



NCN:

Case Reference: EA/ 2022/0326

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

Heard: by determination on the papers

Heard on: 18 January 2023

Decision given on: 18 January 2023

Before:
Judge Alison McKenna

RONALD COUCHMAN

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

DECISION

**The Information Commissioner's Response is admitted out of time.
This appeal is struck out under rule 8 (3) (c) as having no reasonable prospect of success**

REASONS

1. The Respondent's late submission of its Response is admitted. I regard it as fair and just to do so.
2. The Respondent's Strike Out Application dated 7 December 2022 is allowed for the following reasons.
3. The Information Commissioner published a Decision Notice on 28 September 2022 which found that the public authority had correctly relied on s. 42 FOIA in refusing to provide the requested information. The Appellant filed a Notice of Appeal, received on 24 October 2022.
4. On 7 December 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.
5. The Appellant's Grounds of Appeal are that, as he is a member of the Parish Council, he should be provided with the barrister's advice which he requested. He asks the Tribunal to find that he is a 'client' of the barrister but does not appear to dispute the engagement of s. 42 FOIA by the information he requested.
6. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). On 19 December 2022 the Appellant submitted that the Tribunal might be able to retain the confidentiality of the legal advice to the public but release it to members of the Parish Council; that it might think of another solution; and that the public interest might favour disclosure notwithstanding the confidentiality of the document requested.
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 have considered both parties' representations and concluded that this is a case which may be described as 'not fit for a full hearing'. The grounds of appeal do not dispute the engagement of s. 42 FOIA. The Appellant asks the Tribunal to find that he is a client of the barrister, but the Tribunal has no power to do this. The Tribunal may only decide whether the Decision Notice was correct to find that s. 42 FOIA was engaged by the barrister's advice and whether the public interest favoured maintaining the exemption. No argument has been advanced to suggest that this was an erroneous conclusion. Furthermore, the Tribunal, if it directed disclosure under FOIA, could only direct the disclosure of the advice to the public at large. It is

not the Tribunal's role to think of fresh solutions but only to determine appeals falling within s. 57 FOIA.

9. It does not 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: 18 January 2023

Judge Alison McKenna

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