



**Appeal number: EA/2021/0298 GDPR**  
**NCN: [2022] UKFTT 00250 (GRC)**

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

**ELIZABETH TARA LENNON WELLESLEY**

**Applicant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**TRIBUNAL: JUDGE ALISON MCKENNA**

**Sitting in Chambers on 10 August 2022**

**RULING  
on Rule 4 (3) Application**

**The appeal is struck out for the following reasons**

**REASONS**

1. On 23 June 2022 the Registrar struck out the Applicant's Notice of Appeal as having no reasonable prospects of success. By email dated 4 July 2022, the Applicant has asked for the Registrar's Decision to be considered afresh by a Judge, pursuant to rule 4 (3) of the Tribunal's Rules<sup>1</sup>. I have accordingly considered this matter afresh.
2. The strike out was made on the Information Commissioner's application, the Registrar also having considered the Applicant's submissions in reply.
3. 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*

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<sup>1</sup> [General Regulatory Chamber tribunal procedure rules - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

*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.*

4. Applying this approach, I have considered the matter afresh and concluded that the Applicant’s prospects of obtaining an Order under s. 166 DPA 2018 must be regarded as falling into the ‘fanciful’ category. This is because the ICO has submitted that it did provide her with an outcome to her complaint and the Applicant has not set out an arguable case to the contrary. I note that the Applicant does not agree with the ICO’s response, but that it not an argument which engages the Tribunal’s jurisdiction under s. 166 DPA 2018, which is procedural in nature. It does not therefore seem to me that any Judge could reasonably be expected to make the Order the Applicant continues to seek in the circumstances.
5. The Applicant’s request for a rule 4 (3) reconsideration is drafted in the format of an appeal or a request for a review of the Registrar’s ruling. With respect, that is not the nature of the jurisdiction I am exercising here, as I am tasked with considering the strike out application afresh. Nevertheless, I have considered the arguments made and note that the Applicant seeks a quashing order and an order requiring the Respondent to give reasons for its decision or to explain its approach. I note that this Tribunal has no power to grant such remedies, whether under s. 166 DPA 2018 or otherwise. I also note that no application for costs which meets the requirements of rule 10 of the Tribunal’s Rules has been made, so the Tribunal is not in a position to consider that matter. I further note that this Tribunal has no power to make an award of damages.
6. For all these reasons, having considered the matter afresh, I find myself in agreement with the Registrar that the Notice of Appeal should be struck out as having no prospects of success. It would appear that the Applicant’s remedy lies in the Courts rather than the Tribunal, as only a Court would be competent to make directions to the Respondent, set aside its decisions, award damages and costs and also determine the Applicant’s claim under the Human Rights Act.
7. Having considered the matter afresh, I now direct that the Notice of Appeal is struck out.

**(Signed)**

**Dated: 10 August 2022**

**Judge Alison McKenna**

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