-000871-GIA**
ADMINISTRATIVE APPEALS CHAMBER

On appeal from First-tier Tribunal (General Regulatory Chamber) (Information Rights)

Between:

Mr Noel Pereira

Appellant

- v –

The Information Commissioner

Respondent

Before: Upper Tribunal Judge Wright

Decision date: 5 June 2023

Decided after a remote (video) oral hearing on 20 April 2023

Representation: Mr Pereira represented himself
The respondent did not appear at the hearing

DECISION

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the First-tier Tribunal dated 22 April 2022 (as amended on 13 May 2022) under case number EA/2021/0097 did not involve the making of any material error of law.

REASONS FOR DECISION

Introduction

1. This appeal concerns a number of requests Mr Pereira made to the Insolvency Service concerning why it had granted a Debt Relief Order to a third party who owed money to Mr Pereira.

2. A Debt Relief Order is a way by which an individual can deal with their debts if they cannot afford to pay them. If granted, the Debt Relief Order means that certain debts do not need to be paid by the individual. It can be applied for via an "approved intermediary", who is an authorised debt adviser.

The requests

3. The first request was made by Mr Pereira on 27 December 2019 and asked the Insolvency Service about the steps it had taken to verify the information provided by

the third party prior to the Insolvency Service granting that third party a Debt Relief Order on 19 November 2019. Mr Pereira said he was making the request because he was concerned that others in his position may have lost because of the Insolvency Service's promptness in issuing Debt Relief Orders "without having made essential checks". He also requested, at the same time, to be informed of what further investigations the Insolvency Service performed after Mr Pereira's objection and complaint.

4. The Insolvency Service is not itself a 'public authority' for the purposes of the Freedom of Information Act 2000 ("FOIA"), but it is an executive agency of the Department for Business, Energy and Industrial Strategy and the latter is a FOIA public authority. I use 'Insolvency Service' to refer to the public authority for ease of reference in this decision.

5. As the First-tier Tribunal rightly summarised in its decision, Mr Pereira was (and remains) aggrieved by the grant of a Debt Relief Order ("DRO") given to a particular individual with whom Mr Pereira had a dispute about money owed. The information provided by Mr Pereira led to the DRO being revoked.

6. The Insolvency Service responded to Mr Pereira's requests of 27 December 2019 by saying that it held information falling within the scope of the requests but it considered the information was exempt from disclosure under section 40(2) of the Freedom of Information Act 2000 ("FOIA").

7. This led Mr Pereira to, in his words, rephrase the request to ask what steps the Insolvency Service takes, in general, to ensure that claims for a DRO have merit. By its response to this request, the Insolvency Service said that it held the requested information, and it provided Mr Pereira with a description of the process followed and a link to the DRO process.

8. In asking the Insolvency Service to conduct an internal review of this response Mr Pereira further asked it to (i) inform him of the name of the debt adviser/authorised intermediary involved in his case, and (ii) notify him of "what checks are performed in these circumstances (before granting a DRO or if your circumstances change during a DRO)…and, if the info is allowable, were performed in this case, particularly after my objection where [an Insolvency Service employee in a letter dated 22 November 2019 had stated] 'extensive investigations' were performed". I will term these the "further requests".

9. In its response to the internal review, the Insolvency Service said that it did not hold any further information about the general steps that are taken to ensure a DRO application has merit. As for the further requests, it said, in respect of (i) in the further requests, that it held the name of the debt adviser but considered this was exempt from disclosure under section 40(2) of FOIA. As to part (ii) of the further requests, the Insolvency Service said that the checks that are performed in the circumstances had already been provided to Mr Pereira, in response to his 'rephrased' request. This was therefore considered a repeat request and was refused under section 14(2) of FOIA. The remainder of part (ii) of the further requests was refused under section 40(2) of FOIA because it was specific to the third party's case.

10. It is apparent from the above summary of Mr Pereira's requests that, broadly, they fell into three categories. First, he wanted general information about how a DRO is awarded. Second, he wanted the name of the debt adviser, that is the authorised intermediary, who had assisted the third party to obtain a DRO. Third, Mr Pereira was

seeking information about the specific actions the Insolvency Service took in relation to the DRO applied for and obtained by the third party.

