



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

Appeal No: EA/2010/0108

BETWEEN:

ROSE GRAHAM

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

REFUSAL OF PERMISSION TO APPEAL

Introduction

1. On 6th September 2011 all Ms Graham's grounds of appeal apart from a modified ground 4, were 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 they had no reasonable prospect of success. Ms Graham now appeals against that ruling by application dated 23rd November 2011.

Permission to appeal out of time.

2. In her grounds of appeal the Appellant applies for permission to appeal out of time on the grounds that she was not provided with a copy of the ruling until 7th October when she saw it in the bundle of documents served by the Commissioner in preparation of the hearing in relation to modified ground 4.
3. The Tribunal Judge had understood her to have received the ruling and the consequential directions both dated 6th September 2011 since the Appellant responded to the Tribunal on 21st September indicating that she had been away and stating:
"Our family feel that the 9th September 2011 response from you was premature as the ICO had not responded to questions which would enable us to have the S 14 vexatious classification thrown out too .."

4. The Tribunal Judge responded to what she understood to be an application to set aside her strike out decision on the grounds that Ms Graham had not expected the Tribunal to make its strike out ruling before she had time to obtain additional information from the Commissioner, in a ruling of 27th September 2011¹. It would now appear that the Appellant did not receive a copy of the ruling and was in fact responding to the directions. The Tribunal observes that both the directions of 6th September and the ruling of 27th September make reference to the strike out and the fact that only modified ground 4 was proceeding to a hearing.
5. In the ruling of 27th September, as it appeared that Ms Graham had not been informed of her right to appeal in relation to the strike out ruling, the letter of 20th September 2011 was not treated as an application to appeal, and Ms Graham was provided with information upon how to appeal.
6. Ms Graham sent another letter dated 17th October 2011 (i.e. within time from her notification of how to appeal on 27th September) which the Tribunal Judge construed as an application to appeal albeit not in the proper form. In this letter she advanced examples of where she argued that the Tribunal had erred in law. From the terms of this letter it did not appear that the Ms Graham had advanced all the grounds that she wished to rely upon.
7. The Tribunal responded by letter dated 2nd November 2011 in which the Tribunal Judge indicated that she was treating this as an application for review and application for permission to appeal. She noted that the Appellant had only provided some examples and directed that if Ms Graham:
“...has any further points relating to her application to appeal this ruling or her application for a review, that she wishes to make, she should do so in writing within 28 days, or indicate that she has no additional matters that she wishes to raise; at which time the Tribunal Judge will make her ruling on these points. “

¹ This is erroneously dated 6th September 2011.

8. The Appellants notice of appeal dated 23rd November is therefore within the 28 day period allowed. On the facts as set out above, I do not construe this application as late as time has been extended pursuant to rule 5(3) of the GRC Rules.

Grounds of Appeal

9. Ms Graham's grounds of appeal are largely a rehearsal of the matters already advanced in her rule 8(4) submissions. They are lengthy, discursive and recount the history of her Mother's admission and Ms Graham's complaints relating to this. They are set out in the application to appeal and also in letters of 21st September and 17th October 2011. They have been summarized into itemized grounds for ease of reading and are dealt with in turn in the body of this ruling.

Grounds a-c

10. a) The material was supplied before the family knew that the Hospital had committed fraud.
- b) She was not expecting the Tribunal to rule when it did and had hoped to be able to present the information pursuant to her letter to the Commissioner of 5th September 2011 before any such ruling was made.
- c) The ruling was made before she was able to confirm that the Commissioner has no department for checking the truth of what it is told by the public authority.
11. In her grounds of appeal Ms Graham makes reference to s15² and 11(4)³ FOISA in connection with her assertion that the failure to provide information in breach of the Act is false representation and hence a fraud. FOISA is the Freedom of Information Act that applies to Scotland. Ms Graham's request was made under the Freedom of Information Act. I have therefore presumed that Ms Graham meant to apply the equivalent provisions of FOIA s16 and 11(4) which are made in the same terms.
12. I am satisfied that the allegation that the Hospital had committed fraud was ventilated within the Appellant's rule 8(4) submissions. The arguments relating to the timing of

² Duty to provide advice and assistance

³ Provision of information by any means reasonable in the circumstances

the strike out ruling were dealt with in the ruling of 27th September, they are adopted here.

