



Appeal number: QJ/2021/0002
P¹

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER**

Susan Britton

Applicant

- and -

The Information Commissioner

Respondent

**Before:
JUDGE LYNN GRIFFIN**

Determined on the papers, sitting in Chambers 13 April 2021

DECISION

1. Mrs Britton's application is struck out pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, on the grounds that there is no reasonable prospect of it succeeding.

¹ P: paper determination which is not provisional

MODE OF HEARING

2. The proceedings were due to be held by the cloud video platform on 13 April 2021. Mrs Britton had indicated that she was not intending to participate. The Tribunal checked her intention on 12 April 2021, and she confirmed by email of 13 April 2021 at 07.06 that she would not be attending the hearing. The Respondent had indicated that she did not propose to attend the hearing.
3. The Tribunal may make a decision without a hearing pursuant to rule 32 where that decision disposes of proceedings under rule 8 (striking out a party's case).
4. The parties having indicated that they would not be attending and having read all the documents including, the submissions of the Respondent in her response and of the Applicant's emails and attachments², I am satisfied that it is fair and just to proceed in this way.

REASONS

Background to the Application

5. There is a complex history of events that form the background to this application. It is not necessary to set them out in this decision in any detail, but this application has its origins in Mrs Britton's experiences in 2013 in Switzerland, since which time she has determinedly pursued a satisfactory resolution of her complaints. This has resulted in a number of applications to this Tribunal and frequent correspondence with various organisations and public figures; the information she has sent to the Tribunal demonstrates that she has made complaints to different regulators, to the police and to government about her concerns. Mrs Britton has worked tirelessly to achieve a resolution she is content with and says in her email of 14 February 2021 that she has worked up to ten hours each day since 2013 on the issues. I do not doubt that this is so.

² Mrs Britton has written to the tribunal on many occasions since making her application. I have read each email and their attachments.

The Application to the Tribunal

6. In her notice of application to this Tribunal, dated 31 December 2020, Mrs Britton makes an application as regards the Respondent's decision notice reference IC-52453-N8K4. The Applicant said³

"In the absence of an insistence by the GRC that the FCO discloses evidence that irrefutably exists, I am now required to submit an application about Lord Ahmad of Wimbledon - who has taken it upon himself to involve himself in my case, to access data without my permission, to falsely profile me - and to represent the FCO. I had fully expected a reply well before the 28 days, and I had fully expected that the GRC would insist that the ICO discloses the results of its investigation into the FCO, so that there would be no need to submit this complaint about Lord Ahmad of Wimbledon.

7. In her notice of application Mrs. Britton said that she would like the following remedy from the Tribunal

"I would therefore, like to request that the GRC issues an order to the ICO to investigate this entire case for possible criminal data breaches, corruption and perversion of the course of justice and that those in the ICO responsible for reporting any crimes to the relevant law enforcement agencies do so immediately. I would also like to request that the GRC reports any data crimes, corruption and perversion of the course of justice in this case handled by the ICO... to the relevant law enforcement agencies."

8. The application was interpreted by the Tribunal as an application under section 166 Data Protection Act 2018.

9. Mrs Britton is a litigant in person. Having regard to the Equal Treatment Benchbook and to the overriding objective, I have carefully considered her emails to examine whether there is any other remedy that she seeks that the Tribunal has power to provide.

10. In the response to the application the Information Commissioner invited the Applicant to withdraw her application because she had received an outcome to her complaint but in the event she did not do so, the Information Commissioner has applied for this case to be struck out pursuant to rule 8(3)(a)

³ As written by Mrs Britton

of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. It is argued that as there has been an outcome provided to Mrs Britton, the Tribunal no longer has any power to make an order under s166 and thus her application has no reasonable prospect of succeeding.

11. The Applicant not having withdrawn her appeal I now consider the application to strike out these proceedings on the basis that they have no reasonable prospects of success.

The powers of the Tribunal in s166 applications

12. Since the Data Protection Act 2018 came into force a person can apply to this Tribunal for an “order to progress complaints” under section 166.

13. A data subject has a right to make a complaint to the Commissioner if they consider that, in connection with the processing of personal data relating to them, there is an infringement of the General Data Protection Regulations [GDPR], and/or Parts 3 or 4 of the Data Protection Act 2018: see Article 77 GDPR, and section 165 (1) & (2) Data Protection Act 2018.

14. Under section 166 Data Protection Act 2018, a data subject has a right to make an application to the Tribunal if they consider that the Commissioner has failed to take certain procedural actions in relation to their complaint.

15. Section 166 DPA18 as relevant states:

166 (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.*

16. The Tribunal can only exercise powers given to it by Parliament as set out in legislation. When considering an application under s.166 the Tribunal is not concerned with the merits or strength of the underlying complaint.