The (sole) request with which these appeal proceedings is concerned

11. I emphasise these three categories of request as only one of them (the third) arises on this appeal to the Upper Tribunal. This is because Mr Pereira confirmed to the First-tier Tribunal that he was no longer seeking the name of the debt adviser/authorised intermediary, but just the organisation for which that person worked, which he had subsequently been provided with. Further, Mr Pereira succeeded in his appeal to the First-tier Tribunal about being disclosed further information by the Insolvency Service in respect of his request for general information about how a DRO is awarded.

12. It had become apparent during the Information Commissioner's investigation of Mr Pereira's complaint against the Insolvency Service's responses to his requests that the public authority held written guidance for staff in the small number of cases where objections or complaints are received against DROs. The Insolvency Service had not disclosed this guidance to Mr Pereira under FOIA as it had not been used in the case of the third party's DRO and therefore was considered to be irrelevant to Mr Pereira's requests. The Information Commissioner effectively endorsed the Insolvency Service's approach on this point by holding that the request for such guidance did not come within the scope of any of Mr Pereira's requests. The First-tier Tribunal allowed Mr Pereira's appeal on this point as it did not consider Mr Pereira's requests were limited to information relating to the particular third party DRO of which Mr Pereira was particularly aggrieved. The First-tier Tribunal therefore substituted a decision notice in the following terms.

> "The [Insolvency Service] is required to take the following steps to ensure compliance with the legislation:-
>
> Reconsider [Mr Pereira's] requests afresh on the basis that the scope of the requests includes all information (such as guidance to staff) which covers the steps carried out to ensure that claims have got merit including the steps to be taken in relation to contested DROs, not limited to the information used in relation to the specific DRO with which [Mr Pereira] has been involved.
>
> The [Insolvency Service] must take these steps within 35 calendar days of the date of this decision, and inform [Mr Pereira] of the outcome from taking those steps within the same time period."

13. I have dealt with this point in some detail because Mr Pereira considers the Insolvency Service has failed to carry out the above steps ordered by the First-tier Tribunal and he (wrongly) thought this alleged failing would fall for consideration on this appeal. I advised Mr Pereira that this was not the case as all I was concerned with was his challenge to part of the First-tier Tribunal's decision that did not find in his favour. That is the part of the decision that concerned the specific details of the third party's DRO. Challenging a failure of a party to carry out the steps it had been ordered to carry out gives rise to separate proceedings under section 61(3) and (4) of FOIA and rule 7A of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2008. It is for Mr Pereira to investigate the basis of his making an application under that route.

14. Reverting then to the issue on this appeal, the First-tier Tribunal dealt with it as follows:

> "39. The other 'live' issue in this case is whether disclosure of information relating to the specific DRO application with which the Appellant is involved, is covered by s40(2) FOIA and exempted from disclosure.
>
> 40. Applying the legal framework above, it is our view that the information sought is clearly the personal information of the third party applicant, and it is additional to the information currently available about the third party online.
>
> 41. We accept the Commissioner's analysis in the decision notice that the Appellant has a legitimate interest in the disclosure of the information, to enable him to discover how the third party was able to successfully apply for a DRO in the circumstances of the case. Given the availability of some information online, the process which led to the revocation of the DRO, and the availability of the Ombudsman to investigate the procedures of the Insolvency Service this must lessen the Appellant's legitimate interest in disclosure. We are also less sure than the Commissioner that disclosure would be necessary to fulfil this legitimate interest, but on balance we accept that there may be undisclosed information which it would still be necessary for the Appellant to have access to.
>
> 42. Therefore, to complete our analysis, it is necessary to balance these legitimate interests in disclosure to the Appellant against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure.
>
> 43. We agree with the Commissioner's view that the named third party would have no expectation that the Insolvency Service would disclose details of his DRO application to the 'world at large' (as disclosure under FOIA cannot be restricted). We have viewed the withheld information, and its disclosure would clearly interfere with the privacy rights of the named third party and be likely to cause him harm and/or distress. We note the Appellant's allegation that the third party has been dishonest in his application, but it seems to us that, even if that is so, that does not remove the third party's reasonable expectation that the information will not be disclosed.
>
> 44. Therefore, we accept that Appellant has a limited legitimate interest in accessing this information, but in our view this is insufficient to outweigh the third party's fundamental rights and freedoms relating to their private life, even if the information provided during the application process was not all true."

