



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

Appeal No: EA/2011/0078

BETWEEN:

DAVID HICKS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION ON APPLICATION FOR PERMISSION TO APPEAL

1. On 16TH June 2011 Mr Hicks' appeal was struck out pursuant to rule 8(3) of the *Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009* (the GRC Rules) on the grounds that it had no reasonable prospect of success.
2. Mr Hicks now appeals against that ruling by application dated 11th July 2011.
3. Mr Hicks' grounds of appeal repeated the history of the case, much of the evidence before the Tribunal and the Commissioner and the arguments that he made in support of his appeal, additionally the following grounds were identifiable:
 - a) According to the Tribunal website, only a small number of appeals are struck out and these do not raise issues of law,
 - b) The appeal was struck out without providing a full investigation of the facts and evidence that could be presented to the Information Rights Tribunal,
 - c) There is a disagreement between the parties about the facts of this appeal,

d) There are also legal arguments that could be explained in more depth to the Information Rights Tribunal.

4. Taking each of these grounds in turn:

a) The First Tier Tribunal is not bound by other decisions of the First Tier Tribunal. The applicable rule to be applied when considering a strike out is rule 8 of the GRC Rules and this is what was applied in relation to Mr Hicks' case.

b) Whilst the Tribunal is not limited to the evidence that was before a previous decision maker, pursuant to rule 15(2) GRC Rules it is entitled to rely upon it. Pursuant to the overriding objective as set out in rule 2 GRC Rules:

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;...

Consequently the Tribunal is not required to hear all the evidence that “could” be presented to it, so long as the evidence is sufficient to determine the matter before it. The Ruling set out the evidence that was taken into consideration and in my view the “additional” evidence that Mr Hicks seeks is in fact a repetition or re-presentation of the evidence that was already before the Commissioner.

c) The evidence in this case is documentary or recorded in the Decision Notice, it is not the facts that are in dispute (in the sense that it is not denied that certain letters were sent), it is the conclusions that are drawn from the facts that are not agreed. The appeal was struck out because I was of the view that Mr Hicks had no reasonable prospect of success in persuading the Tribunal that his conclusions were correct.

d) Mr Hicks was given the
opportunity to make representations (which he did) prior to the appeal being struck out. He did not refer to these legal arguments then and does not itemize them in this application to appeal. Consequently I am satisfied that reference to “legal arguments” does not identify an error in law.

5. In his application to appeal Mr Hicks asks that the appeal be reinstated. I am satisfied that this is not an application for reinstatement pursuant to rule 8(5) GRC Rules as the appeal was struck out under rule 8(3)(c) to which rule 8(5) does not apply.

6. Under rule 44 of the GRC Rules, the Tribunal may undertake a review of a decision if (a) it has received an application for permission to appeal and (b) it is satisfied there is an error of law in the original decision. I have considered whether Mr Hicks' grounds of appeal identify an error of law in the First-tier Tribunal's ruling. As set out in the consideration of grounds a-d above, I am satisfied that Mr Hicks has not raised any points of law. I conclude, therefore, that there is no power to review the decision in this case.

7. Finally, I consider whether permission to appeal to the Upper Tribunal should be granted. For the reasons given above, having considered the grounds of appeal as set out above, I am satisfied that they do not identify an error of law in the ruling of 16th June 2011, as required by rule 42(5)(g) of the GRC Rules, consequently, permission to appeal is also refused.

8. Under rule 21(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended the Appellant has one month from the date this Ruling was sent to him to lodge the appeal with the Upper Tribunal (Administrative Appeals Chamber).

Dated this 25th day of July 2011

Fiona Henderson
Tribunal Judge