



Appeal number: EA/2019/0170
V¹

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

NIKHIL PRABHU

Appellant

- and -

INFORMATION COMMISSIONER

Respondent

**Before:
JUDGE LYNN GRIFFIN**

By video hearing on 21 April 2021

Appearances: Mr Homi Ghadiali for the Appellant

DECISION

1. The appeal is dismissed.
2. For the reasons stated below, the Tribunal's Decision confirms the Commissioner's Decision Notice FS50897209 of 8 April 2020.

¹ V: video (all remote)

MODE OF HEARING

3. The hearing was conducted by a Judge, sitting alone given the nature of the case and the circumstances of the pandemic. There was no objection from the parties. The Tribunal was satisfied that it was appropriate to conduct the hearing in this way.
4. The proceedings were held by the cloud video platform. All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.
5. The Appellant, Mr Prabhu did not attend the hearing. Mr Homi Ghadiali appeared on his behalf and informed me that he was the Appellant's employer and that the Appellant had made the application on Mr Ghadiali's behalf in any event. Mr Ghadiali said that Mr Prabhu was indisposed but consented to the appeal proceeding in his absence. Mr Ghadiali was named on the notice of appeal as the Appellant's representative. The Tribunal was satisfied that Mr Prabhu had received notice of the appeal and that it was in the interest of justice to proceed in his absence. This is consistent with the overriding objective and in particular the avoidance of delay where this is consistent with the proper consideration of the issues.
6. The Respondent had indicated that she did not intend to send a representative to the hearing.
7. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 370.
8. I apologise to the parties for the time it has taken to promulgate this decision.

REASONS

Background to Appeal

9. The Appellant is employed by a company that is seeking to gather information from every council in the country about their spending on children's services.

10. In February 2019, the Appellant had made an earlier separate information request under the Freedom of Information Act 2000 ("FOIA"), to Slough Borough Council ("SBC") about payments made to social care providers. In that case, SBC disclosed most of the requested information but said that it did not hold financial information in respect of children's services because those services were provided by Slough Children's Services Trust ("SCST"), which it said was a separate legal entity.

11. The Appellant argued in that case that SCST held this information on behalf of SBC, and therefore that the information was accessible via SBC, under FOIA. This issue was investigated by the Respondent and her decision was that SBC was entitled to state that it did not hold this information for the purposes of FOIA.

12. The Appellant appealed that decision to this Tribunal [EA/2019/0344]. The matter was struck out by the Registrar because it had no reasonable prospect of succeeding, however, the Tribunal stated as follows², see bundle page 206:

"The question whether the Trust can be required to provide the information to [the complainant] is completely separate; to test the current assertion that the Trust is not obligated under the Freedom of Information Act 2000, [the complainant] needs to make a request to the Trust, receive their response and (if need be) invoke his right under section 50 of the Freedom of Information Act 2000 to complain about the Trust to the Information Commissioner's Office. The Information Commissioner's Office may then issue a decision notice under section 50 about the Trust which can be appealed to this Tribunal if either [the complainant] or the Trust disagrees with the Information Commissioner's Office conclusion".

13. This current appeal results from that further request being made to SCST.

² Echoing the words of the Commissioner in her decision FS50833599, see bundle p232

The request

14. On 13 November 2019 the Appellant requested financial information from Slough Children's Services Trust ("SCST") via the What do they Know website, see bundle p188. His request read

"I'd like to make a request for payments to suppliers who provide a service in Health and Social Care, all transactions over £500 from 1st April 2018 to Date. As a minimum, please make sure to include the date, value and recipient of each transaction.

This would include all suppliers falling under the categories :-

- 1. Payments to suppliers who provide fostering and adoption services to the Council*
- 2. Payments to Children's Residential Care Providers*
- 3. Providers who carry out Homeless Services for children*
- 4. Payments to suppliers who provide Special Education Services*

In particular I am looking for itemized transactions (i.e., at the daily level) for suppliers from 1st April 2018 - Current, preferably in CSV format. I look forward to the information at the earliest".

15. SCST referred the request to SBC and on 6 December 2019, SBC responded on behalf of SCST stating that, as it had previously explained to him, SCST was not a public authority for the purposes of FOIA and therefore refused to respond to his request, see bundle p191. As SBC had advised that SCST was not a public authority, no internal review was requested and the Appellant passed his complaint to the Commissioner for her consideration.

