



NCN: [2023] UKFTT 118 (GRC)

Case Reference: EA/ 2022/0388 GDPR

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

Heard: by determination on the papers

Heard on: 10 February 2023

Decision given on: 13 February 2023

Before: Judge Alison McKenna

EDWARD WILLIAMS

Applicant

- and -

THE INFORMATION COMMISSIONER

Respondent

RULING ON APPLICATION FOR PERMISSION TO APPEAL

Permission to appeal is refused.

REASONS

1. The Applicant applied for an order under s. 166 of the Data Protection Act 2018.
2. On 19 January 2023, I struck out the Applicant's application as having no reasonable prospect of success, having first considered the Information Commissioner's application for a strike out and the Appellant's own submissions on that application.

3. On 30 January, I refused the Applicant's application for reinstatement of the appeal, explaining that this remedy was not available for appeals struck out under rule 8 (3) (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended)¹.
4. On 30 January 2023, the Applicant applied for my refusal to reinstate the struck-out appeal to be set aside, relying on rule 5 (2) of the Rules. In the alternative, he requested permission to appeal against the strike out ruling of 19 January 2023. On 8 February 2023 he supplied grounds of appeal, as follows: (i) that the First-tier Tribunal has power to set aside the strike out Decision; and (ii) that the strike out Decision was erroneous because it failed to take into account his submission that his complaint to the Information Commissioner was decided by a person without the requisite delegated authority to make that decision.
5. I note the Applicant's offer to attend a hearing to explain his grounds of appeal further, but I consider that I can decide this matter fairly and justly without a hearing. There is no entitlement to a hearing in connection with an application under part 4 of the Rules.
6. I have first considered in accordance with rule 44 whether to review the strike out Decision, but have decided not to undertake a review, as I am not satisfied that there was an error of law in the Decision.
7. Dealing first with the submission of 30 January 2023 that the Tribunal had power to reinstate the struck-out application under rule 5 (2), I am afraid this this is misconceived. Rule 5 (2) applies to the case management of 'proceedings', by which is meant occasions on which a live appeal requires some directions. It does not therefore apply to appeals which have been struck out. This is why there is a very specific power of reinstatement under rule 8 of the Rules. However, as I have explained, this power does not apply to the particular basis on which the Applicant's case was struck out.
8. I have considered whether the grounds of appeal dated 8 February 2023 are *arguable*. This means that there must be a realistic (as opposed to fanciful) prospect of success – see Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.
9. As I understand it, the first ground of appeal is that the Tribunal has power to set aside the strike out Decision (this being a different argument from the one above, concerning the powers under rules 8 and 5). I accept that the Tribunal has power to set aside a strike out Decision, however this could

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)

only be the case where the criteria under rule 41 of the Tribunal's Rules have been met. No application has so far been made which requests a set aside under rule 41 or sets out grounds meeting the criteria under rule 41, so I conclude that this ground of appeal is not arguable because it relates to a submission which has never been made or determined.

10. I have also concluded that the second ground of appeal is not arguable because it seeks to challenge the lawfulness of the Information Commissioner's outcome letter, whereas s. 166 DPA 2018 is, for the reasons explained in my strike out ruling, a procedural remedy only. If the Applicant is correct about the lack of delegated authority for the decision maker, then this is a matter that must be determined by the Administrative Court, as this Tribunal has no jurisdiction to consider it.
11. It is clear that the Applicant disagrees with the strike out Decision, but I conclude he has not set out a case on which I can give him permission to appeal. Accordingly, this application is refused.

(Signed)
2023

Judge Alison McKenna

Dated: 10 February

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