



Neutral citation number: [2024] UKFTT 1039 (GRC)

Case Reference: FT/EA/2024/0374/GDPR

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard by determination on the papers
Heard on: 15 November 2024
Decision given on: 22 November 2024

Before

TRIBUNAL JUDGE SWANEY

Between

ROBERT BLOWN
JO'ANNE BLOWN

Applicants

and

THE INFORMATION COMMISSIONER

Respondent

DECISION ON STRIKE OUT APPLICATION

1. The application dated 17 September 2024 is struck out.

REASONS

2. The applicants made a subject access request and a data rectification request to the Financial Ombudsman Service (the FOS). On 1 February 2024 they made a complaint to the respondent (the Commissioner) about the FOS' handling of the request (IC-286450-C7F2). On 22 February 2024 the appellants made a separate complaint.
3. The Commissioner states that on 21 March 2024 the file with reference ending C7F2 was closed and a new complaint was opened (IC-295797-K1Q6). The Commissioner states that this was to avoid confusion with the evidence previously provided. The exact status of the two complaints is a matter of dispute between the parties.
4. The Commissioner contacted the FOS and asked it to investigate its handling of the applicants' requests. On 16 August 2024 the FOS responded to the Commissioner. On 23 August 2024 the FOS contacted the applicants in relation to their rectification

requests. The applicants responded to the FOS on 26 August 2024 indicating that they were not satisfied with the response. On 28 August 2024 and 30 August 2024 the applicants contacted the Commissioner to express concerns about the response received from the FOS. They provided document to the Commissioner to demonstrate their concerns and support their assertion that the FOS may have concealed information.

5. On 17 September 2024 the applicants made an application to the tribunal for an order pursuant to section 166(2) of the Data Protection Act 2018 (the DPA). They sought the following:
 - (a) Within 14 days of the date of the promulgation of this decision take appropriate steps to respond to the complaint, including steps to investigate the subject matter of the complaint to the extent appropriate, by initiating formal correspondence with the relevant officials of the Financial Ombudsman Service (the "FOS") to: (i) ascertain the basis upon which personal information in the Subject Access Request materials were withheld and/or altered, defaced, blocked, erased or concealed and (ii) determine the basis upon which the Applicants request for rectification of inaccurate personal data has not been complied with and (iii) having considered any responses provided by the FOS, assess whether or not the FOS has acted lawfully.
 - (b) Conclude the investigation into the Applicants complaints within 2 months of the date of the promulgation of this decision and, having concluded such investigation, inform the Applicants of the outcome by the end of that period.
6. On 3 October 2024 the Commissioner provided an outcome to the applicants.
7. The Commissioner opposes the application in its entirety and seeks to have it struck out pursuant to rules 8(2)(a) and/or (3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Procedure Rules) on the basis that the tribunal lacks jurisdiction to make the orders sought and/or because the application does not have a reasonable prospect of success.
8. The Commissioner submits that although the applicant's complaint was pending when the application under section 166 was lodged, it has now been completed and an outcome provided to the applicants. Accordingly, the complaint is no longer pending, relying on R (Delo) v Information Commissioner and Wise Payments Ltd [2023] EWCA Civ 1141 [64]. The applicants seeks to distinguish Delo on the basis that in that case the application for an order was made *after* the Commissioner had issued an outcome, whereas they had made their application *before* the Commissioner issued an outcome. In that way the applicants contend that the tribunal retains jurisdiction.
9. The Court of Appeal held at paragraph 64:

An 'outcome' must be the end point of the Commissioner's 'handling' of a complaint. A conclusive determination or ruling on the merits that brings an end to the complaint is certainly an 'outcome' but that word is intended to have broader connotations. In *Killock*, the Upper Tribunal decided, in my view correctly, that it embraced a decision to cease handling a specific complaint whilst using it to inform and assist a wider industry investigation. In the present case, Mostyn J held that the word 'outcome' is an apt description of the Commissioner's decision to conclude his consideration of Mr Delo's complaint by informing him of the Commissioner's view that the conduct complained of was 'likely' to be compliant with the UK GDPR (or, put another way, that the complaint of infringement was 'likely' to be ill-founded). Again, I would agree with that.

10. It is clear that the tribunal's jurisdiction is limited to where a complaint is pending. While it is true that the applicants' complaint was pending at the time they lodged their application, the same is no longer true. The Commissioner provided the outcome to the applicants on 3 October 2024, which is not disputed.
11. I have considered whether there is an argument to be made that a complaint remains pending given that the applications made two separate complaints. I find that there is not. Firstly, the Commissioner states that the initial complaint was closed with the applicants' agreement. I do not understand this to be in dispute. Secondly, the outcome issued on 3 October 2024 deals both with the subject access request and the data rectification request. It appears therefore that the Commissioner in fact handled the subject matter of both complaints in the outcome of 3 October 2024. I find that there is no ongoing jurisdiction. Even if there were, it is clear that the tribunal would be unable to issue the orders sought in the application.
12. Notwithstanding that the applicants have attempted to frame their arguments as procedural ones, in fact, what they seek is a reopening of the complaint because they are dissatisfied with the Commissioner's response. The tribunal has no power to consider the merits of the underlying complaint.
13. I find for these reasons that the tribunal does not have jurisdiction and for the same reasons that the application has no reasonable prospect of success.
14. The applicant is struck out and no further action will be taken in relation to it.

Signed *J K Swaney*

Date: 15 November 2024

Judge J K Swaney
Judge of the First-tier Tribunal