16. The Information Commissioner's Office decision notice FS50897209 of 8 April 2020 found that Slough Children's Services Trust was not a public authority and so was not required to respond to the complainant's request under FOIA.

17. The Commissioner's decision was founded on the following reasons which are found in paragraphs 27- 42 of her decision, in summary the Commissioner decided

- a) SCST is not listed in schedule 1 of FOIA
- b) SCST is not designated a public authority by order of the Secretary of State

- c) SCST is not a publicly owned company for the purposes of s3(1)(b) FOIA as it is not wholly owned by the Crown or any public body listed in schedule 1 FOIA
 - d) The Information Commissioner does not have the power to designate a public authority
 - e) The fact that SBC responded to the request on behalf of SCST is not indicative of SCST being governed by SBC
 - f) SCST is incorporated as a private company limited by guarantee without share capital
18. Mr Prabhu appealed against that decision to the Tribunal.

Appeal to the Tribunal

19. The Appellant's Notice of Appeal dated 5 May 2020, included supporting documentation and raises the following issues, in summary
- a) SBC is controlling and retains ultimate responsibility for disclosures under FOIA
 - b) SCST would not exist if it was not funded by the Crown and a public authority i.e. SBC
 - c) The definition of public authority is unclear and too narrow within FOIA and should be read with reference to the meaning within the Human Rights Act 1998 to include anyone performing a public function which would cover SCST. The Appellant relies on case law to support his argument that public functions are broader than set out in FOIA and points to ten factors he says would indicate that SCST should be regarded as a public authority under the Human Rights Act.
 - d) SCST's income comes principally from SBC and grant income from the Department of Education and thus it is dependant on those public bodies to provide income to allow for its existence.
 - e) SBC was ordered to set up SCST because it could not meet a public service. This delegated authority is reported back to the Crown and SBC.
 - f) There is no clear demarcation of duties between SCST and SBC

20. The Response on behalf of the Commissioner divided the grounds into three topic headings as follows which she then addressed in turn as summarised

a) Criticism of SBC/SCST.

The Commissioner submits this is outside the scope of the Tribunal's jurisdiction [as it was outside the Commissioner's] and should be dealt with via other civil process or by complaint to the Parliamentary and Health Services Ombudsman

b) Belief that SCST is a public authority under Human Rights Act

The Commissioner submits that had Parliament intended the definition of public authority within human rights legislation to apply to FOIA then Parliament would have said so. The only relevant definition is that within FOIA.

c) Belief that SCST is a public authority under FOIA as it is funded by SBC.

The Commissioner submits that whether or not SCST "should" be a public authority is not relevant nor a valid ground of appeal, the only test is that set out in FOIA. Simply because SCST is wholly owned in a financial sense by SBC does not mean it is "wholly owned" under FOIA such as to make it a public authority.

21. The Response invited the Tribunal to strike out the appeal under 8(3)(c) of the 2009 Rules, for reasons explained in paragraphs 31-39 of the response which are summarised above.

22. The Appellant by reply, made representations on the application to strike out dated 7 August 2020.

23. The Respondent having applied to strike out the appeal as having no reasonable prospects of success, this application was placed before the Registrar. In directions dated 18 August 2020 the Registrar refused that request on the grounds that she did not think it appropriate to do so.

24. This case was listed for hearing on 12 January 2021 but postponed at the Appellant's request with no objection from the Respondent.

The Law

25. The powers of the Tribunal in determining this appeal are set out in s.58 FOIA, as follows:

“If on an appeal under section 57 the Tribunal considers -
(a) that the notice against which the appeal is brought is not in
accordance with the law, or
(b) to the extent that the notice involved an exercise of discretion by
the Commissioner, that he ought to have exercised his discretion
differently,
the Tribunal shall allow the appeal or substitute such other notice as could
have been served by the Commissioner, and in any other case the Tribunal
shall dismiss the appeal.

On such an appeal, the Tribunal may review any finding of fact on which
the notice in question was based.”

