



NCN: [2023] UKFTT 00354 (GRC)

Case Reference: EA/ 2022/0446

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Heard: by determination on the papers
Heard on: 6 April 2023
Decision given on: 6 April 2023
Before: Judge Alison McKenna

RHISIART ap RHYS OWEN

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

DECISION

This appeal is struck out under rule 8 (3) (c) as having no reasonable prospect of success.

REASONS

1. The Respondent's Strike Out Application dated 9 February 2023 is allowed for the following reasons.
2. The Information Commissioner published a Decision Notice on 30 November 2022 which found that the public authority had provided the Appellant with the information held within the scope of his request and that no further information was held. The Appellant filed a Notice of Appeal dated 18 December 2022.

3. On 9 February 2023, the Information Commissioner, in filing its Response to the appeal, applied for a strike out under rule 8 (3)(c) of the Tribunal’s rules on the basis that the appeal had no reasonable prospects of success. This was because the grounds of appeal criticise the public authority but do not suggest that the Information Commissioner’s Decision Notice was wrong in law or involved an inappropriate exercise of discretion.
4. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4), by 23 February 2023. He has not replied to this invitation.
5. I have considered the Upper Tribunal’s decision in *HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation)* [2014] UKUT 0329 (TCC), in which it is stated at [41] that

*...an application to strike out in the FTT under rule 8 (3) (c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the First-tier to summary judgement under Part 24). The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance) prospect of succeeding on the issue at a full hearing...The Tribunal must avoid conducting a “mini-trial”. As Lord Hope observed in *Three Rivers* the strike out procedure is to deal with cases that are not fit for a full hearing at all.*

6. Applying this approach, I have considered both parties’ representations and concluded that this is a case which may be described as ‘not fit for a full hearing’. This is because the grounds of appeal do not engage with the Tribunal’s jurisdiction under s. 57 and s. 58 FOIA, which is to consider whether the Decision Notice is wrong in law or involves an inappropriate exercise of discretion.
7. It does not seem to me that any Tribunal properly directed could allow this appeal, as drafted. It provides no basis on which the Tribunal could issue a substituted Decision Notice. In all the circumstances, I have concluded that this appeal should be struck out as having no reasonable prospects of success. I direct accordingly.

(Signed)

Dated: 6 April 2023

Judge Alison McKenna

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