



**In the First-tier Tribunal
(General Regulatory Chamber)**
Information Rights

Before: **Judge Alison McKenna**

Applicant: **Mr G. Brida**

Respondents: **Information Commissioner**

Ruling on Respondent's Application for Strike Out: The Application is Refused.

It is Ordered: -

That the application to strike out the Notice of Appeal pursuant to rule 8 (3)(c) of the Tribunal's Rules¹ is refused. This matter will proceed to a hearing.

REASONS

1. This appeal concerns the Information Commissioner's Decision Notice dated 11 September 2023, in which he found that the public authority was entitled to rely on s.14 FOIA in refusing to disclose the information requested by the Appellant.
2. By application dated 16 November 2023, the Respondent applies for the Appellant's Notice of Appeal dated 6 October 2023 to be struck out under rule 8 (3)(c) on the basis that it has no reasonable prospects of success.
3. The Appellant has, as required, been invited to make submissions on the strike out application under rule 8 (4), and I have considered his representations dated 30 November 2023. He has requested an oral hearing of his appeal, which is shortly to be listed for trial.
4. The Respondent submits that the Appellant's case is not suitable for trial as he has not pleaded a case which would allow the Tribunal to find that the Decision Notice is erroneous.
5. 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

¹ [General Regulatory Chamber tribunal procedure rules - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/672227/General_Regulatory_Chamber_tribunal_procedure_rules_-_GOV.UK_(www.gov.uk).pdf)

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.

6. Applying this approach, I have concluded that this is not a case in which the prospects of success are so fanciful that it may be described as ‘not fit for a full hearing’. The Appellant has set out a very full case indeed over 22 pages in which he challenges the key conclusions of the Decision Notice, in addition to making other points about the Information Commissioner’s procedure which may not assist the Tribunal. I conclude that it would indeed be possible for a Tribunal to make a finding that the Decision Notice was erroneous and so there is a triable issue between the parties. The Appellant clearly disputes that s. 14 FOIA was engaged by his request, as he challenges the level of burden to the public authority which was identified in the Decision Notice, and he further asserts that his request has a value which the Decision Notice failed to acknowledge. These are matters that the Tribunal should determine.
7. I do not assess here whether this appeal has a strong likelihood of success, but I do conclude that it would not be fair and just to strike it out under rule 8(3) (c), considered in the light of rule 2.
8. Accordingly, I now refuse the application for a strike out and this appeal will proceed to a hearing.

Signed: *Judge Alison McKenna*

Date: 5 January 2024

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