26. The central question in this appeal is whether SCST is a public authority for the purposes of FOIA.

27. The definition of ‘public authority’ is set out in section 3(1) FOIA which states that ‘public authority’ means -

“3(1)(a) subject to section 4(4), any body which, any other person who,
or the holder of any office which -
(i) is listed in Schedule 1, or
(ii) is designated by order under section 5, or
(b) a publicly-owned company as defined by section 6.”

28. Section 5 FOIA permits the Secretary of State to designate a public authority by order.

29. Section 6 FOIA states that a company is a ‘publicly-owned company’ for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1, other than a government department or any authority which is listed only in relation to particular information.

30. Section 6 FOIA states

6(1) A company is a “publicly-owned company” for the purposes of section
3(1)(b) if—
(a) it is wholly owned by the Crown,
(b) it is wholly owned by the wider public sector, or

- (c) *it is wholly owned by the Crown and the wider public sector.*
- (2) *For the purposes of this section –*
- (a) *a company is wholly owned by the Crown if, and only if, every member is a person falling within sub-paragraph (i) or (ii) –*
- (i) *a Minister of the Crown, government department or company wholly owned by the Crown, or*
- (ii) *a person acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown,*
- (b) *a company is wholly owned by the wider public sector if, and only if, every member is a person falling within sub-paragraph (i) or (ii) –*
- (i) *a relevant public authority or a company wholly owned by the wider public sector, or*
- (ii) *a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector, and*
- (c) *a company is wholly owned by the Crown and the wider public sector if, and only if, condition A, B or C is met.*
- (2A) *In subsection (2)(c) –*
- (a) *condition A is met if –*
- (i) *at least one member is a person falling within subsection (2)(a)(i) or (ii),*
- (ii) *at least one member is a person falling within subsection (2)(b)(i) or (ii), and*
- (iii) *every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),*
- (b) *condition B is met if –*
- (i) *at least one member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),*
- (ii) *at least one member is a company wholly owned by the Crown and the wider public sector, and*
- (iii) *every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii) or a company wholly owned by the Crown and the wider public sector, and*
- (c) *condition C is met if every member is a company wholly owned by the Crown and the wider public sector.*
- (3) *In this section –*
- “company” includes any body corporate;*
- “Minister of the Crown” includes a Northern Ireland Minister*
- “relevant public authority” means any public authority listed in Schedule 1 other than –*

- (a) a government department, or
- (b) any authority which is listed only in relation to particular information.

31. I have been provided with another decision of the Commissioner, under reference FS50843890 in which the public authority in that case was required to issue a response to the request for information, no issue arose in that case about whether the organisation to whom the request had been made was a public authority. Thus that decision, which is not binding on the Tribunal in any event, does not assist me in resolving the issue in this case whether or not it was set up in a similar fashion to SCST.

The Facts

32. SCST is not a body that is listed in Schedule 1 FOIA. This is not in dispute.

33. SCST is not a “trust” in the legal sense and is registered at Companies House, and is a “private company limited by guarantee without share capital” which was incorporated on 12 March 2015. As a company limited by guarantee it must reinvest any surpluses back into furthering its objectives, see page 325-6. The objects of the company are to provide social care and youth offending services to children, young people and their families for the advancement of the community in Slough. This is not in dispute.

34. A company limited by guarantee does not have any shareholders and is owned by its members who are guarantors. It is a matter of public record that the Department of Education was registered as a body which had significant influence and control over SCST from 6 April 2016, SBC was not so registered until 2021.

35. It is not in dispute that SBC is a public authority for the purposes of FOIA.

36. Neither was it in dispute that at the material time the SCST website stated as follows as regards information requests:

“Please be advised that as Slough Children’s Services Trust is a private limited company they are not subject to the Freedom of Information Act.

...

Financial Information for Slough Children's Services Trust is available via Companies House – Slough Children's Services Trust, Companies House Filing History ... All Freedom of Information requests should be directed to Slough Borough Council via the process listed on their website

Slough Children's Services Trust will support Slough Borough Council in answering Freedom of Information Requests where they are processing data on behalf of them".

37. SCST was set up under direction from the Department for Education, "following unsatisfactory Ofsted inspections". SBC retained control of the information relating to children's services provision until 30 September 2015. After this point, the Trust assumed responsibility. This was not a voluntary outsourcing of SBC's children's services function and the Trust is not a subsidiary or an arm's-length management organisation (ALMO) of SBC.

