



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2013/0204
Appellant: Kevin Hulse
Respondent: The Information Commissioner
Second Respondent: Financial Ombudsman Service
Judge: NJ Warren

DECISION NOTICE

1. Mr Hulse made a request to the Financial Ombudsman Service (FOS) under the Freedom of Information Act (FOIA). The FOS had been investigating a complaint from Mr Hulse about the way his bank had treated him. In the course of that investigation FOS made an error as to the terms and conditions which applied to the bank account. On realising the error, FOS corrected it and decided that it made no difference to their decision to reject Mr Hulse's complaint.
2. Mr Hulse's request under FOIA was misconceived from the start. He asked for a copy of the terms and conditions applying to his bank account as originally and erroneously FOS understood them to be. This information, of course, did not exist. In the language of the statute, FOS did not "hold" the information.
3. Mr Hulse complained to the Information Commissioner (ICO) that FOS had not dealt with his request properly. He was unsuccessful. He now appeals to the Tribunal. FOS have been joined as a party and have asked for the appeal to be struck out because it has no reasonable prospect of success.
4. When given an opportunity to comment, Mr Hulse appears to accept that FOS never had the information requested. He asks for compensation and complains about the FOS investigation. I offered Mr Hulse a second opportunity asking him

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Date of decision: 19 December 2013

to state precisely which parts of the response by FOS to his appeal he disagreed with and why but no such detail has been forthcoming.

5. In my judgement the arguments advanced by FOS in their response are unanswerable. If this appeal went to a hearing it is inevitable that it would be dismissed. I would be doing no one any favours by keeping it alive and I therefore strike it out on the ground that it has no reasonable prospect of success.

6. I should add that Mr Hulse also made subject access requests to FOS under the Data Protection Act. There are some suggestions in the papers that Mr Hulse understands that this issue also is before the Tribunal. It is not. It did not form part of the ICO decision notice which is under appeal and the Tribunal has no jurisdiction to deal with complaints about the handling of Mr Hulse's subject access request.

NJ Warren

Chamber President

Dated 19 December 2013



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DECISION NOTICE

1. On 19 December 2013 I struck out an appeal by Mr Hulse against a decision of the Information Commissioner (ICO) because it had no reasonable prospect of success. The Financial Ombudsman Service (FOS) now applies for a direction that Mr Hulse should pay legal costs of £1,386.
2. The FOS asked to be joined as a party to the appeal. They were the public authority from whom Mr Hulse requested information. That information request, which was misconceived from the start, was triggered by an error made by FOS in investigating a complaint made by Mr Hulse concerning his bank. The FOS had taken pains to explain in clear language to Mr Hulse the error which they had made and their reasons for saying that the outcome of his complaint was unaffected by it.
3. The starting point in this jurisdiction is that generally speaking citizens should have access to the Tribunal without running the risk of an award of costs. Costs do not follow the event. This is an important principle.
4. One exception to the principle is to be found in Rule 10(1)(b) of the GRC Procedure Rules. It applies where the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings. This is the ground on which the FOS relies.

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5. I have sympathy with the points made by the FOS. On the other hand, viewed from Mr Hulse's point of view, he is an ordinary citizen who exercised his remedy of appeal to the ICO and then, when told of a further right of appeal to the Tribunal, exercised that right also. He was badly advised throughout by a relative – but then advice in this sometimes complex area of law is not easily available to the ordinary citizen. Having considered all the circumstances, and reviewed the conduct of the case, I am not prepared to characterise Mr Hulse's behaviour as “unreasonable” even though it was on any view misguided and would appear to anyone with a knowledge of this area of the law as wrongheaded.
6. For these reasons I refuse the application.

NJ Warren**Chamber President****Dated 9 January 2014**