



Neutral Citation number: [2023] UKFTT 951 (GRC)

Case Number: TC*****
Case Reference: EA/2023/0409

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard by: determination on the papers

**Heard on: 3 November 2023
Decision given on: 09 November 2023**

Before

TRIBUNAL JUDGE ALEKSANDER

Between

SAJAD HUSSAIN

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

Decision: The appeal is struck-out

REASONS

1. On 7 May 2023, Mr Hussain submitted a request for information to the City of Bradford Metropolitan District Council (“Bradford Council”) relating to fraud in direct care payments. A supplementary request for information on this topic was submitted on 26 May 2023. Bradford Council sought clarification and the requests was resubmitted on 9 June 2023 as follows:

As you have sought further clarity I would like to extend the timeframe further back to commence from 2017 to the present. So I need you to confirm that the following updated enquiry is correct:

Q1. How many times has a resident of the LA been done for fraud against them and fined or jailed covering the period from 15 January 2007 (the date the Fraud Act 2006 became law) until the end of May 2023. This relates to direct care payments.

Is your revised response now: One?

Q2. How many of these was safeguarding relatives like the mental health act does under a section or when the office of the public guardian takes power.

Is your revised response now: One?

Q3. Do you have numbers of fraud cases where the accused have never spent the money.

Is your revised response now: One?

2. On 13 June 2023 Bradford Council responded stating that the answer was “one” to questions one and two, and that information was not held in relation to question three.

3. Following an internal review, Bradford Council updated its response on 16 June 2023 stating that the response to question one was “zero”, and that information was not held in relation to questions two and three.

4. On 16 June 2023, Mr Hussain complained to the Information Commissioner about Bradford Council’s response relating to question three.

5. Having undertaken an investigation, the Information Commissioner was satisfied, on the balance of probabilities, that Bradford Council was unable to “ratify that money was never spent”. Accordingly, the information sought by question 3 was not held.

6. Mr Hussain now appeals against the Information Commissioner’s decision. His grounds of appeal are:

I believe the ICO is conspiring with the Public Authority City of Bradford Metropolitan District Council (CBMDC) under some quid-pro-quo arrangement to help coverup the LA’s failures to comply with their obligations to the FOI regulation, in clear contravention of the Fraud Act 2006.

7. No supporting documents were filed by Mr Hussain.

8. In his response, the Information Commissioner states that he categorically denies the allegations made by Mr Hussain.

9. The Information Commissioner applies to strike out Mr Hussain’s appeal on the basis that the grounds of appeal fall outside the Tribunal’s jurisdiction.

10. Mr Hussain referred to his submissions in appeal EA/2023/0402 which detailed the justification of why the case should be heard as he believes it is necessary and in the public interest for it to be adjudicated upon. In EA/2023/0402, Mr Hussain submitted that the matter is an important Human Rights issue and that he would be relying on European case law arguing that the decision taken by the Information Commissioner is wholly incompatible with the decision of the European Court of Human Rights. In EA/2023/0402, Mr Hussain stated that his legal basis was that failure to disclose the requested information is a violation of his human rights under Article 10 of the European Convention on Human Rights, as incorporated into English law by the Human Rights Act 1998. He referred to the decision of the European Court of Human Rights in *Magyar Helsinki Bizottság v. Hungary* [2016] ECHR 975.

11. The Information Commissioner referred me to *Moss v Information Commissioner and the Cabinet Office* [2020] UKUT 242 AAC, where the Upper Tribunal dismissed the argument that Article 10 was a relevant consideration when dealing with requests under FOIA. I refer Mr

Hussain to my decision in EA/2023/0402 where I found that *Magyar* does not assist Mr Hussain in that appeal. The reasoning in that appeal is equally applicable to this appeal, and I find that *Magyar* is of no assistance to Mr Hussain in this appeal.

12. The jurisdiction of the Tribunal is set out in s58 Freedom of Information Act 2000 (FOIA) as follows:

58(1) If on an appeal under section 57 the Tribunal considers—

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

13. Rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 provides that the Tribunal must strike out proceedings if the Tribunal does not have jurisdiction in relation to them. Rule 8(3) provides that I may strike out proceedings if they have no reasonable prospect of success.

14. I agree with the Information Commissioner that the grounds of Mr Hussain's appeal fall outside the jurisdiction conferred upon this Tribunal under s58 FOIA. As the Tribunal has no jurisdiction to deal with the grounds of appeal, this appeal must be struck out.

15. Even if I am wrong in my determination that the Tribunal lacks jurisdiction, Mr Hussain does not particularise in any way his grounds that the Information Commissioner is in any way conspiring with Bradford Council to cover up its failures to comply with the FOIA, nor does he provide any evidence of such a cover up. In these circumstances his appeal is bound to fail. As I find that it would have no reasonable prospects of success, I would strike it out under Rule 8(3).

16. Finally, if Mr Hussain believes that there is a contravention of the Fraud Act 2006 and has evidence to support his beliefs, he should report the matter to the police.

NICHOLAS ALEKSANDER
TRIBUNAL JUDGE
Promulgated on: 09 November 2023