38. SBC had no control over the model of business adopted by SCST, and it was expected to operate as a stand-alone, independent business from day one. The Chair was an appointee of the Secretary of State for Education, the DfE transferred funding for the post to the SCST which then had responsibility for paying the Chair's fees, costs and expenses on behalf of the DfE. Management posts were subject to the processes in Transfer of Undertakings (Protection of Employment) regulations (TUPE), which indicates a transfer of ownership. SBC retains statutory responsibility for the functions and accountable for the delivery of the services, the quality of service provision. The service contract would require the Council to have in place monitoring and reporting arrangements and followed the Crown Commercial Service and the Government Legal Service model terms and conditions for major services contracts. See p326-332.

39. The governance of SBC was set as follows

The Council will be retaining its statutory DCS role and as a part of governance it is envisaged a Partnership made up of the DCS and the Council's Lead Member for Children will have monthly meetings with the Chair and Chief Executive of the CSO³.

³ The CSO means children's services organisation is SCST

7.46 The CSO have agreed to attending 4 Council meetings consisting of Cabinet, Overview & Scrutiny meetings and Education and Children's Scrutiny Panel each year. Which is a change to the number Cabinet were advised of at their meeting on the 14th September. The intention is that this will deliver accountability of the CSO through the existing democratic processes.

7.47 A wider partnership board, the Strategic Monitoring Board, made up of the Lead Member and the Council DCS for the Council and for the CSO their Chair and Chief Executive along with officers of the Council the CSO and partner agencies, will meet as a forum for shared enterprise between the Council, the CSO and other relevant 3rd parties. This wider relationship is designed to ensure the Borough's children, young people and families receive a fully integrated seamless service.

40. The relationship between SBC and SCST is a contractual one – see para 5.14 -16 of the monitoring report to SBC of 16 September 2019 [page 63 @ p68] and the pages referred to above. I have not been provided with a copy of that contract.

41. The Appellant has provided a series of press articles concerning the financial management of SCST. These discuss concerns about the sustainability of the service. The articles post-date the making of the request on 13 November 2019 and detail the planned transfer of SCST into the direct ownership of SBC in 2020/21 because SCST had been set up without inbuilt oversight from the council and how there was likely to be an overspend on SCST's allocation. This budgetary situation had existed for some time as is confirmed by a budget monitoring report to SBC of 16 September 2019 [page 63] and showing that SBC was revising its financial contribution to SCST in the year 2019-20. This document also reveals the governance model for SCST as follows, see para 5.11 at page 67 of the bundle⁴

Slough Children's Services Trust (SCST) is governed by a board, made up of executive and non-executive directors and advisors. When created, under direction from the Children's Minister, the Trust was established to be wholly independent of the Council. There is one Council Member of the board. No Council officers are Board Members although SBC's Director for Children, Learning and Skills is now invited as an observer.

⁴ And repeated in later versions of the report see page 94 and 123

42. The SCST limited annual report and financial statements for year ended 31 March 2019 begin at page 147 of the bundle. The directors names are given at p147. The report details how the trust works with SBC and describes the relationship as one of partnership. As to funding the report notes a one off payment having been secured from SBC and Department of Education in advance of an Ofsted inspection and a payment by SBC in advance on the sums due on the contract to provide sufficient working capital. The advance payment being repayable at the end of the contract.

43. Furthermore SBC advised the Commissioner that:

“SCST’s corporate data, this includes budgets, strategies, tendering, payments, Human Resources information, payroll, and salaries. It is information falling within this category of data which SBC considers to be SCST’s own information, to which it has no access or control, and which is not held on SBC’s behalf”.

44. In a change of circumstances since the date of the decision under appeal SCST has changed its name and now is wholly owned by SBC, nothing in this decision affects how that new company should be treated within the freedom of information legislative framework.

Submissions

45. The premise of this appeal is that s3(1)(b) applies to SCST as it is wholly owned by the wider public sector as defined in s6(2)(b). The Appellant submits that SCST is “not a private company in the true sense” and that it is “wholly dependent on public funds” and should therefore be regarded as a publicly owned company as defined by section 6 .

