



NCN: [2023] UKFTT 00365 (GRC)

Case Reference: EA/ 2022/0454

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

Heard: by determination on the papers

Heard on: 6 April 2023

Decision given on: 6 April 2023

Before: Judge Alison McKenna

**ALINA HARUTUNIAN**

**Appellant**

**- and –**

**THE INFORMATION COMMISSIONER**

**Respondent**

**DECISION**

**This appeal is struck out under rule 8 (3) (c) as having no reasonable prospect of success.**

**REASONS**

1. The Respondent's Strike Out Application dated 9 February 2023 is allowed.
2. The Information Commissioner published a Decision Notice on 21 November 2022 which found that the public authority had correctly relied on s. 12 FOIA in refusing to provide the requested information. The Appellant filed a Notice of Appeal on 27 December 2022. This was out of time but the Registrar allowed the Notice of Appeal to proceed on 12 January 2023.

3. On 9 February 2023 the Information Commissioner, in filing its Response to the appeal, applied for a strike out under rule 8 (3)(c) of the Tribunal’s rules on the basis that the appeal had no reasonable prospects of success.
4. The Appellant’s Grounds of Appeal are extensive but they do not suggest that the Decision Notice was in error to find that s. 12 FOIA was engaged or that the Information Commissioner had inappropriately exercised his discretion in the Decision Notice.
5. The Appellant was invited to make submissions in response to a proposed strike out, as required by rule 8 (4). She did not file any submissions by the deadline set of 23 February 2023, or at all.
6. 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.*
7. Applying this approach, I have considered both parties’ representations and concluded that this is a case which may be described as ‘not fit for a full hearing’. The Decision Notice has not properly been challenged within the scope of s. 57 and s. 58 FOIA as the grounds of appeal do not allege an error of law in the Decision Notice. It does not therefore seem to me that any Tribunal properly directed could allow this appeal. In all the circumstances, I have concluded that this appeal should be struck out as having no reasonable prospects of success. I direct accordingly.

**(Signed)**

**Dated: 6 April 2023**

**Judge Alison McKenna**

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