



**Case Reference: EA/ 2022/0096**

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

Heard: by determination on the papers

Heard on: 9 January 2023

Decision given on: 9 January 2023

Before:  
Judge Alison McKenna

**ROBERT SAYER**

**Appellant**

**- and –**

**THE INFORMATION COMMISSIONER**

**First  
Respondent**

**-and-**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

**Second  
Respondent**

**DECISION**

**This appeal is struck out under rule 8 (3) (c) as having no reasonable prospect of success**

## REASONS

1. The First Respondent's Strike Out Application dated 20 June 2022 is allowed. The Second Respondent's Strike Out Application dated 10 October 2022 is allowed.
2. The Appellant made an information request to the Charity Commission for England and Wales ('CCEW'). The Information Commissioner published a Decision Notice on 23 March 2022 which found that CCEW, which had disclosed some of the requested information, had been entitled to refuse to disclose the remainder in reliance upon s. 41 (1) of the Freedom of Information Act 2000 ('FOIA'). The Appellant filed a Notice of Appeal on 19 April 2022.
3. On 20 June 2022, the Information Commissioner, in filing its Response to the appeal, applied for a strike out under rule 8 (3)(c) of the Tribunal's rules on the basis that the appeal had no reasonable prospects of success. On 10 October 2022, CCEW also applied for a strike out of this appeal, in support of the Information Commissioner's case.
4. I understand the Appellant's Grounds of Appeal to be: (a) that the Information Commissioner misunderstood his request; (b) that he wishes to check whether CCEW did its job properly; (c) that he challenges the engagement of s. 31 and s. 40 FOIA (exemptions not relied upon in the Decision Notice); and (d) challenges just one aspect of the legal test for finding a duty of confidence (detriment). I note that he does not here challenge the Decision Notice's substantive conclusion as to the engagement of s. 41 (1) FOIA.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 11 October 2022 the Appellant submitted that his appeal should not be struck out because the Information Commissioner and CCEW are playing games to hide their mistakes. He does not challenge the Decision Notice's conclusion but refers to the public interest in disclosure of the requested information (although s. 41 FOIA is an absolute exemption).
6. 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.*
7. Applying this approach, I have considered all parties' representations and concluded that this is a case which may be described as 'not fit for a full hearing'. This is because the role of this Tribunal under s. 57 FOIA is to decide whether there is an error of law or inappropriate exercise of discretion in the Information

Commissioner's Decision Notice. The grounds of appeal simply do not engage with that jurisdiction. Although he takes issue with CCEW and the ICO, the Appellant has not presented an argument which engages the Tribunal's jurisdiction, which is limited to the conclusions of the Decision Notice.

8. It does not therefore seem to me that any Tribunal properly directed could allow this appeal. In all the circumstances, I have concluded that this appeal should be struck out as having no reasonable prospects of success. I direct accordingly.

**(Signed)**

**Dated: 9 January 2023**

**Judge Alison McKenna**

**© CROWN COPYRIGHT 20**

