



NCN:

Case Reference: EA/ 2022/0223

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

Heard: by determination on the papers

Heard on: 23 December 2022

Decision given on: 23 December 2022

Before:  
Judge Alison McKenna

**POTTO PARISH COUNCIL**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**DECISION  
on Strike Out Application**

1. The Appellant's Notice of Appeal dated 17 August 2022 is struck out.

**REASONS**

2. The Information Commissioner published a Decision Notice dated 15 August 2022 in which he found that the Appellant had failed to conduct adequate searches for the requested information. He directed a fresh response to the information requester following the conduct of further searches.
3. The Appellant filed a Notice of Appeal dated 17 August 2022 in which it is not submitted that the Decision Notice was erroneous, only that a fair process had not been adopted because it had not had a fair opportunity to comment before the Information Commissioner made his findings. In the section of the Notice of Appeal form which describes the outcome sought in the appeal, the Appellant stated that it

wished the Decision Notice to be withdrawn and an apology issued by the Information Commissioner.

4. On 16 September 2022, the Information Commissioner, applied for a strike out under rule 8 (3) (c) of the Tribunal's Rules, on the basis that this appeal has no reasonable prospects of success. The Appellant was given the opportunity to comment on the proposed strike out but did not respond to the Tribunal by the 30 September deadline set. The requester of the information has also submitted that the appeal should be struck out.
5. I have first considered whether the appeal ought to be struck out under rule 8 (2)(a) on the basis that the Tribunal has no jurisdiction to determine the appeal. An appeal under s. 57 FOIA may be made against a Decision Notice by the public authority concerned, but the Tribunal's powers under s. 58 are limited to finding whether the Decision Notice itself was erroneous. It has no power to supervise the conduct of the Information Commissioner's investigation. It has no power to direct an apology. The Information Commissioner has no power to withdraw a Decision Notice, but a fresh one may be substituted by the Tribunal if the original one is found to be erroneous.
6. I therefore consider that the Appellant's grounds of appeal disclose no triable issue that falls within the jurisdiction of this Tribunal. Accordingly, a strike out is mandatory. However, as the Appellant was not asked to comment on a strike out for want of jurisdiction, I have considered whether the Respondent's application for a strike out under rule 8 (3) (c) should be made. As noted above, the Appellant was invited to comment on this proposal but chose not to do so.
7. 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.*
8. Applying this approach, I consider that this appeal falls into the category of cases described as having a 'fanciful' prospect of succeeding. It does not engage with the Tribunal's statutory remit in considering an appeal and it seeks an outcome which the Tribunal has no power to deliver. I conclude that it is not fit for a full hearing.
9. In all the circumstances, I have concluded that the Tribunal has no jurisdiction to determine this appeal and so it must be struck out under rule 8 (2) (a). In case it is unfair so to conclude because the Appellant had no notice of that possibility, I have also considered making a discretionary strike out under rule 8 (3) (c) and decided that this appeal also merits a strike out on the basis that it has no reasonable prospect of success. I direct a strike out accordingly and this appeal will proceed no further.

**(Signed)**

**Dated: 23 December 2022**

**Judge Alison McKenna**

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