



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

EA/2011/0086 and 0087

BETWEEN:

JAMES MURRAY

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

Decision on Application to Strike Out

Introduction

1. The Appellant is the owner of an ex-council property and has had ongoing problems with anti-social behaviour from neighbours in properties owned and run by a housing association, ACIS, a private company which is not subject to the Freedom of Information Act 2000 (the "FOIA"). He has pursued the matter with ACIS and with West Lindsey District Council (the "Council") over an extended period. The Council adopted a 'single point of contact' procedure for some of the time to manage the Appellant's contact with it.

2. On 16 April 2010 the Appellant made a request to the Council under the Freedom of Information Act 2000 (the "FOIA") for information in the following terms –
 - "1. How many persons were subjected to the 'single point of contact' treatment in the years 2000-2009 respectively?*
 - 2. How many persons were deemed 'difficult' and how many 'dangerous' according to the 'Difficult Customer Protocol –*

Version One 2009' What steps were taken to make SPOC customers aware of the terms of this badly drafted document.

3. In each case a) how long was the sentence and b) what were the alleged grounds for the imposition of the punishment on customers in para. 1 above.

4. What policies and procedures were followed in each case (2000-2009) and were the victims informed of the consequences of these decisions?"

3. The Appellant made a further request to the Council on 28 May 2010 in the following terms:

"A press report in October 2009 stated that ACIS Group (co-agency of WLDC) had been 'saluted for its 'nuisance handling' and that it had been 'accredited' by SLCNG and Housemark for 'the way in which it deals with anti-social behaviour'. The 'accreditation' was awarded after a 'very robust inspection-style assessment...against 70 different criteria.'

WLDC ASB 'team' acts as agents for ACIS and presumably was inspected by SLCNG [Social Landlords Crime and Nuisance Group] and Housemark.

- 1. When was WLDC ASB 'team' inspected?*
- 2. What was the name of the inspector?*
- 3. Was a copy of the assessment made and if so, please supply a paper copy?*
- 4. What were the 70 criteria used in the 'accreditation'?.?*
- 5. In what way does the accreditation 'bolster the firm's (ACIS) partnership credentials with other organisations?*
- 6. What form does the 'accreditation' take? Is certificate, cup, silver salver etc?*

7. *By what authority do the SLNCG and Housemark award 'accreditation'?*

8. *What is the supervisory body for these two organisations?"*

4. The Trust refused both requests as vexatious under section 14(1) of FOIA: the general right to access to information held by public authorities does not oblige a public authority to comply with a request for information if the request is vexatious. It argued that:

- i) The Appellant's continuing requests can fairly be seen as obsessive;
- ii) Complying with the requests is imposing a significant burden on the limited resources of a relatively small district council and hindering its ability to give due consideration to other requests; and
- iii) The volume, frequency and similarity of the requests are harassing the authority and causing distress to its staff.

The Information Commissioner's Decision

5. The Appellant appealed to the Information Commissioner (the "Commissioner") who issued a Decision Notice in respect of each request for information. The Commissioner considered the factors relevant to determining whether a request is vexatious and concluded that the Council was entitled to refuse the requests on the basis of section 14 of FOIA.

Appeal to the Tribunal

6. The Appellant appeals against both Decision Notices and has advanced the same grounds of appeal in relation to each.

7. The Appeals were consolidated under Rule 5(3)(b) of of The Tribunal Procedure (First-tier) Tribunal (General Regulatory Chamber) Rules 2009 (the 'Rules') as these Appeals raise common issues.

Application to Strike Out

8. The Commissioner, in his Response to the Appellant's Notice of Appeal, invited the Tribunal to strike out the whole of the Appellant's appeal under Rule 8(3)(c) of The Tribunal Procedure (First-tier) Tribunal (General Regulatory Chamber) Rules 2009 (the "Rules") on the basis the appeals have no realistic prospect of success. In particular, on the basis that the Appellant does not challenge the substance of the decisions but raises complaints that are outside the jurisdiction of this Tribunal.