15. The First-tier Tribunal's reference in paragraph 40 to the "legal framework is a reference to the following earlier paragraphs in its decision.

> "12. Under section 1(1)(a) FOIA, a public authority is obliged to tell an applicant whether or not it holds the information requested. The 'scope' of the request itself is something to be interpreted by the public authority and the Commissioner, and now by the Tribunal.

13. There are also issues in this case which relation to the disclosure of information which is potentially 'personal' in nature. Section 40 (2) FOIA reads as follows:-

> (2) Any information to which a request for information relates is also exempt information if—
>
> (a) it constitutes personal data which does not fall within subsection (1) (personal information of the applicant], and
>
> (b) the first, second or third condition below is satisfied.

14. Section 3(2) of the Data Protection Act 2018 (DPA 2018) defines personal data as 'any information relating to an identified or identifiable living individual'.

15. The relevant condition (as referred to in s40(2)(b) FOIA) in this case is found in s40(3A)(a):-

> (3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act— (a) would contravene any of the data protection principles.

16. Under s40(7) FOIA the relevant data protection principles in this case are to be found, first, in Article 5(1) of the General Data Protection Regulation (GDPR). Materially, Article 5(1)(a) reads:-

> Personal data shall be: (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency').

17. Further, and relevantly for this case by Article 6(1) GDPR:-

> Processing shall be lawful only if and to the extent that at least one of the following applies:
>
> (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
>
> (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data…

18. In relation to the tests to be applied at this last stage the principles are set out in *Goldsmith International Business School v IC and the Home Office* [2014] UKUT 0563 (AAC) and explained as follows:-

> 33. In making his submissions Mr Knight referred me to four authorities, being (in date order) decisions of the Information Tribunal, the Divisional Court, the Supreme Court and the Upper Tribunal respectively. These were: (1) *Corporate Officer of the House of Commons v Information Commissioner and Others* (EA/2007/0060-0063, 0122-0123 and 10131) (abbreviated here to "*Corporate Officer (Information Tribunal)*"); (2) *Corporate Officer of the House of Commons v Information Commissioner and Others* [2008] EWHC 1084 (Admin) ("*Corporate Officer (Divisional Court)*");

(3) *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55 ("*South Lanarkshire*"); and finally (4) *Farrand v Information Commissioner* [2014] UKUT 310 (AAC) ("*Farrand*"). The last, of course, was decided after the Tribunal had given its decision on the present appeal.

34. Mr Knight helpfully set out eight principles or, as I prefer to call them, eight propositions, derived from this case law. I set them out below, including references to the relevant passages in the various decisions as authority for these propositions as (a) I endorse them; (b) they assist in resolving the present appeal; and (c) this taxonomy may well prove a useful roadmap for the Commissioner and other First-tier Tribunals when seeking to chart a path through the thicket of issues thrown up by Condition 6(1) of Schedule 2 in other cases…

35. Proposition 1: Condition 6(1) of Schedule 2 to the DPA requires three questions to be asked:

> "(i) Is the data controller or the third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?
>
> (ii) Is the processing involved necessary for the purposes of those interests?
>
> (iii) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?"
>
> Authority: *South Lanarkshire* at [18].

36. Proposition 2: The test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

> Authority: *Corporate Officer* (Information Tribunal) at [58], *South Lanarkshire* at [18] and *Farrand* at [29].

37. Proposition 3: "Necessity" carries its ordinary English meaning, being more than desirable but less than indispensable or absolute necessity.

> Authority: *Corporate Officer* (Divisional Court) at [43] and *Farrand* at [26]- [27].

38. Proposition 4: Accordingly the test is one of "reasonable necessity", reflecting the European jurisprudence on proportionality, although this may not add much to the ordinary English meaning of the term.

> Authority: *Corporate Officer* (Divisional Court) at [43], *South Lanarkshire* at [27] and *Farrand* at [26].

39. Proposition 5: The test of reasonable necessity itself involves the consideration of alternative measures, and so "a measure would not be necessary if the legitimate aim could be achieved by something less"; accordingly, the measure must be the "least restrictive" means of achieving the legitimate aim in question.

