



NCN: [2023] UKFTT 00225 (GRC)

Case Reference: EA/ 2022/0269

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

Heard: by determination on the papers

Heard on: 1 March 2023

Decision given on: 1 March 2023

Before:
Judge Alison McKenna

PAUL HOPKINS

Appellant

- and –

THE INFORMATION COMMISSIONER

**First
Respondent**

-and-

CHIEF CONSTABLE STAFFORDSHIRE POLICE

**Second
Respondent**

**DECISION
on Strike Out Application**

1. The First Respondent's Strike Out Application dated 4 November 2022 is refused.

REASONS

2. The Information Commissioner published a Decision Notice on 23 August 2022 which found on the balance of probabilities that no further information was held by the Second Respondent and required no steps to be taken.
3. The Appellant filed a Notice of Appeal dated 19 August 2022 (presumably intended to be 19 September 2022). His grounds of appeal were that the law required the Second Respondent to record more information than it had disclosed, that it had acted in bad faith during the Information Commissioner's investigation and that its position was untenable.
4. On 4 November 2022, the Information Commissioner, in filing his Response to the appeal, applied for a strike out under rule 8 (3)(c) on the basis that the appeal had no reasonable prospects of success. It submitted that it is irrelevant to the Tribunal's statutory remit to consider whether information *should* have been held, only whether it was held.
5. The Appellant was invited to make submissions in response to the proposed strike out pursuant to rule 8 (4). In a submission dated 25 January 2023, he explained that the relevance of the statutory duty to record information that he had identified in his grounds of appeal was that it rendered the Decision Notice's conclusion on the balance of probabilities erroneous, because the Decision Notice should have taken into account the fact that there was a particular reason why more information would have been held.
6. 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.*

7. Applying this approach, I have considered all the parties' representations and concluded that this is not a case which may be described as 'not fit for a full hearing'. On the contrary, I find that the Appellant's grounds of appeal clearly establish a triable issue between the parties, which is whether the Tribunal should conclude that more information is held as a result of the Second Respondent being under a statutory duty to record it. I am satisfied that this is relevant to the application of the balance of probabilities test.
8. In all the circumstances, I have concluded that this appeal should not be struck out as having no reasonable prospects of success and so I refuse the Respondent's application. This matter should proceed to determination as soon as practicable.
9. I note that the First Respondent and the Appellant have debated the relevance of several Decisions of the First-tier Tribunal. I hope it is helpful if I remind the parties that Decisions of the First-tier Tribunal do not set binding precedent, and that the Tribunal which decides this appeal will only be bound to follow precedent set by the Upper Tribunal and Higher Courts.

(Signed)

Dated: 1 March 2023

Judge Alison McKenna

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