9. The Appellant has complained to the Tribunal that:

- i) Each Decision Notice contains the "untrue and offensive" factual inaccuracy that he received an Anti-Social Behaviour Order.
- ii) The Commissioner alleged that his correspondence was "inappropriate" without specification or evidence.
- iii) The Commissioner was "generally hostile/unhelpful and a horrific bureaucracy".

10. The application to strike out is made on the basis that the grounds of appeal do not challenge the substance of the decisions made by the Commissioner. The Commissioner submits that even if a factual error was made (which is denied) it is irrelevant for the purposes of the appeal as the Tribunal's functions are limited to dealing with the substance of a decision notice.

11. The Commissioner therefore submits that there is no reasonable prospect of the Appellant's case succeeding.

12. Under Rule 8(4) of the Rules, the Tribunal may not strike out the whole or part of the proceedings under Rule 8(3)(c) without first giving the Appellant an opportunity to make representations in relation to the proposed striking out.

13. The Appellant was therefore directed to provide written representations to the Tribunal and the Commissioner in relation to the proposed striking out by 24 May 2011. The Commissioner was directed to serve any response to those representations by 7 June 2011.

14. The Appellant has provided further written submissions although he has indicated, despite further clarification being given, that he remains unsure what representations are required. He submits that:

“Basically the problem is that the IC has twice stated in so-called ‘decision notices’ that I am or have been the subject of an anti social behaviour order. This is untrue and is the subject of my recourse to the ‘Tribunal’”

15. He has provided a lengthy document setting out the background to his complaints about the behaviour of his neighbours. This does not address the limitations of this Tribunal's jurisdiction.

16. The Commissioner did not serve a further response and relies on his previous submissions.

The Issues for the Tribunal

17. Although the application to strike out is sought under Rule 8(3)(c) of the Rules on the basis that there is no reasonable prospect of the appellant's case, or part of it, succeeding, the effect of the

Commissioner's submissions is that the application to strike out is sought under Rule 8(2).

18. Rule 8(2) of the Rules provides as follows:

(2) The Tribunal must strike out the whole or part of the proceedings if the Tribunal-

(a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

19. It is clear from the material already before me that the Appellant remains aggrieved following a long-standing dispute with a private housing association over anti-social behaviour of neighbours and that is a matter of great personal concern to him. The Decision Notices in this case relate to requests for information to West Lindsey District Council. The Tribunal's jurisdiction is concerned with those Decision Notices and not, for example, the conduct of the Commissioner in investigating the complaint. The Tribunal's powers in relation to appeals made under section 57 of the Freedom of Information Act 2000 (as this is) are set out in section 58, as follows:

(1) 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.

20. It is clear that the Appellant does not challenge the decisions of the Commissioner but seeks an amendment to the two Decision Notices from the Tribunal: *“Basically the problem is that the IC has twice stated in so-called ‘decision notices’ that I am or have been the subject of an anti social behaviour order. This is untrue and is the subject of my recourse to the ‘Tribunal’.*

21. The Tribunal does not have jurisdiction under section 58 of FOIA to amend a Decision Notice in the way sought by the Appellant; the fact complained about formed part of the Background narrative as opposed to a finding of fact upon which the decision was based (although the Appellant does not challenge that decision in any event.) It is no part of the Tribunal’s jurisdiction to rewrite Decision Notices.

22. Additionally, the Tribunal does not have jurisdiction to investigate the Appellant’s complaint that the Commissioner was *“generally hostile/unhelpful and a horrific bureaucracy”.*

23. I am therefore satisfied that the matters complained about by the Appellant are not matters within the jurisdiction of this Tribunal, which draws its jurisdictional powers from the Freedom of Information Act 2000 and Data Protection Act 1998. I therefore strike out the whole of the appeal under Rule 8(2)(a) of the Rules.

24. I make no direction under Rule 5(3)(k)(i) of the Rules as I do not consider another court or tribunal to be a more appropriate forum.

Annabel Pilling
Tribunal Judge

14 June 2011