



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

Appeal reference: EJ/2021/0016

Between

Alan M Dransfield

Applicant

And

Information Commissioner

Respondent

DECISION ON APPLICATION TO STRIKE OUT

**TRIBUNAL JUDGE LYNN GRIFFIN
SITTING IN CHAMBERS 11 NOVEMBER 2022**

DECISION

The application to certify is struck out under rule 8(2) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 because this tribunal does not have jurisdiction to consider it and I decline to exercise the discretion to transfer the case to another court or tribunal.

REASONS

Background

1. The Tribunal received an allegation of contempt of court from Mr Dransfield in an email dated 31 October 2021 at 08.13.
2. Mr Dransfield makes an allegation that the Information Commissioner's office has committed a contempt of court by sending of a letter by email on 27 October 2021 at 15.11.
3. In the context of EA/2019/0227, Mr Dransfield submits that the letter of 27/10/21 "*shows the ICO are treating the requester as vexatious not the request.*"

I now ask the FTT to strike out the ICO legal argument on this case and to allow the passage of this case to go before the UT.”. Mr Dransfield’s correspondence was placed before Upper Tribunal Judge Rintoul for his consideration in so far as it was relevant to that case.

4. Turning then to the allegation of contempt of court. The letter complained of concerns the Information Commissioner’s reference IC-132181-T3D6. It informs Mr Dransfield that the Information Commissioner declines to consider the complaint given case reference IC-132181-T3D6 under s50(2)(c) Freedom of Information Act 2000. As far as I am aware appeal reference EA/2019/0227 is not the case referred to in the letter of 27/10/21.
5. The letter of 27 October 2021 draws attention to the available remedy in relation to that decision via judicial review and also the PHSO. A decision not to pursue a complaint under s50(2) FOIA is not subject to a right of appeal to the First Tier Tribunal but is susceptible to judicial review.
6. In addition to applying to the tribunal Mr Dransfield has
 - a. written to his MP to request the matter is referred to the PHSO, at 16.45 on 27/10/21
 - b. asked the ICO to reissue the letter with a signature, this request made at 17.59 on 27/10/21

The application to certify

7. Pursuant to s61 FOIA this Tribunal may certify an offence of contempt to the Upper Tribunal if both parts of s61(3) are satisfied. This will involve considering two questions
 - a. Is the Information Commissioner guilty of any act or omission in relation to proceedings before the Tribunal which, if those proceedings were proceedings before a court having power to commit for contempt, would constitute a contempt of court?
 - b. If the Information Commissioner is guilty is *“guilty of an act or omission in relation to proceedings before the Tribunal which, if those proceedings were proceedings before a court having power to commit for contempt, would constitute a contempt of court”*, should the Tribunal exercise its discretion to certify a contempt to the Upper Tribunal?

8. The act relied upon by the applicant is the sending of the letter of 27 October 2021. The applicant relies on the following grounds to argue it would amount to a contempt because
 - a. It was sent while the decision in EA/2019/0227 was awaited,
 - b. The ICO are treating the requester as vexatious not the request
 - c. It should have been signed by the author.
9. The reason why the applicant says that the Tribunal should exercise its discretion to certify a contempt to the Upper Tribunal is not set out in specific terms, but it is implied from other correspondence from the Applicant, that the Applicant regards the act relied upon as egregious and deliberate.
10. I directed that the Information Commissioner should respond to the allegation and provided for the Applicant to reply to the Information Commissioner's response. More recent directions made on 17 October 2022 provided further time for any submissions on the application made in the response that the tribunal should strike out the application to certify a contempt.
11. Mr Dransfield responded by email on 17 October 2022 making allegations about the tribunal system and asking for a hearing on the issues he raised. I am not required to hold a hearing to consider an application to strike out and there is nothing in the email of 17 October 2022 that persuades me it would be in the interests of justice to do so.

The application to strike out

12. I have considered the documents submitted by both parties and the correspondence from Mr Dransfield.
13. The Information Commissioner draws attention to the statutory provisions which require any contempt to be in relation to proceedings. It is then submitted that in the context of the application to certify that the acts complained of are not in relation to proceedings. The Information Commissioner submits that the tribunal has no jurisdiction and should strike out the appeal on that basis.
14. The letter in issue, dated 27 October 2021 was a letter sent to the Applicant in response to a complaint under s.50 FOIA concerning a response from the

Ministry of Justice to a FOIA request. The file reference for the Commissioner's investigation is IC-132181-T3D6.

15. In that letter, the Commissioner explained to the Applicant that the Commissioner declined to investigate his complaint because the Commissioner considered the S.50 complaint to be frivolous and / or vexatious under section 50(2)(c) FOIA.
16. The reference in the Applicant's email to the Tribunal dated 31 October 2021 to a hearing on 18 October 2021 was a reference to a hearing relating to the appeal in the matter of Kirkham v Information Commissioner & Dransfield EA/2019/0227 (in which Mr Dransfield had been joined as a second Respondent), the letter from the Commissioner to the Appellant dated 27 October 2021 has nothing to do with appeal reference EA/2019/0227.
17. I conclude that the letter dated 27 October 2021 (the alleged act) was not therefore something "in relation to proceedings before the First-tier Tribunal on an appeal" under any of the provisions under section 61(1) FOIA. No proceedings in relation to this letter have been commenced in this tribunal and no such proceedings could be commenced before the First-tier Tribunal because any challenge to the letter would have to be made by way of an application for a judicial review in the High Court
18. Therefore, the requirement under section 61(3) FOIA has not been met.
19. I conclude that this tribunal has no jurisdiction to deal with Mr Dransfield's application.
20. I would further indicate that were I to be wrong about the extent of the jurisdiction of the tribunal that I find that the letter dated 27 October 2021 does not constitute an act which, if the relevant proceedings were before a court having power to commit for contempt, would constitute a contempt of court.
21. This is because the three reasons relied upon by Mr Dransfield would not amount to a contempt of court. The fact that it was sent while the decision in EA/2019/0227 was awaited, could not be contemptuous as it related to a wholly unrelated matter. Whether or not the ICO had proper grounds to issue the letter (reference the complaint that they are treating the requester as vexatious not the request) is a matter for the High Court and not this

tribunal and moreover, whether or not it had been signed by the author was not something required by this tribunal or in defiance of any tribunal rule.

22. I have considered whether to exercise my discretion to transfer this case to the High Court or other appropriate court or tribunal. However, bearing in mind Mr Dransfield was told he could challenge the Commissioner's decision in that way and did not do so and given the potential costs of such litigation it seems to me that whether to embark on a High Court case is more appropriately a question for the appellant having taken such legal advice as he wishes. There is no other court or tribunal to whom the case could be appropriately transferred.
23. In the light of my conclusions above, acting in accordance with rule 8(2), I must strike out these proceedings.

Lynn Griffin

Tribunal Judge Lynn Griffin

Dated: 11 November 2022