46. The Appellant contends that

- a) SCST would not exist if it was not funded by a public authority (Slough Borough Council) and that they are dependent on those funds
- b) SCST is an arm’s length management organisation (“ALMO”)
- c) SCST was set up to perform a public function; to improve the Ofsted ratings for children’s service in Slough
- d) the fact that SBC responded to his request of 13 November 2019 on behalf of SCST demonstrates that they are not an independent organisation.

47. Further , the Appellant submits that the definition of public body is unclear within FOIA and open to interpretation. It is submitted that the Tribunal should refer to the definition of a public authority under the Human Rights Act 1998 and caselaw considering whether an organisation is a public authority for the purposes of that legislation. The Appellant provides the Seventh report of session 2003-4 of the Joint Committee on Human Rights as to the meaning of public authority under the Human Rights Act in support of his construction of what amounts to a public authority.

48. The Appellant also relies upon YL v Birmingham City Council and Others [2007] UKHL 27 and contends that Baroness Hale found that because the individual's care was paid for by the local authority it should be held that the home was performing public functions. He also draws attention to R (on the application of Susan Weaver) v London & Quadrant Housing [2008] EWHC 1377 (Admin) in which he argues that the High Court decided that L&Q was to be regarded as a public authority under the Act because it managed and allocated housing stock and this was a function of public nature which was affirmed by the Court of Appeal. He contends that the execution of services provided by SCST and those conducted by L&Q are strikingly similar.

49. The Appellant submits that paragraphs 8 & 9 of the decision of the Registrar in EA/2019/0344 dated 12 November 2019 amount to findings on which he can rely and which should have bound the Respondent as to their approach to his complaint. These paragraphs read

8. The reason that the Trust was created was because the Department for Education could not (in my words) trust the Council to adequately carry out its responsibilities to children. It is logical, therefore, that the Council would have to hand over to the Trust any finance it received which the Council would, ordinarily have put into its own provision of children's services because the Council cannot benefit from being rated inadequate.

9. Also flowing from the reasons the Trust was set up is the inevitable conclusion that the Trust cannot be acting "on behalf of" the Council when it carries out its duties because the reason it exists is because the Council cannot be trusted to do the work the Trust now needs to do – it is acting instead of the Council.

50. The Respondent replies by submitting that Slough Borough Council (SBC) has previously explained to the Commissioner that SCST was set up under direction from the Department for Education, following unsatisfactory Ofsted

inspections. The Respondent submits this was not a voluntary outsourcing of its children's services function and the Trust is not a subsidiary or ALMO of SBC. SBC retained control of the information relating to children's services provision until 30 September 2015. After this point, the Trust assumed responsibility.

Analysis and Decision

51. I shall determine such issues as are necessary to make this decision. I have considered all the written material and the oral submissions even where not directed referred to below.

52. It was not in dispute that at the time of the Appellant's request, and as at the date of the Respondent's decision notice, SCST was not listed in Schedule 1 FOIA, nor had the Secretary of State made an order under section 5 designating SCST as a public authority.

53. This Tribunal nor the Commissioner has power to designate a body as a public authority under section 5.

54. Therefore, SCST is not a public authority by virtue of either section 3(1)(a)(i) or (ii) of FOIA.

55. The question for the House of Lords in YL v Birmingham City Council and Others [2007] UKHL 27 and for the Administrative Court in R (on the application of Susan Weaver) v London & Quadrant Housing [2008] EWHC 1377 (Admin) was whether the organisations they were considering were a "public authority" within the meaning of s.6(3)(b) of the Human Rights Act 1998 not whether those organisations met the definition of 'public authority' as set out in section 3(1) FOIA or whether those legal definitions were the same or interchangeable.

56. I agree with the submissions of the Commissioner that the definition of public authority contained in FOIA is self-contained. Its interpretation is not unclear and does not require reference to external sources such as the cases relied upon by the Appellant, reports, guidance or other legislation to define the term.

57. The definition of what is a public authority, is different for the purposes of FOIA from that applicable to the Human Rights Act 1998.

58. It is notable that the definition of what is a public authority is given a different definition within the Environmental Information Regulations 2004 from that provided for in FOIA by the addition of two additional limbs which do not apply to FOIA. This shows that the legal definition of whether an organisation is a public authority is context dependant.

