NCN: [2023] UKFTT 00167 (GRC) **Case Reference: EA/ 2022/0312**

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Heard: by determination on the papers
Heard on: 21 February 2023
Decision given on: 22 February 2023

Before:
Judge Alison McKenna

DAVID ERIC PLATTS **Applicant**

- and –

THE INFORMATION COMMISSIONER **Respondent**

DECISION on rule 4 (3) application:

This appeal is struck out under rule 8 (2) (a) as the Tribunal has no jurisdiction to determine it.

REASONS

1. By application dated 16 February 2023, the Applicant asks for a Judge to consider afresh the question of whether this appeal should be struck out. The Registrar struck the appeal out pursuant to rule 8 (3)(c) of the Tribunal's Rules[1] on 16 February 2023, as he considered that it had no reasonable prospects of success.

2. The Applicant had made an information request to the Pensions Ombudsman, which relied on an assumption that the Pensions Ombudsman operated a 'cost criterion' in relation to its investigations. He asked for information about the assumed costs criterion. The Pensions Ombudsman responded that it did not operate a costs criterion for investigative decisions, and so did not hold the information requested.

3. The Information Commissioner published his Decision Notice on 11 October 2022, in which he found that no information within the scope of the request was held and that the Pensions Ombudsman need take no steps.

4. The Appellant filed a Notice of Appeal on 11October 2022. The Appellant's Grounds of Appeal are that he was not consulted prior to the issue of the Decision Notice and requests the Tribunal to consider whether relevant information is held by the Pensions Ombudsman. He requests the Tribunal to order disclosure of the information he requested and for the Decision Notice to be re-drafted.

5. On 15 November 2022, the Information Commissioner, in filing its Response to the appeal, applied for a strike out under rule 8 (3)(c) or rule 8 (2) (a) of the Tribunal's rules on the basis that the appeal had no reasonable prospects of success or that the Tribunal had no jurisdiction to determine it.

6. The Appellant was invited to make submissions in response to the proposed strike out, as required by rule 8 (4). On 23 December 2022 he submitted that the case should be considered by a Judge as the Pensions Ombudsman 'may have more information'. The Registrar then struck out the appeal under rule 8 (3) (c) of the Tribunal's Rules.

7. I have considered all parties' representations afresh. It seems to me that the Applicant may have misunderstood the role of the Tribunal. This is to determine appeals within the statutory framework created by Parliament. As such, an appeal may only proceed if it alleges that the Decision Notice was wrong in law or involved an inappropriate exercise of discretion by the Information Commissioner. The Applicant appears to maintain his belief that the Pensions Ombudsman operates a cost threshold for investigations, despite the fact it has denied this. It is not the Tribunal's role to take another look at the issue simply because the Applicant does not accept the Pensions Ombudsman's nor the Information Commissioner's statements.

[1] The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (publishing.service.gov.uk)

8. In this case, I have concluded that the grounds of appeal do not engage the Tribunal's statutory jurisdiction under s. 57 and 58 FOIA[2]. They do not allege that the Decision Notice is wrong in law in any respect or that it involved an inappropriate exercise of discretion. Having regard to the Tribunal's powers under s. 58 FOIA, I note that the Applicant asks for a remedy which the Tribunal may not provide.

9. It does not therefore seem to me that the Tribunal has jurisdiction to determine this appeal. In such circumstances, a strike out is mandatory. I now direct a strike out accordingly.

(Signed) **Dated: 21 February 2023**

Judge Alison McKenna

[2] Freedom of Information Act 2000 (legislation.gov.uk)