



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS)**

Appeal No: EA/2010/0156

BETWEEN:

ILONA MERYL LONG

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Ruling on the Strike Out of an Appeal pursuant to Rule 8 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended

1. Background

1.1 This Appeal relates to information requests under the Freedom of Information Act 2000 (“FOIA”), made by the Appellant to The Cardiff and Vale University Health Board. The Appellant requested copies of investigations into the treatment of her deceased husband. The Cardiff and Vale University Health Board decided on 24 September 2009 that the Appellant’s request was vexatious and repeated, on the basis that the Appellant has made repeated allegations of clinical negligence for some thirteen years and that the Cardiff and Vale University Health Board has already disclosed all relevant documentation to her.

1.2 Following a complaint to the Information Commissioner, Decision Notice FS50287130 was issued, dated 1 September 2010. The Information Commissioner upheld the Cardiff and Vale University Health Board’s decision in finding that the request was vexatious, pursuant to s. 14 of FOIA. The Information Commissioner did not require any further steps to be taken by the

Cardiff and Vale University Health Board. The Appellant now seeks to appeal against the Decision Notice.

2. The Notice of Appeal

- 2.1 In her Notice of Appeal, the Appellant seeks permission to apply out of time, however she does not need it as she has 28 days from the date the Information Commissioner's decision was communicated to her to lodge her appeal, and did so after only nine days.
- 2.2 The Notice of Appeal in this matter comprised a copy of a letter dated 4 September to the Information Commissioner's Office. This was appended to a Notice of Appeal form which simply stated "*as enclosed*" at section 6.
- 2.3 Having reviewed the file, I asked the Tribunal administration to write to the Appellant, explaining that "*The Tribunal can hear appeals where the Appellant wants to argue that the Information Commissioner's decision was wrong in law. It is not clear from your grounds of appeal (which appear to be a copy letter to Ann Jones) why you are saying that the Information Commissioner's decision was wrong in law. Following receipt of your further comments the Judge will proceed to consider whether the Tribunal can hear your case....*"
- 2.4 On 21 September the Tribunal administration received an undated letter from the Appellant repeating her original information request for reports into her husband's death in 1997 and repeating her allegations of clinical negligence and her requests for details of various clinicians' insurers. She did not say why she regarded the decision to treat her request as vexatious as, in her opinion, wrong in law. She said that she would be very happy to answer any further questions put to her by the Tribunal Judge.

3. The Rules

- 3.1 Rule 22 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended ("the Rules") provide that a Notice of Appeal must include various information, including the grounds on which the Appellant relies and the result the Appellant is seeking. The Notice of Appeal in this matter does not contain this required information and I am therefore considering striking it out under rule 8 of the Rules.

3.2 The relevant parts of rule 8 are as follows¹:

“8(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal –
(a) does not have jurisdiction in relation to the proceedings or that part of them; and
(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal)
in relation to the proceedings or that part of them.

8(3) The Tribunal may strike out the whole or a part of the proceedings if –

(a)...

(b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly or justly; or

(c) The Tribunal considers there is no reasonable prospect of the appellant’s case, or part of it, succeeding.

8(4) The Tribunal may not strike out the whole or part of the proceedings under paragraph...(3)(b) without first giving the appellant an opportunity to make representations in relation to the proposed striking out”.

3.3 It follows that, if I am satisfied that the Tribunal has no jurisdiction in relation to this appeal then I must strike it out. Alternatively, if I reach the view that the Appellant’s failure to confirm her grounds of appeal amounts to a failure to co-operate with the Tribunal to the extent required, or that her grounds of appeal as drafted have no reasonable prospect of succeeding, then I have a discretion to strike them out.

3.4 I am required to take into account the Appellant’s submissions (should she choose to make any) before making a final decision and I accordingly invited the Appellant to make representations as to why this Appeal should not now be struck out by sending her a draft strike out ruling on 28 September.

3.5 The Appellant responded by letter dated 3 October in which she repeated her original information requests and allegations of negligence. She stated that she disputed that she is

¹ Available on <http://www.tribunals.gov.uk/Tribunals/Firsttier/generalregulatory.htm>

vexatious. She did not say why she considered the Information Commissioner's Decision Notice to be wrong in law.

4. Ruling

4.1 I have considered the Appellant's representations in this matter and concluded that the Tribunal must strike out this appeal under rule 8(2) of the Rules. This is because, taken as a whole, the Appellant has not provided grounds of appeal that fall within the Tribunal's jurisdiction. The Appellant's complaint relates to the original refusal of her request and not to the finding that the complaint was vexatious. She does not identify an error of law in the Decision Notice. It is important to note that the Information Commissioner's Decision was that the manner of the Appellant's previous request was vexatious, however this does not prevent her from making future information requests, which would have to be considered on their merits. I would suggest that the Appellant takes advice about the presentation of any future request, perhaps from a Citizens' Advice Bureau, so that it is presented in a manner which would not be considered vexatious.

6.2 An appeal against this decision may be submitted to the Upper Tribunal. A person seeking permission to appeal must make a written application to the First-tier Tribunal for permission to appeal to the Upper Tribunal, within 28 days of the receipt of the decision against which they wish to appeal. Such an application must identify the alleged error or errors of law in the decision and state the result the party is seeking. Relevant forms and guidance for making such an application can be found on the Tribunal's website at www.informationtribunal.gov.uk.

Signed:

Alison McKenna

Tribunal Judge

Dated: 14 October 2010