59. There is no reason to read across any other definition, as one is provided within FOIA.

60. The definition within FOIA is exhaustive. The purpose of having an exhaustive definition is to reduce the scope for dispute about whether a particular body is a public authority to a minimum, see Sugar (Appellant) v British Broadcasting Corporation and another (Respondents) [2009] UKHL 9 at paragraph 56.

61. SCST may well amount to a public authority under the Human Rights Act parameters but that is not the issue for me to decide.

62. There is no legal conflict between a body being regarded as a public authority for one piece of legislation but not for another where there are two separate definitions.

63. With respect to the decision of the Registrar in EA/2019/0344 dated 12 November 2019, this does not bind me as to the facts nor any inferences that can properly be drawn from them. I must apply the legal test contained in FOIA to the facts as I find them to be in this case.

64. Thus the only issue for me to decide is whether SCST is a publicly owned company within the meaning of s6(3) FOIA.

65. The first question is whether SCST is wholly owned by the Crown. A company is considered to be wholly owned by the Crown if it has no members other than Ministers of the Crown, government departments, companies wholly owned by the Crown or persons acting on behalf of any of these, see section 6(2)(a) FOIA. That is not the position for SCST, it may have been set up at the instigation of the Department of Education and contracted to SBC who were exercising some statutory functions through the company but, although the department was registered as having significant control over the company,

there were others so registered and I am not satisfied on the evidence before me that any of them were a minister of the Crown or acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown. In any event having significant control over a company does not necessarily mean that you own it.

66. The second question is whether SCST is wholly owned by the wider public sector, it will be considered to be so if it has no members other except the wider public sector or companies owned by the wider public sector, or persons acting on behalf of either of these, see section 6(2)(b).

67. Wider public sector is not defined in FOIA but with reference to the explanatory notes to the act that inserted the provision it can be gleaned that it was intended to refer to public authorities as defined in s6(3), i.e. those in schedule 1 FOIA⁵. SBC is a public authority.

68. SBC did not own SCST and was not registered as having significant control (and to an extent that would have defeated the object of its creation). There was a contractual relationship for the provision of services by one company on behalf of a local authority which would inevitably involve an element of control, supervision and financial payment over SCST which is not determinative of ownership. I am not satisfied on the evidence before me that the arrangements between SBC and SCST, amount to SCST being 'owned' in any sense by SBC and I conclude SCST is not "wholly owned" by the public authority or the wider public sector.

69. The third question is whether SCST is wholly owned by the Crown and the wider public sector within the scope of s6(2)(c) and s6(2A). On the basis that I have concluded on the evidence available to me that SCST is not owned in any sense by SBC or the wider public sector then the requirements of s6(2A) cannot be satisfied.

70. The Appellant points to SBC being at risk due to budgetary overspend by SCST as indicating ownership. The relationship between the two bodies is contractual and as noted above advance payment to provide working capital was made but subject to repayment under the contract.

⁵ See para 20-024 and note 178 Coppel QC, Information Rights 5th edition

71. I further note that since the time I am considering SCST has come under the direct control of SBC which is a material change which demonstrates that previously it did not have such control. Control is not a determinative factor in considering ownership under the regime in FOIA, and although control can indicate ownership, the absence of control does not mean the absence of ownership. The control exercised by SBC over SCST was that given it under the contract for provision of services. On the facts of this case there is neither control by SBC beyond that contractually agreed, nor ownership in advance of the change on circumstances in 2021.

72. I conclude therefore that SCST is not a public authority within the definition provided for within FOIA in section 3.

73. I agree with the Commissioner's submissions that criticism of SBC or SCST and their operation is outwith the jurisdiction of the Tribunal to enquire into as it is not relevant to the determination of whether SCST is a public authority. There may be recourse to the courts or PHSO in this regard but that is not a matter this tribunal can advise the appellant about.

Was the Decision Notice in accordance with the law?

74. For the reasons set out above I conclude that the notice against which the appeal is brought is in accordance with the law. I further conclude that to the extent that the notice involved an exercise of discretion by the Commissioner, it was exercised appropriately.

75. Therefore I dismiss the appeal.

**Tribunal Judge Lynn Griffin
17 March 2022**

Corrected under the slip rule 12 April 2022

Promulgated: 13 April 2022