



NCN: [2022] UKFTT 00486 (GRC)

Case Reference: EA/ 2022/0211

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

Heard: by determination on the papers

Heard on: 21 December 2022

Decision given on: 23 December 2022

Before:
Judge Alison McKenna

BRIAN MURPHY

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**DECISION
on Strike Out Application**

1. The Appellant's Notice of Appeal dated 2 August 2022 is struck out as having no reasonable prospect of success.

REASONS

2. On 9 September 2022, the Information Commissioner, in filing his Response to this appeal, applied for a strike out under rule 8 (3)(c) on the basis that the appeal had no reasonable prospects of success.
3. The Appellant seeks to appeal the Information Commissioner's Decision Notice dated 27 July 2022, in which he found that the cost to the public authority of complying with the information request would exceed the appropriate costs limit.
4. The Appellant's Grounds of Appeal are that the Decision Notice erred in law because the public authority's estimate of time was unreasonable and exaggerated.

5. The Respondent submits that the estimate was sensible, realistic and supported by cogent evidence. The Information Commissioner had asked relevant questions before accepting the estimate. Furthermore, the Appellant had made a three-part request and the costs of complying with one part only were estimated to exceed the costs limit.
6. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). He submitted that, having personal professional knowledge of the public authority's systems, he was able to give expert evidence to persuade the Tribunal that the Information Commissioner had been wrong to regard the public authority's estimate as reasonable.
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 concluded that the Appellant's prospects of success in this appeal must be seen as falling into the "fanciful" rather than the "realistic" category of cases. The Tribunal's role in determining an appeal under s. 12 FOIA would be to consider whether the Decision Notice had wrongly concluded that an estimate had been made, or wrongly concluded that the estimate made was permissible when it included tasks which the public authority was not entitled to include. The Appellant has not challenged these criteria, relying instead on a submission that his own estimate should be preferred. It does not seem to me that any properly-directed Tribunal could allow such an appeal.
9. In all the circumstances, I have concluded that this appeal should be struck out as having no reasonable prospects of success and I direct accordingly.

(Signed)

Dated: 21 December 2022

Judge Alison McKenna

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