17. Section 166 Data Protection Act 2018 does not provide a right of appeal against the substantive outcome of an investigation into a complaint under s.165 Data Protection Act 2018.

18. On an application under s.166 Data Protection Act 2018 the Tribunal is limited to considering whether to make an order of the kinds set out in s.166(2). Once the Information Commissioner has provided an outcome to the complaint there is no longer an Order for the Tribunal to make under s.166(2).

19. The powers of the Tribunal in considering such applications have been considered by the Upper Tribunal. These cases are binding on the First Tier Tribunal of which the General Regulatory Chamber is a part.

20. In *Leighton v Information Commissioner (No.2)* [2020] UKUT 23 (AAC) Upper Tribunal Judge Wikeley said at paragraph 31

“Appropriate steps” mean just that, and not an “appropriate outcome”. Likewise, the FTT’s powers include making an order that the Commissioner “take appropriate steps to respond to the complaint”, and not to “take appropriate steps to resolve the complaint”, least of all to resolve the matter to the satisfaction of the complainant.”

21. Further in the case of *Scranage v Information Commissioner* [2020] UKUT 196 (AAC) the Upper Tribunal went further in saying :

“... there is a widespread misunderstanding about the reach of section 166. Contrary to many data subjects’ expectations, it does not provide a right of appeal against the substantive outcome of the Information Commissioner’s investigation on its merits. Thus, section 166(1), which sets out the

circumstances in which an application can be made to the Tribunal, is procedural rather than substantive in its focus. This is consistent with the terms of Article 78(2) of the GDPR (see above). The prescribed circumstances are where the Commissioner fails to take appropriate steps to respond to a complaint, or fails to update the data subject on progress with the complaint or the outcome of the complaint within three months after the submission of the complaint, or any subsequent three month period in which the Commissioner is still considering the complaint."

22. Many members of the public think that this Tribunal has the power to consider an application about the substantive outcome of the Information Commissioner's investigation, as has been acknowledged by the Upper Tribunal in the decision in *Scrannage*, but the Tribunal is limited in its powers to those given by Parliament as interpreted by the Upper Tribunal.

23. A person who wants a data controller (or processor) to rectify personal data compensate them or otherwise properly comply with the Data Protection Act 2018 or General Data Protection Regulations in relation to personal data must go to the civil courts⁴ not a tribunal pursuant to sections 167-169 & 180 of the Data Protection Act 2018. I express no opinion one way or another about whether Mrs Britton can do so, or whether she should do so; that is a matter for her, about which this Tribunal cannot advise her.

24. This Tribunal does not have an oversight function in relation to the Information Commissioner's Office and does not hold them to account for their internal processes. The Parliamentary and Health Service Ombudsman is the body which has that function. I express no opinion one way or another about whether she can or whether she should raise the issue with the Ombudsmen; again, that is a matter for her, about which this Tribunal cannot advise her.

The Facts

25. On 16 August 2020 the Applicant sent the Respondent an e-mail and in this and subsequent e-mails she complained about Lord Ahmad, acting in this capacity as Minister responsible for Transparency and Data at the Foreign and Commonwealth Office ('FCO').

⁴ High Court or County Court

26. On 26 August 2020 the Respondent's case officer set up case reference IC-52453-N8K4 to address the Applicant's complaint that Lord Ahmad accessed her personal data without her permission. Mrs Britton's belief appears to stem from when an MP had contacted FCO on her behalf, and on 9 April 2020 Lord Ahmad responded for FCO, explaining to the MP that the Applicant had contacted various individuals/organisations and that the FCO believed it had provided all of the personal data it is able to provide in relation to the Applicant's requests.

27. On 26 August 2020 the case officer provided a response to the complaint made by the Applicant. He told Mrs Britton that he was of the view that she had not raised any data protection concerns the Commissioner needed to pursue. The case officer explained this was because he did not share the Applicant's view that Lord Ahmad has accessed the Applicant's personal data unlawfully. The case officer explained Lord Ahmad responded to an MP's enquiries, made at the Applicant's request and that Lord Ahmad's comments regarding the different individuals/organisations to whom the Applicant had complained appeared to be based on information the Applicant had sent to the FCO in the course of the Applicant's dealings with FCO, and records held by the FCO of the Applicant's correspondence with them.

28. The applicant requested a case review of the outcome to her complaint and after some delay due to administrative oversight and the volume of material to consider the result of the case review was provided on 3 November 2020⁵. The reviewing case officer had

- a) reviewed the information relating to the data protection complaint and considered the points the Applicant had raised;
- b) considered whether the complaint was dealt with reasonably;
- c) considered whether the matter was handled in line with the Commissioner's casework processes; and
- d) considered whether there are any outstanding matters for the Commissioner to pursue.

