



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

Information Rights

Before: **Judge Alison McKenna**

Applicant: **Talib Hussain**

Respondents: **Information Commissioner
Financial Ombudsman Service**

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

It is Ordered: -

**That the Notice of Appeal is struck out pursuant to rule 8 (3)(c) of the Tribunal's Rules¹,
on the basis that it has no reasonable prospect of success.**

REASONS

1. This appeal concerns the Information Commissioner's Decision Notice dated 29 June 2023, in which he found that the Financial Ombudsman Service did not hold the requested information.
2. By application dated 17 October 2023, the Respondent applies for the Appellant's Notice of Appeal dated 26 July 2023 to be struck out under rule 8 (3)(c) on the basis that it has no reasonable prospects of success.
3. The Second Respondent, who has been joined as a party to this appeal, supports the strike out application.
4. 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 21 October 2023. He has requested an oral hearing of his appeal, which means the Tribunal must convene one, although he suggests that he will be bound by the Tribunal's view of the appropriate mode of hearing. I take into account the costs implications to all parties and to the Tribunal of holding an oral hearing of this appeal.
5. The Appellant's information request was phrased "*How does...?*" Perhaps surprisingly, the Financial Ombudsman Service treated this as a request for recorded information under FOIA 2000. It is usually the case that requests phrased as "who", "what", "where", "how" and "why" are requests for information falling outside of FOIA 2000, as they are not for recorded information but for explanations. As the Information Commissioner has pointed out, the Financial Ombudsman Service should have

¹ [General Regulatory Chamber tribunal procedure rules - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114141/General_Regulatory_Chamber_tribunal_procedure_rules_-_GOV.UK.pdf)

clarified the request at the initial stage. In the event, it did not but refused to comply with it on the basis that it did not hold the requested information and was not required to create it.

6. The Information Commissioner upheld the Financial Ombudsman Service's stance in his Decision Notice. The Appellant appeals on the basis that he believes that information is held; thus, that the Decision Notice is erroneous.
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 this is a case in which the prospects of success are so fanciful that it may be described as 'not fit for a full hearing'. This is because it would be impossible for a Tribunal to make a finding as to what recorded information the Appellant requested and whether it was held because his request was not one for recorded information. It is also because the Information Commissioner was clearly correct to conclude that the request was one for an explanation, falling outside the ambit of FOIA 2000, and that there was no obligation on the Financial Ombudsman Service to create new recorded information with which to provide the explanation requested.
9. It follows that, in my view, no Tribunal properly directed could allow this appeal. I find that it has no reasonable prospect of success and that it is fair and just to strike it out under rule 8(3) (c), considered in the light of rule 2.
10. Accordingly, I have directed a strike out and this appeal will proceed no further.

Signed: *Judge Alison McKenna*

Date: 8 December 2023

Promulgated: 12 December 2023

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