



Neutral citation number: [2023] UKFTT 01076 (GRC)

Case Reference: EA-2023-0305-GDPR

**First-tier Tribunal**  
**General Regulatory Chamber**  
**Section 166 DPA 1998**  
Decision Given on: 05 January 2024

**Before**

**TRIBUNAL JUDGE BUCKLEY**

**Between**

**BRIDGET PATRICIA ROCHE**

Applicant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**JUDGE BUCKLEY**

**Sitting in Chambers**  
**on 11 December 2023**

**AMENDED DECISION**

**Under rule 40 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.**

1. The time limit for submitting the application under section 166 of the Data Protection Act 1998 is extended to 27 July 2022 under rule 5(3)(a) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.
2. The application under section 166 of the Data Protection Act 1998 is **STRUCK OUT**.

## REASONS

3. Ms Roche has previously emailed the tribunal saying that she did not like the 'legal jargon' in a letter from the tribunal and asking for an explanation in simple plain English.
4. I have attempted to provide a plain English summary of this decision for the benefit of Ms Roche. This is not a substitute for the full reasons for the decision which are set out below and if there is any conflict between the two, the full reasons should be preferred.

### *Plain English summary for Ms Roche*

5. You have made an application to the tribunal under section 166 of the Data Protection Act 1998. Your application to the tribunal has been 'struck out'. This means that the case will not continue in the tribunal. The tribunal will not make a decision on your application. It will not make a decision on whether the Commissioner should have re-sent the letter to your neighbour.
6. This is because the tribunal only has limited powers under section 166. It is not allowed to decide if the Commissioner reached the right decision. In most cases, the tribunal can only make orders for the Commissioner to take steps to progress a complaint where the Commissioner has not yet reached a decision.
7. I think that the Commissioner has already made two decisions in your case. First of all the Commissioner made a decision in October 2022 when his officers decided to write to your neighbour. Then the Commissioner made another decision in June 2023 not to write to your neighbour again. You have been told about both those decisions in writing.
8. I do not think the tribunal has any power to make any orders in this case under section 166, because the Commissioner has already told you what its decisions are.
9. Your application was also late, but that is not why I have not allowed the case to continue.

### *Full reasons*

10. In this decision, 'the Application' is a reference to the application made to the tribunal by Ms Bridget Roche under section 166 of the Data Protection Act 1998 (DPA) and 'the Applicant' is a reference to Ms Roche.
11. Although I have extended time for the Application to be submitted, I must make clear that I have, in any event, struck the Application out, and therefore the Application will not be considered any further by the tribunal.

### *Time limits*

12. The Commissioner received the complaint from the Applicant on 27 July 2022. The Application was received by the tribunal on 22 June 2023.
13. Under rule 22(6)(f) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ('the Rules'), an application under section 166 of the Data Protection Act 1998 (DPA) must be made to the tribunal within 28 days of the expiry of six months from the date on which the Commissioner received the complaint.
14. The tribunal wrote to the parties on 19 September 2023 stating that, 'The appeal was received in time'. This was incorrect. The Application was received significantly out of time because it relates to a complaint made on 27 July 2022.
15. No extension of time has been granted by the tribunal so far. Under rule 22(4)(b) unless the tribunal extends time for the notice of appeal it must not admit the notice of appeal. This is mandatory. There is no power and no discretion to admit an out of time application unless and until an order is made extending time under rule 5(3)(a).
16. Having considered the facts underlying this application, despite my view on the merits of the application which have ultimately led me to strike out the application, I am persuaded that it is appropriate to extend time and admit the application.
17. The period of delay is serious and significant. The time limit in a section 166 applications runs from the date of the complaint to the Commissioner, which in this case was 27 July 2022. The Commissioner communicated the outcome of that complaint to the Applicant in October 2022.
18. However, this Application concerns a later decision by the Commissioner, communicated on 16 June 2023, to the effect that the Commissioner was not going to take any further action in response to new information provided by the Applicant. That new information was provided to the Commissioner in May 2023.
19. The Applicant complained to the Commissioner about his decision on 16 June 2023 and the Commissioner reiterated his position on 21 June 2023.
20. In those circumstances it is easy to see why the Application was not issued until July 2023.
21. I must also consider all the circumstances of the case, so as to deal justly with the Application. The need for litigation to be conducted efficiently and at proportionate cost is a particular factor. The merits of an Application will be relevant only if the tribunal can see without much investigation that the grounds are very strong or very weak.
22. As set out below, I do consider in this case that the grounds of the Application are very weak. However in my view it is in the interests of justice to consider the merits more fully in the context of the strike out application than simply to refuse to extend time on that basis.

23. I appreciate from the Applicant's point of view that this makes little difference as her Application has ultimately not been allowed to proceed, but in my view this approach is fairer and in the interests of justice.
24. For those reasons I extend time for the Application to be submitted.

*Strike out application*

25. The Commissioner applies for the Application to be struck out under rule 8(3)(c) (no reasonable prospects of success) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.
26. The Commissioner submits that the remedies sought by the Applicant are not outcomes that the tribunal can grant in a section 166 application against the Commissioner. The Commissioner further submits that the Application is significantly out of time, which is dealt with above.
27. The Applicant responded to this application by email dated 16 October 2023 in which she stated:

“All I can say is that I am very disappointed with this decision.

