Appeal number: EA/2019/0201
EA/2019/0202

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

MALCOLM SIMMONS **Appellant**

- and -

THE INFORMATION COMMISSIONER **Respondent**

TRIBUNAL: JUDGE MOIRA MACMILLAN

Determined on the papers, the Tribunal sitting in Chambers on 18 March 2020

DECISION

1. Both Applications are refused.

REASONS

2. The Applicant applied to the Tribunal for an Order to progress his complaints under s. 166 of the Data Protection Act 2018 ("DPA 2018").

3. In his Notice of Appeal form dated 3 June 2019, the Applicant relies on grounds that the Commissioner has not finally responded to his complaints against the PHSO and against TA Law, and she is therefore in breach of her statutory duties.

4. The Information Commissioner's Responses dated 26 June 2019 and email dated 11 March 2020 relies on grounds of opposition that the Commissioner has since responded appropriately to the Applicant's complaints, so there no basis for making the Order sought.

5. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered agreed open bundles of evidence comprising 20 pages (0201) and 19 pages (0202), including submissions made by both parties.

The Law

6. Section 166 of the DPA 2018 creates a right of application to the Tribunal as follows:

Orders to progress complaints

(1) This section applies where, after a data subject makes a complaint under section 165 or Article 77 of the GDPR, the Commissioner—

(a) fails to take appropriate steps to respond to the complaint,

(b) fails to provide the complainant with information about progress on the complaint, or of the outcome of the complaint, before the end of the period of 3 months beginning when the Commissioner received the complaint, or

(c) if the Commissioner's consideration of the complaint is not concluded during that period, fails to provide the complainant with such information during a subsequent period of 3 months.

(2) The Tribunal may, on an application by the data subject, make an order requiring the Commissioner—

(a) to take appropriate steps to respond to the complaint, or

(b) to inform the complainant of progress on the complaint, or of the outcome of the complaint, within a period specified in the order.

(3) An order under subsection (2)(a) may require the Commissioner—

(a) to take steps specified in the order;

(b) to conclude an investigation, or take a specified step, within a period specified in the order.

(4) Section 165(5) applies for the purposes of subsections (1)(a) and (2)(a) as it applies for the purposes of section 165(4)(a).

7. The *"appropriate steps"* which must be taken by the Information Commissioner is further defined by s. 165 (5) DPA 2018 as investigating the subject matter of the complaint *"to the extent appropriate"* and keeping the complainant updated as to the progress of inquiries.

8. The powers of the Tribunal in determining a s. 166 application are limited to those set out in s. 166 (2). In order to exercise them, the Tribunal must be satisfied that the Commissioner has failed to progress a complaint made to her under s. 165 DPA 2018. The jurisdiction to make an Order is limited to circumstances in which there has been a failure of the type set out in s. 166 (1) (a), (b) and (c).

The Evidence

9. I have considered carefully the agreed bundle of evidence. This shows that the Applicant made complaints to the Information Commissioner on 28 February 2019 about the processing of his personal data by TA Law and the PHSO. The Commissioner acknowledged receipt of the complaints on 4 June 2019. She then failed to send any further response to the Applicant prior to the Applications being lodged with the Tribunal on 3 June 2019. The Commissioner subsequently responded to the Applicant on 6 June 2019 and sent a final response on 25 July 2019 (TA Law) and 12 November 2019 (PHSO).

Submissions

10. The Applicant's grounds are that the Commissioner has failed to comply with her statutory obligations because she has failed to respond to his complaints within the required 3-month period.

11. The Commissioner accepts that her substantive response to the Applicant's complaint fell outside the 3-month timeframe stipulated by s. 166 DPA 2018. However, she submits that she has since taken appropriate steps to respond to the Applicant's

complaint and that there is no longer an Order for the Tribunal to make under s. 166 DPA 2018.

Conclusion

12. I have concluded that the Information Commissioner took appropriate steps to respond to the Applicant's complaint on 25 July 2019 and 12 November 2019. Although her first substantive responses were outside the 3-month statutory timeframe, she has since remedied this oversight. I am not persuaded that there has been a subsequent failure on the Commissioner's part to address the matters in s. 166 (1) (b) and (c).

13. I find conclude that there is no basis for making an Order under s. 166 (2) DPA 2018 on the facts of this case.

14. For these reasons, the Applications are refused.

JUDGE MOIRA MACMILLAN
(First Tier Tribunal Judge)

DATE: 18 March 2020
Date Promulgated: 19 March 2020