13. The burden of proof before the Commissioner and Tribunal is on a balance of probabilities. The Commissioner did not assert that he has a department for checking the evidence that he receives. He weighs the evidence and makes a decision. The Commissioner (and the Tribunal) have set out the evidence that they have taken into consideration in reaching their respective decisions. Additionally the Tribunal considers this to be another attempt to advance the arguments dealt with in the Tribunal's ruling in relation to ground 6. I am satisfied that this application raises no new matters on these points and there is no error in law in this respect.

Ground d

14. d) The Appellant argues that the Tribunal erred in law in the following respects;

- i) Condemning use of quotation marks and attributing *status* to "doctors" whose errors & record loss resulted in a fit patient becoming paralysed, dumped on absentee & dead 3 months later.
- ii) Insisting *I* created an "incident" I didn't initiate after I was stalked. I left before it became one.
- iii) Condemning opinion of a ward where staff tortured, withheld information from us for 7 weeks
- iv) Dismissing evidence to defend unknown "doctor" sending vicious emails to discredit me *first*.
- v) Condemning me for responding 16 months later & citing Mums mistreatment for naming the doctors email terrorism "resentment"...
- vi) Deciding the emails *by the named individual* were not designed to smear or were falsified to smear even when she took part in Fraud by False Representation and could get 10 years for it.
- vii) Labelling it all as speculation by insinuating the act of sending falsified. fraudulent emails is OK as absent doctor & Commissioner (with no facility to test for Fraud) are in possession of "factual" evidence not falsified information they used to kill our requests thereby ensuring we went to Tribunal where Tribunal could give validity to both organisations & all falsifications

15. I am satisfied that these are not errors of law, but a challenge to the conclusions drawn from the evidence relied upon. The appeal was struck out because I was of the view that Ms Graham had no reasonable prospect of success in persuading the Tribunal that her conclusions were correct. In reaching that conclusion I had regard to all the material in front of me and the overriding objective. This ground is an attempt to re-litigate the facts in this case and does not identify an error of law.

Ground e

16. Additionally in her application for permission to appeal dated 23rd November, the Appellant has provided additional documents and arguments to support her contention that documents have been removed e.g. in relation to the POVA form. These allegations were before the Commissioner and the Tribunal. Their recitation here does not alter the conclusions drawn by the Tribunal or the reasons for them.

Ground f

17. The Appellant argues that the strike out decision is flawed because she received no response to her request for help from the Tribunal Judge (made in her submissions of 26th July 2011). In the strike out ruling at paragraph 8 I noted that:

- the Appellant is a litigant in person and not therefore accustomed to the process of drafting grounds of appeal.
- It is not the role of the Tribunal to assist one party to present its case.
- The Tribunal does give effect to the overriding objective rule 2(2)(a), (b) and (c) GRC Rules .
- I have adopted a purposive approach in determining the reasons for this highlighted in the grounds and r8(4) submissions.

I am therefore satisfied that the Appellant's request for help was responded to and this does not disclose an error of law.

Applications

18. The Tribunal has considered this to be an application to have the strike out ruling set aside pursuant to rule 41 *The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009*. (The GRC Rules). For set reasons out in the ruling of 27th September⁴ I am satisfied that there are no additional matters raised by Ms Graham which alters that decision. I therefore adopt the reasons set out at paragraphs 2-7 of that ruling.
19. 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 Ms Graham's grounds of appeal identify an error of law in the First-tier Tribunal's ruling. As set out in the consideration of grounds above, I am satisfied that Ms Graham has not raised any points of law. I conclude, therefore, that there is no power to review the decision in this case.
20. 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 6th September 2011, as required by rule 42(5)(g) of the GRC Rules, consequently, permission to appeal is also refused.

Dated this 15th day of December 2011

Fiona Henderson
Tribunal Judge

⁴ Erroneously dated 6th September 2011