I do not think it was a big ask to request that you resend the paperwork to the named person at [name and address redacted] because at the time the original documents were sent there I did not know her name. I feel this was a very simple request and had even offered to pay the postage.

In the meantime, these neighbours continue to harass us with their video camera pointing directly into our garden, thereby invading our private space, surely this is wrong?”

*Discussion and conclusions*

28. I have read the grounds of the Application in detail.
29. In response to the Applicant's complaint made in July 2022 about her neighbour's use of CCTV, the Commissioner sent a letter to the Applicant's neighbour in October 2022 advising them of the requirements of the DPA and requesting that they take steps to ensure that they are complying with those requirements. At the time the Applicant knew and provided to the Commissioner the address but not the name of her neighbour. Presumably the Commissioner addressed the letter to 'The Occupier' or similar.
30. The Applicant complains in her notice of application that she has since found out the name of her neighbour and has asked the Commissioner to re-send the letter to the neighbour using her name. The Commissioner has refused.
31. The letters sent by the Applicant to the Commissioner asking them to re-send the letter are dated 31 May 2023 and 8 June 2023. The Commissioner's response is in a letter dated 16 June 2023. On 16 June the Applicant wrote again saying she was unhappy with the response, and the Commissioner reiterated its position by letter dated 21 June 2023.

32. In the letter dated 16 June 2023 the Commissioner states as follows:

“I understand you remain concerned about your neighbour’s use of CCTV and wish for us to contact them again, addressing our correspondence to the named occupant.

Part of our role is to consider complaints from individuals who believe there has been an infringement of the data protection law. As previously noted, when we receive a domestic CCTV complaint, we will write to the address of the CCTV Operator to remind them of their data protection obligations.

In this case, we contacted the CCTV Operator in October 2022 by writing to the address provided. We provided compliance advice and informed them of their data protection obligations when capturing images beyond their own boundaries.

Therefore, there is no further action we would look to take in relation to this matter and we do not consider it appropriate nor proportionate to contact the CCTV Operator again.

I appreciate you will be disappointed with this response and I am sorry that I cannot be of any further assistance. However, if you are concerned about my handling of this case, you can ask for it to be reviewed. To do this, you should complete the complain about us form on our website and return it to us within three months.

You have also asked for details of our governing body so that you can make a formal complaint. If you believe that the ICO has provided you with a poor service, or if you believe we have not treated you properly or fairly, you can complain to The Parliamentary and Health Service Ombudsman (PHSO).

All complaints to the PHSO must be made through an MP. However, you must first exhaust our complaints process before taking any concerns to the PHSO.

I hope this information is helpful to you.”

33. On an application to the tribunal under section 166, the tribunal has no power to deal with the merits of the complaint to the Commissioner or its outcome (confirmed in **Killock & Veale & ors v Information Commissioner** [2021]UKUT 299 (AAC) (**Killock v Veale**).

34. Further, once an outcome to a complaint has been provided, the tribunal has no power retrospectively to order the Commissioner to take appropriate steps to respond to the complaint, where that might lead to a different outcome. That is because once a decision has been reached, challenges to the lawfulness of the process by which it can be reached or to its rationality are a matter for judicial review by the High Court, and not a matter for the tribunal. (**Killock v Veale and R (on the application of Delo) v**

**Information Commissioner and Wise Payments Limited** [2022] EWHC 3046 (Admin), upheld by the Court of Appeal at [2023] EWCA Civ 1141 (“**Delo**”).

35. In this case there are two ‘outcomes’ that have been communicated to the Applicant. The first in October 2021 is not challenged by the Applicant. The second was the decision not to take write again to the neighbour in relation to the new information provided (i.e. the neighbour’s name). That decision was communicated by letter dated 16 June 2023. That letter clearly communicates the outcome, i.e. the Commissioner’s decision that it is not appropriate or proportionate to take any further action, in the light of the action already taken in response to the complaint. That is the second outcome.
36. The tribunal does not have any remit to consider whether or not that outcome was substantively correct.
37. I do not accept that there is in this Application any challenge to the ‘appropriate steps’ taken by the Commissioner which would not involve reopening that outcome. I conclude therefore that this case does not fall within the narrow circumstances in which the tribunal might be able to make an order under section 166(2)(a) (appropriate steps to respond to the complaint) after the complainant has been informed of the outcome of their complaint.
38. For those reasons, I do not consider that there is any reasonable prospect of the tribunal making any order under section 166(2).
39. I have considered whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of the Application succeeding at a full hearing. In my view, there are no reasonable prospects of the Application under section 166 succeeding.
40. I have considered whether I should exercise my discretion to strike the Application out. Taking into account the overriding objective, it is a waste of the time and resources of the Applicant, the tribunal and the Commissioner for this Application to be considered at a final hearing. In my view it is appropriate to strike the Application out.
41. As the Commissioner correctly states in his response, if the Applicant wishes to seek an order of compliance against the Controller for breach of their data rights, the correct route for them to do so is by way of separate civil proceedings in the County Court or High Court under section 167 of the DPA18.
42. For the above reasons the Application is struck out.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 18 December 2023