



Neutral citation number: [2024] UKFTT 1137 (GRC)

Case Reference: FT-EA-2024-0193-GDPR

Decision given on: 20 December 2024

**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Before**

**JUDGE MOAN**

**Between**

**AMEEL AMARNI R GRAY**

Applicant

**And**

**THE INFORMATION COMMISSIONER**

Respondent

**Decision made on the papers.**

**Decision:** The Respondent's application to strike out the application of the Applicant is granted. The appeal is struck out under Rule 8(2)(a) as an application that cannot be made to this Tribunal and under Rule 8(3)(c) on the basis that there is no prospect of the application in being successful.

**REASONS**

1. The Applicant lodged a notice of appeal to the Tribunal dated 16<sup>th</sup> May 2024. The appeal form states that the Applicant was appealing the decision of the Information Commissioner as regards a data complaint. The application was expressed as an appeal against the decision of the Commissioner in a FOIA or EIR case, plainly it was not. The complaint was about data and ultimately the Commissioner did not provide an outcome letter stating that the issues were not within the remit of the Commissioner's powers to review.
2. The application form stated that the Applicant considered that the Commissioner had not acknowledged his concerns and had not investigated his complaint appropriately.
3. It transpired from the Respondent's response that the Applicant submitted a complaint about his local health services. Whilst he had also complained about the services provided by his GP practice, he also said that there was information on his medical records which was incorrect, which had been communicated to the DVLA leading to the loss of his driving licence and consequential financial loss. The Applicant sent a letter to the practice dated 7<sup>th</sup> March 2024 which had been sent to the Commissioner on 17<sup>th</sup> May 2024 as part of the investigation of his complaint which identified that he disagreed with various diagnosis. The Commissioner had advised the Applicant that they could not deal with the rectification of his data as this was medical opinion.
4. The Respondent replied to the application on 3<sup>rd</sup> July 2024 and made an application for the strike out of the application. The Applicant responded to that application and asked the Tribunal to instruct the Commissioner to investigate, uphold his rights, impose a monetary

penalty and enforce his rights. He also sought an order against the relevant NHS Trust that included a monetary remedy.

5. The Applicant does have a right to make an application under s166 of the Data Protection Act 2018 as regards a complaint to the Information Commissioner. However, the scope of an application under section 166 of the Data Protection Act 2018 is to achieve some progress in a complaint that has not been progressed. Once an outcome is received, there is nothing left to progress. The Tribunal has no powers to investigate the investigation of the Respondent or supervise their investigation as is suggested in the notice of appeal.
6. The complaint to the Commissioner was considered and found not to be within the gift of the Commissioner to investigate, the Applicant wanted to reference to diagnoses removed from his records which the Commissioner said were matters of medical opinion.
7. I considered it appropriate to conduct the review on the papers and without a hearing noting the nature of the strike out application made and having regard that both parties have fully responded to the issues. The Tribunal must strike out an application where it does not have jurisdiction.

### **The legal framework and powers of the Tribunal**

8. The Data Protection Act 2018 confirms the jurisdiction of the Information Commissioner for upholding information rights and data privacy. The Act provides limited scope for appeals to the Tribunal, proceedings in the County Court and the prosecution of offences before the criminal courts. The courts and Tribunals can only deal with those issues that Parliament has intended it to do so as set out by the legislation.

9. As stated on the Information Commissioner's website - complaints about data protection outcomes can be reported for review to the ICO's office or referred to the Parliamentary and Health Service Ombudsman. There is no right of appeal to the First Tier Tribunal from a data protection decision save in the very limited circumstances permitted by the Act for example under s162 as regards penalty notices etc. This is distinct from Freedom of Information requests where decisions of the ICO can be appealed to the First Tier Tribunal. There also exists the right to apply for judicial review albeit that would relate to the reasonableness of decision-making discretion of the ICO rather than a disagreement with the decision itself, and noting the judicial review is costly and time-consuming. There is also a remedy available in the County Court.

### **Analysis and conclusions**

10. The powers of the Tribunal to consider data issues is very limited. The Tribunal has no supervisory power over the Commissioner. His opinion regarding the medical records and inability to deal with that complaint appears entirely correct. On the basis that the Commissioner does not have power to investigate and provide an outcome, the Tribunal have no powers to make an order to progress let alone to hear an appeal against that decision. This is very distinct from the Commissioner refusing to investigate where he has the ability to do so.
11. The NHS website provides the following guidance -

*Sometimes, you may disagree with information written in your record, but the information could still be factually correct. For example, you may disagree with a diagnosis you were given in the past. Whilst you can still ask the organisation to amend the entry that you feel is inaccurate, an organisation should not change it if the health and care professional believes it is factually correct.*

12. Rectification of data such as an incorrect date of birth is permissible where that data is clearly incorrect. Medical opinion is not factual but an opinion of the medical practitioner. Doctors are not obliged to remove diagnoses recorded with which the patient disagrees and indeed it may be dangerous/not in the safety interests of the patient to do so. There is often provision for a note to be added to the records to the effect that the patient disagrees with the diagnosis. This is in accordance with GMC guidance.
13. There is no power for this Tribunal to award monetary compensation whether against the Commissioner or the relevant NHS Trust. This application is not a civil claim against the Trust, this Tribunal has no power to hear a civil claim against the Trust.
14. The application is misconceived and confused, and cannot proceed because both the Tribunal have no power to consider it and because it has no realistic prospect of succeeding. The Applicant has fully responded to the application to strike out and his representations considered.
15. There is no realistic prospect of the application succeeding in the circumstances and it would be a misuse of the resources of the Tribunal and the parties to allow that application to continue any further. Time spent on a meritless application reduces those resources available to consider other applications.

District Judge Moan sitting as a First Tier Tribunal Judge

18<sup>th</sup> December 2024