



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

**Tribunal Reference:** EA.2015.0257  
**Appellant:** The Education Authority  
(Formerly the Belfast Education and Library Board)  
**Respondent:** The Information Commissioner  
**Registrar:** R Worth

## Decision

### Appeal lodged out of time

1. On 9 November 2015 the Tribunal received a notice of appeal from the Education Authority. By that notice the Education Authority sought to appeal against the conclusion(s) of a letter from the Information Commissioner's Office dated 23 October 2014, reference RFA0549953.
2. An appeal against a decision sent to the appellant on 23 October 2014 should have been lodged with the Tribunal by 20 November 2014. This appeal was lodged almost 1 year late, clearly a very serious breach of the time limit.
3. The reason given for the breach is unpersuasive.

### Strength of grounds of appeal

4. Very strong grounds of appeal may mean that, despite a very serious breach of the time limit, it is in the interests of justice to admit an appeal.
5. The Education Authority's case is that the letter of 23 October 2014 is in substance and enforcement notice under s.40(1) of the Data Protection Act 1998.

6. S.40(1) of the Data Protection Act 1998 provides:

*40(1) If the Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles, the Commission may serve him with a notice (in this Act referred to as "an enforcement notice") requiring him, for complying with the principle or principles in question, to do either or both of the following-*

*(a) .....*

7. S.40(6) of the Data Protection Act 1998 provides:

*(6) An enforcement notice must contain-*

**Appellant:** The Education Authority**Date of decision:** 12 November 2015

---

(a) *a statement of the data protection principle or principles which the Commissioner is satisfied have been or are being contravened and his reasons for reaching that conclusion, and*

(b) *particulars of the rights of appeal conferred by section 48*

8. The letter dated 23 October 2014 (which does not refer to s.48) states:

“It does appear that the Belfast Education and Library Board (BELB), would be likely to be in breach of the legislation, if it continues to process the personal data of ....” (my emphasis)

...

“Next steps / Action required

We would now ask that BELB return to PSNI the documentation that it received, and to then discuss.....”

9. In my view that does not indicate that the Commissioner is satisfied that a data protection principle has been or is being contravened by the Education Authority. It is a warning that they will, in the future, be likely to be found in breach if they continue in certain actions; not a finding of wrongdoing at the present time.

10. The expression “We would now ask” is in my view very far from requiring action as is needed for s.40(1) and s.40(6)(a).

11. Failure to comply with an enforcement notice is a criminal offence punishable with an unlimited fine in the Crown Court (s.47(1) and s.60(2)). The existence of an enforcement notice would have to be proved beyond a reasonable doubt if criminal proceedings were brought.

12. Quite apart from the fact that the letter is not described as an enforcement notice, I doubt that the Information Commissioner’s Office would be able to successfully argue in a criminal court that the letter was “in substance” an enforcement notice even though it does not comply with the requirements of s.40 and that therefore they can prove their case beyond a reasonable doubt.

13. Facts in this Tribunal do not have to be proved beyond a reasonable doubt. However without the ultimate sanction of criminal proceedings for non-compliance the document is powerless and it is difficult to see how it could be considered as “probably” an enforcement notice.

#### Effect on Information Commissioner’s Office

14. I take account of the fact that there is little prejudice to the Information Commissioner’s Office in accepting the appeal – other than adding an additional appeal to the number of appeals they are dealing with.

**Appellant:**           **The Education Authority**

**Date of decision:**   **12 November 2015**

---

*Decision and reasons*

15. In all the circumstances outlined above I do not believe that the Information Commissioner's Office letter dated 23 October 2014 is an enforcement notice. If it was not an enforcement notice, there is no jurisdiction for this Tribunal to consider the appeal and, if admitted, it would have to be struck out under *rule 8*.
16. Overall I conclude that it is not appropriate to extend the time limit for appealing. The Education Authority's appeal is dismissed as out of time.

*This decision was made by the Tribunal's Registrar. A party is entitled to apply in writing within 14 days of the date of this document for this decision to be considered afresh by a Judge.*



**R Worth**

**Registrar, dated 12 November 2015**