



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

**Appeal Reference: EA/2019/0462V**

**Heard on 4 January 2021**

**Before**

**JUDGE CHRIS HUGHES**

**Between**

**CAPTAIN FANTASTIC LIMITED**

Appellant

**and**

**INFORMATION COMMISSIONER**

First Respondent

**Appearances:**

**Appellant: Tommy Balaam (Director)**

**Respondent: did not appear**

### **DECISION**

1. Captain Fantastic is a small company which provides entertainers for children's parties. In 2016 it decided to diversify its activities and to start to run after school clubs. In order for it to do so the head teacher of the relevant school required them to register as a data controller.
2. On 14 September 2018 the Information Commissioner (ICO) sent a reminder explaining that the company's registration under the Data Protection Act 1998 (DPA98) was due to expire on 26 October 2018 and requiring it to either renew or if registration was no longer needed to cancel registration and explain the change of circumstances. The email further explained that from the

information the ICO held a charge would be payable under the new arrangements in force from 25 May 2018 - the Data Protection (Charges and Information) Regulations 2018. He was invited check under the ICO assessment tool and notify the ICO if this was not correct. On 5 October 2018 a further reminder was sent. On 23 June 2019 an e-mail was sent reminding the company that its registration as a data controller had expired on 26 October 2018 and giving the company 10 days to either pay a fee of £40 or explain that it was no longer processing personal data or face a Monetary Penalty Notice (MPN) in addition to the fee. A formal notice of intent to issue a MPN setting out the details of the legal basis for a Monetary Penalty Notice was served on the registered office by a letter of 17 September. The notice was issued and served by a letter of 19 November 2019.

3. In response to the service of the notice Mr Balaam completed the registration self-assessment guidance on the website of the IC which confirmed that the company did not need to pay a fee. On 21 November 2019 he raised this with the ICO. The ICO had pointed to the company's website which, in its privacy policy, listed various uses of personal data for which registration with the ICO was necessary and confirmed that those uses required registration, "therefore we are not satisfied with the self-assessment and the response from you. It further pointed out that despite several reminders "we received no response from you advising why the Data Protection registration was no longer required or any receipt of the Data Protection fee as requested. Therefore the penalty notice was issued on 19 November 2019."
4. The company paid the fees on 9 December 2019 for the two year period to 26 October 2020 and appealed against the penalty explaining that it did not know that the fee was a legal requirement, that the self-assessment check indicated that it didn't need to be registered and that it was planning to start running after school clubs in 2020 so had paid the fees, but arguing that "a £400 fine was excessive for something I technically didn't need or have been made aware of."
5. In response the ICO pointed out that the status as a data controller was not in dispute because the company had paid the fee going forward. The penalty had been calculated as a tier 1 controller (the smallest scale organisation) in accordance with the scheme approved by Parliament and in accordance with its Regulatory Action Policy. Despite the company's arguments to the contrary it had been repeatedly reminded of its obligations. The company had failed to comply with the Regulations and there was no basis in law for setting aside the penalty.
6. In his oral presentation the director of the company (Mr Balaam) confirmed that he had ignored the reminders from the ICO, that the plan to start after school clubs had been delayed by the pandemic and the company had effectively suspended operations and could not afford the £400 penalty. He

explained that the company had run a trial of an after-school club after it had registered but it had not been able to recruit enough parents prepared to pay to turn it into a commercial success and it had been stopped. He was not aware of what had been done with any data collected. He accepted that he had not paid attention to the question of data protection and claimed that had thought that the various communications he had received might be a scam. He was not aware whether or not any personal data had been retained from the pilot after school club.

#### Consideration

7. Captain Fantastic was a data controller registered under s18 of DPA98. Under s20 it had a duty to keep its registration up to date. The relevant law is now the Data Protection Act 2018 which provides by s137 for “Charges payable to the Commissioner by controllers” which are set out in regulations. S149(5) DPA18 provides for the service of enforcement notices for breach of the regulations relating to charging under s137 and for the service of a penalty notice under s155(1). The Data Protection (Charges and Information Regulations) 2018 (made under provisions of the Digital Economy Act 2017 and continued in force by DPA2018) provides for the continuation of registrations from under the DPA98, for the provision of information to the ICO by data controllers and the payment of charge in respect of each period of registration. By failing to respond to the ICO when prompted Captain Fantastic lost the opportunity to ensure that, if it no longer needed a registration, it was removed from the register.
8. I am satisfied that no grounds have been advanced by Mr Balaam which can base a successful appeal against the MPN issued by the ICO and the appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal  
Date: 9 February 2021