> Authority: *Corporate Officer* (Information Tribunal) at [60]-[61] and *South Lanarkshire* at [27].
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> 40. Proposition 6: Where no Article 8 privacy rights are in issue, the question posed under Proposition 1 can be resolved at the necessity stage, i.e. at stage (ii) of the three-part test.
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> Authority: *South Lanarkshire* at [27].
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> 41. Proposition 7: Where Article 8 privacy rights are in issue, the question posed under Proposition 1 can only be resolved after considering the excessive interference question posted by stage (iii).
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> Authority: *Corporate Officer (Information Tribunal)* at [60]-[61] and *South Lanarkshire* at [25].
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> 42. Proposition 8: The Supreme Court in South Lanarkshire did not purport to suggest a test which is any different to that adopted by the Information Tribunal in *Corporate Officer* (Information Tribunal).
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> Authority: *South Lanarkshire* at [19]-[20] and *Farrand* at [26]."

The Upper Tribunal's grant of permission to appeal

16. Upper Tribunal Judge Macmillan (as she then was) gave Mr Pereira permission to appeal against the First-tier Tribunal's decision on 22 August 2022. She did so for the following reasons.

> "12 Mr Pereira proposes two grounds of appeal. Both relate to the FTT's conclusions in relation to [the requests asking to be informed of the steps the Insolvency Service took the investigate the DRO application of the third party] and both, in essence, concern the approach taken to balancing Mr Pereira's legitimate interests against the 3rd party's rights and interests. The first proposed ground is that the FTT should have afforded less weight to the 3rd party's rights and interests because the 3rd party signed a fraudulent declaration in order to obtain the DRO. Mr Pereira asserts in addition that a great deal of information relating to the 3rd party's DRO application is already in the public domain and, by inference, that 'the cat is already out of the bag'.
>
> 13. The second proposed ground is that there is a strong public interest in publishing the information, because the steps IS took to investigate the 3rd party's DRO application were clearly inadequate. Mr Pereira submits that he was initially informed by IS that it had carried out an "extensive investigation" of the 3rd party's application. However, Mr Pereira was able to identify evidence available online of the 3rd party's financial assets which led to the DRO being withdrawn.
>
> 14. The FTT's decision provides a sufficient outline of the process it has followed when reaching its decision in relation to s.40(2). The FTT reminded itself of relevant guidance provided by the Upper Tribunal in *Goldsmith International Business School v IC and the Home Office* [2014] UKUT 0563 (AAC), and of the eight propositions identified in this decision from previous authorities. The FTT noted that the first proposition, derived from the Supreme Court's decision in *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55, is that the test for

> lawfulness of processing as set out in article 6(1)(f) may be distilled into the following pertinent questions:
>
> (i) Is the data controller or the third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?
>
> (ii) Is the processing involved necessary for the purposes of those interests? And
>
> (iii) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?"
>
> 15. The FTT approached these questions as follows [Judge Macmillan then set out paragraphs 41-44 of the First-tier Tribunal's decision].
>
> 16. It is arguable that the FTT may have made an error in its approach to question (i), namely by attaching weight to Mr Pereira's legitimate interest in seeking disclosure of the personal data rather than treating this question as a binary issue. (See, by way of contrast, the approach taken by the Upper Tribunal to the issue in *Farrand v Information Commissioner* [2014] UKUT 310 (AAC) at paragraphs 23 – 25.) Further, and potentially in the alternative, the FTT may arguably have made an error by considering issues relevant to question (ii) – whether disclosure was reasonably necessary for the purposes of Mr Pereira's interests given that he had already accessed various remedies – when determining the answer to question (i).
>
> 17. Although it does not follow that either error (if made) was necessarily material to the outcome of Mr Pereira's appeal, on the face of it the proposed ground of appeal may have some force, albeit only in relation to the overall approach taken by the FTT to the balance of interests." I therefore grant permission to appeal.
>
> 18. The Information Commissioner is now invited to address the appeal. The Information Commissioner's views are also sought on whether, in the context of an article 6(1)(f) balancing exercise, any distinction should be drawn between the existence of a positive expectation by the data subject that personal data will not be disclosed, and a more neutral position whereby the data subject had no expectation that it would be disclosed. (See paragraphs 33 & 34 of *Corporate Officer of the House of Commons v Information Commissioner and Ors*, [2008] EWHC 1084 (Admin).) Both approaches are taken interchangeably in the Information Commissioner's Decision Notice."

