

## IT(EA)R Rule 10 – Summary disposal of appeals

### ***Mr A W Tanner v IC & The Commissioners for Revenue and Customs***

**EA/2007/0106**

**31<sup>st</sup> March 2008**

#### **Cases:**

Swain v Hillman and Gay [2001] 1 All E R 91

Higginson v IC [2006] UKIT EA\_2005\_0008

Ingle v IC [2007] UKIT EA\_2007\_0023

#### **Facts**

The Appellant requested information concerning the number of complaints made against an individual employee of the Valuation Office Agency (VOA), a public body which is an Executive Agency of The Commissioners for Her Majesty's Revenue and Customs (HMRC). The VOA refused to confirm or deny whether the requested information was held in the belief that this would constitute a disclosure of personal data that would contravene the first Data Protection principle, therefore the s.40 exemption applied.

The IC found that the VOA was correct in refusing to confirm or deny that the requested information was held, but that the refusal notice issued by the VOA was inadequate. However, no remedial action was ordered.

#### **Findings**

It was clear to the Tribunal on hearing this case that it would be helpful to all parties – now and in the future - to have certainty about the test being used for Rule 10(1) applications. The Tribunal concluded that the appropriate test was analogous to the test under Part 24 of the Civil Procedure Rules 1998. This makes provision for a claim which has no real prospect of success to be summarily dismissed. Guidance on the meaning of this test was provided in *Swain v Hillman* by Lord Woolf MR. He said that the words “no real prospect of succeeding” did not need any amplification as they spoke for themselves. The court must decide whether there is a "realistic", as opposed to "fanciful", prospect of success.

Applied to the facts and issues in this case, the Tribunal held that the Appellant plainly had no real prospect of succeeding. He did not challenge the substance of the IC's Decision Notice which upheld the exemption claimed by the VOA under s.40(5) (b)(i) of the Act.

They noted that it was not open to the Tribunal to act in the way in which the Appellant would like which was, in effect, to review all the administrative acts by various public bodies about which he complained. The Tribunal recommended that if

the Appellant felt that any crimes had been committed it is open to him to report matters of corruption or fraud to the police for further investigation.

**Conclusion**

The Appeal was disposed of summarily under Rule 10.