



NCN: [2023] UKFTT 410 (GRC)

Case Reference: EA/ 2022/0269

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

Heard: by determination on the papers

Heard on: 09 May 2023

Decision given on: 09 May 2023

Before:
Judge Alison McKenna

PAUL HOPKINS

Appellant

- and -

THE INFORMATION COMMISSIONER

**First
Respondent**

-and-

CHIEF CONSTABLE STAFFORDSHIRE POLICE

**Second
Respondent**

CASE MANAGEMENT DIRECTIONS

**Further to the Tribunal's Case Management Directions of 31 March 2023
IT IS DIRECTED AS FOLLOWS:**

- 1. The First Respondent's application dated 28 April 2023 for a set aside is permitted to proceed out of time. The Decision dated 1 March 2023 by which the First Respondent's application for a strike out was refused is hereby set aside and the Registrar's Decision of 9 February 2023 to strike out the appeal stands;**

- 2. The Appellant's submission of 28 April 2023 is treated as an application for fresh consideration by a Judge pursuant to rule 4 (3) of the Tribunal's Rules. Time is extended to allow consideration of that application;**
- 3. On considering the matter afresh pursuant to rule 4 (3), I have concluded that the First Respondent's application for a strike out should be refused and that this matter should proceed to a final determination;**
- 4. The parties are asked to confirm within 7 days of these Directions being sent to them whether they each agree to a determination on the papers. Further Directions will follow;**
- 5. I make no order on the Appellant's application for witness summonses, which is premature because the Second Respondent's evidence has not yet been filed;**
- 6. There is now no matter before me capable of being transferred to the Upper Tribunal and so I refuse the Appellant's application for a transfer to be considered by the Chamber President.**

REASONS

1. I am most grateful to the parties for their submissions dated 28 April 2023. The First and Second Respondents agree that my Decision of 1 March, by which I refused the First Respondent's application for a strike out, should be set aside pursuant to rule 41 (2) (d) of the Tribunal's Rules¹, because there was a material procedural irregularity, and it is in the interests of justice to do so.
2. The relevant procedural irregularity, as I have explained, is that when I made my own Decision on 1 March 2023, I was unaware that the Registrar had struck out this appeal on 9 February 2023. As there was no step I could take to regularise this regrettable situation on my own initiative, I asked the parties to make submissions. I have extended time to allow the First Respondent to make a set aside application, which I have allowed. I am satisfied that it is in the interests of justice so to do.
3. The setting aside of my Decision dated 1 March 2023 leaves the Registrar's strike out in place. However, I have power under rule 4 (3) of the Tribunal's Rules to consider afresh any Decision delegated to a Registrar. The Appellant has not made an application under rule 4 (3) and is out of time to do so, but it seems to me that this is the most efficient means of correcting the situation and so I have concluded that it would be fair and just to treat the Appellant's submissions of 28 April as an application under rule 4 (3) and to extend time to allow myself to consider it. For the reasons I gave on 1 March 2023, and having considered the matter afresh, I conclude that this matter should NOT be struck out. It raises a triable issue between the parties, and it cannot properly be described as 'not fit for a hearing'. Accordingly, I have directed that it must proceed to a final determination.
4. I am unaware whether all parties have yet consented to a determination on the papers. I have directed that this issue must be confirmed swiftly so that further Directions may be given for the filing of evidence, preparation of bundles, and for the final determination to be listed as soon as possible.
5. I acknowledge that the Appellant opposed the application for a set aside. However, it is clear from his submissions that his main objective in doing so was to secure a final determination of his appeal and so I have proceeded in the manner best able to achieve this conclusion.
6. The Appellant has also applied for Directions in relation to the Second Respondent's witness evidence, but the Tribunal would not consider making any such order until it has seen the evidence which the Second Respondent proposes to rely upon. Thus, the rule 16 application is premature, but I have not dismissed it and it may be renewed at the appropriate time.

¹ [The Tribunal Procedure \(First-tier Tribunal\) \(General Regulatory Chamber\) Rules 2009 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/115444/tribunal-rules-2009.pdf)

7. The Appellant has asked for the matter of the conflicting decisions taken by myself and the Registrar to be referred to the Upper Tribunal. In view of the Directions I have issued today, it is no longer necessary to resolve this conflict and so I refuse his application.
8. It only remains for me to apologise again to the parties for the administrative error which caused this diversion in the proceedings and to thank them all for their assistance in resolving it.

(Signed)

Dated: 9 May 2023

Judge Alison McKenna

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