<u>The parties' arguments on the Upper Tribunal appeal</u>

17. The Information Commissioner has been content on this appeal to set his arguments out in writing and did not attend the oral hearing of the appeal. He, rightly in my judgment, set out that the appeal relates to the balancing of interests for and against disclosure of personal information under section 40(2) of FOIA.

18. The Information Commissioner argues that the potential errors of approach identified in the grant of permission to appeal in respect of the First-tier Tribunal's approach to the first question distilled from the *South Lanarkshire* case were not material to the First-tier Tribunal's decision as it had answered this question in Mr Pereira's favour, as it had the second *South Lanarkshire* question. It was only if both

of those first two '*South Lanarkshire*' questions were answered in Mr Pereira's favour that the third question and the balance of the competing interests could arise. The Information Commissioner argues that the only issue that concerns Mr Pereira on this appeal is whether the First-tier Tribunal approached the balance of the competing interests correctly, and the First-tier Tribunal's approach to any logical prior issues is therefore irrelevant to this appeal.

19. In any event, it is argued, by the Information Commissioner, that the First-tier Tribunal did not wrongly approach or conflate the first two questions under *South Lanarkshire*. He argues that the First-tier Tribunal recognised in the first sentence of paragraph 41 of its decision that *South Lanarkshire* question (i) is a binary one of "Is there a legitimate interest in disclosure". The second sentence of paragraph 41 was commenting on the strength of that interest but was doing no more than foreshadowing the balance to be struck in *South Lanarkshire* question (iii). Nor did the First-tier Tribunal wrongly import issues from *South Lanarkshire* question (ii) in its question (i) consideration. The concern appeared to arise from the second and third sentences in paragraph 41 of the First-tier Tribunal's decision, but any additional points there raised were, again, only foreshadowing the balance of interests under question (iii) in *South Lanarkshire*.

20. As for the point raised in the grant of permission to appeal, about the nature of any expectation the third party may have had about his information remaining private, the Information Commissioner considers that that no distinction should be drawn as a matter of principle between different bases for such an expectation. The balancing of the interests under section 40(2) of FOIA will be case-specific and, accordingly, the strength of the expectation and the weight to be accorded to it will vary depending on the facts of each individual case.

21. Focusing then on Mr Pereira's grounds of appeal, the Information Commissioner argues that they have no merit in error of law terms as they were doing no more than seeking to have the factors under the balance of interests re-evaluated.

22. Mr Pereira in his written and oral arguments before me did not make any argument on the points raised in paragraph 16 in the grant of permission to appeal. He focused on his grounds of appeal, as well as points concerning compliance with the First-tier Tribunal's substituted decision notice. In short, Mr Pereira argued, first, that less weight should have been afforded to the third party's privacy interests because that third party had been found to have committed fraud. He relied on page A28 of the First-tier Tribunal's open bundle as showing a finding of proven fraud. Mr Pereira argued, secondly, that more weight ought to have been given to the need for transparency and accountability because, he considers, the Insolvency Service's checks had been shown to be inadequate. He argued, finally, that there was no evidential basis for what the First-tier Tribunal said in the first sentence of paragraph 43 of its decision about the third party having no expectation that the Insolvency Service would have disclosed details of his DRO application to the world at large.

Discussion and Conclusion

23. I agree with the Information Commissioner that the First-tier Tribunal's approach to the first question distilled from the *South Lanarkshire* case cannot have led it to have committed any material error of law in the decision to which it came on 22 April 2022. Given the lack of any contested argument on this point, I prefer to answer this on the basis that as far as this appeal by Mr Pereira to the Upper Tribunal is

concerned nothing in the First-tier Tribunal's approach to question (i) under *South Lanarkshire* disfavoured Mr Pereira in the First-tier Tribunal's decision.

24. Mr Pereira's concern throughout these proceedings has been with whether the First-tier Tribunal wrongly (in error of law terms) approached the balance of the competing interests arising under section 40(2) of FOIA. That balancing of interests point could only have been reached if he satisfied question (i) (and (ii)) under South Lanarkshire, which the First-tier Tribunal found he did. Once that point has been reached, I cannot see how any potential error the First-tier Tribunal may have made in answering *South Lanarkshire* question (i) affected its approach to the balance of interests under *South Lanarkshire* question (iii), and no one before me argued that it did. Nor did the grant of permission to appeal proceed on the basis that there was a necessary nexus between questions (i) and (iii) under *South Lanarkshire*: see paragraph 17 of that grant.

25. I not able to identify that the correct identification of the nature of the third party's expectation that his personal information would not be disclosed made any difference to the First-tier Tribunal's approach to the balance of the competing interests in this case. As for Mr Pereira's argument that there was no evidential basis for what the First-tier Tribunal said about the third party and expectation in paragraph 43 of its decision, it is important to recognise that the First-tier Tribunal's finding was about an absence of an expectation that the relevant requested information would disclosed rather than a positive expectation that it would not be disclosed. In that context, the evidence before the First-tier Tribunal, including that found in the withheld information to which this particular request related, in my judgment provided a sufficient basis for the First-tier Tribunal's conclusion that the third party had no expectation that the details in his DRO application would be disclosed by the Insolvency Service. Mr Pereira was unable to point to any evidence showing that the third party would have had such an expectation.

26. This then leaves Mr Pereira's two grounds of appeal. I can deal with these quite shortly because I do not consider there is anything in them in error of law terms.

27. Mr Pereira's first ground is that the First-tier Tribunal failed to accord any sufficient weight to the fact that the third party's application for a DRO had been proven to be fraudulent and/or it should have accorded less weight to the third party's interests in privacy because of this fraud. There are three main problems with this argument. First, the weight to be accorded to evidence is classically a matter for the specialist fact-finding First-tier Tribunal. Such a finding as to weight will only be disturbed in an error of law jurisdiction if no rational First-tier Tribunal could have arrived at it. That argument has no basis here. Second, the evidence on page A28 of the First-tier Tribunal's open bundle does not support, as Mr Pereira claims it does, that the third part had acted <u>fraudulently</u> in making the DRO application. Third, the First-tier Tribunal took the allegation of fraud into account and weighed it in its consideration of the competing interests for and against disclosure of the third party information, but it found that the third party's rights to privacy (given the undisclosed information contained sensitive personal information of the third party) outweighed any competing interests held by Mr Pereira. That was the First-tier Tribunal's job – to weigh the competing interests and decide where the balance came down in favour of disclosure or not – and in doing so it took account of all relevant matters. Mr Pereira's argument here is no more than a merits reargument that the First-tier Tribunal ought to have come down in favour of disclosure because Mr Pereira considers that the

balance of interests ought to have fallen in his favour. However, it is no part of the Upper Tribunal's error of law jurisdiction to redecide evidential matters.

28. The same conclusion holds true of Mr Pereira's second ground of appeal. This ground of appeal is that there was a strong public interest in publishing the details of the third party's DRO application because it had been inadequately investigated by the Insolvency Service. Again, however, this is just a rerun of the arguments made by Mr Pereira about the weight the First-tier Tribunal ought to have attached to the competing interests. Having considered myself the withheld information to which this request related, I can state clearly that the First-tier Tribunal was entitled to conclude that disclosure of the information would clearly have interfered with privacy rights of the third party that he would have expected would remain confidential and would be likely to cause him harm and/or distress had that information been made public. It was for the First-tier Tribunal to weigh and consider whether the factors Mr Pereira articulated as providing good reasons for making the information publicly available outweighed the privacy rights of the third party in relation to this requested information. That balancing included, as the Information Commissioner points out, the First-tier Tribunal's view that the strength of the interest in revealing potential missteps in the Insolvency Service's investigation was lessened by the existence of other means of obtaining transparency and accountability (particularly through the Ombudsman). Those interests were then weighed against the nature of the private information sought (about the third party) and the weight to be attached to keep that private information private. The First-tier Tribunal carried out this assessment and weighing of the relevant evidence and it did not err in law in balancing the competing interests as it did.

29. Mr Pereira's argument here amounted in the end to an argument that he considered greater harm would be caused to others by the Insolvency Service continuing to make DRO's on an inadequately identified basis than could arise for the third party by his private information being disclosed. Mr Pereira argued in this respect that the third party continuing to buy guitars and other musical instruments showed the third party remained a capable person. These, however, are no more than arguments on the evidential merits of the case which Mr Pereira was able to make to the First-tier Tribunal. They show no error of law in the First-tier Tribunal's consideration of the privacy rights of the third party that attached to the relevant requested information.

30. It is for all these reasons that this appeal is dismissed.

Approved for issue by Stewart Wright
Judge of the Upper Tribunal

On 5th June 2023.