29. The reviewing case officer referred to the Applicant's initial e-mail complaint and request that the Commissioner "investigate[s] alleged criminal

⁵ There is no dispute that this was received by the Applicant as it forms part of the email chains sent to the Tribunal for the purposes of this application, such as the email of 22/02/2021

data breaches as well as failures to disclose information on investigations it (the Commissioner) has conducted” and told the Applicant that she could see that in the case officer’s email to the Applicant of 26 August, the case officer had acknowledged the Applicant’s concerns about Lord Ahmad.

30. The reviewing case officer noted that the Applicant was dissatisfied with the way the case officer had handled the Applicant’s complaint about Lord Ahmad. However, the reviewing case officer, having considered all the correspondence available, as well as the case officer’s view, confirmed she was upholding the decision the case officer had reached, and was satisfied that the case officer had provided the Applicant with the correct outcome.

31. In concluding the case review the reviewing case officer stated that she considered that the case officer had handled the Applicant’s complaint reasonably and in accordance with the Commissioner’s casework processes.

32. The Applicant was informed by the case review officer, that if she remained dissatisfied following this case review, then she would have a right under Articles 79 and 82 of the GDPR to undertake proceedings through the courts if she was of the view that her information rights had been infringed. The Applicant was also advised of her right to refer the Commissioner to The Parliamentary and Health Service Ombudsman (PHSO) if she thought that she had been provided with a poor service.

Analysis

33. In an email of 23 February 2021, the Applicant says that the Tribunal appears to her to be “grasping at straws” to strike out “substantively evidenced allegations” of data breaches. However, this submission does not recognise the scope of this Tribunal’s powers; this Tribunal has no power to consider the substance of allegations of data breaches made by a data subject or to provide any remedy.

34. The legal principles limiting the powers of the Tribunal in this case, can be distilled as follows; once an outcome to her complaint was provided to Mrs Britton then the Tribunal has no further power to direct steps be taken, the complaint reinvestigated or to consider whether the outcome provided was correct as a matter of law or fact.

35. Mrs Britton was provided with a response to her complaint on 26 August 2020 and this outcome was reviewed and upheld under the Respondent's case review process on 3 November 2020. The Applicant does not agree with the outcome, but this Tribunal has no power to consider an appeal against the Information Commissioner's substantive findings.

36. The Tribunal has no power to do what Mrs Britton is asking for; there is no power to investigate a data subject's allegations of accessing data without permission, or to profile her in an inaccurate way. This Tribunal's jurisdiction does not extend to the investigation of Mrs Britton's allegations nor the reporting of any data crimes, corruption and perversion of the course of justice subsequent to such an investigation.

37. This Tribunal has no power to order the ICO to

- a) investigate a case for possible criminal data breaches, corruption or perversion of the course of justice
- b) provide evidence of the extent of their investigation for the purposes of transparency or otherwise
- c) justify the decisions taken whilst responding to Mrs. Britton's allegations of data breach.

38. On 10 March 2021 Mrs Britton wrote to the tribunal asking that the Tribunal direct that she was provided with all the evidence of data held but not disclosed by the FCO. Mrs Britton may have made a subject access request but that is not within the scope of this appeal and neither is any Freedom of Information Act request such as that referred to in Mrs Britton's email of 11 March 2021⁶.

39. I note the Applicant also alleges in her emails that she has been defamed. Actions for defamation are dealt with in the courts and not this Tribunal. I express no opinion one way or another about whether she can, or whether she should, pursue such an action; again, that is a matter for Mrs Britton about which this Tribunal cannot advise her.

40. Further, in her email of 9 March 2021 there is reference to an application being made to the North London Magistrates' Court about which Mrs Britton has been asked to provide concise particulars. For the avoidance of doubt this

⁶ IC-39289-C1M6

tribunal has no power to investigate any criminal allegation, which are entirely within the remit of the criminal courts.

Conclusion

41. Turning to s166 DPA18, and this application, the Respondent has considered the Applicant's complaint in case reference IC-52453-N8K4, taken steps as outlined above and informed her of the outcome.

42. The Applicant is not satisfied with that outcome and wishes it to be reconsidered but it is, nonetheless, an outcome.

43. This Tribunal has no power to make a decision about the merits of that outcome, whether it be right or wrong. Neither does the Tribunal have power to examine whether there should be further or different steps to those taken by the Commissioner. This is the case regardless of the nature of the complaint made or its evidential basis.

44. Furthermore, the Tribunal does not have any power to supervise or mandate the performance of the Commissioner's functions.

45. There is subsequently no basis for the Tribunal to make an order under section 166(2) DPA18.

46. Having considered whether this tribunal could provide the Applicant with any other remedy I have concluded that while there may be a remedy available from the courts (about which I make no conclusions or give any indication) having considered the nature of the issues raised by Mrs Britton there is no other remedy available from this Tribunal in relation to the application made on 31 December 2020.

47. In order for Mrs. Britton's application of 31 December 2020 to proceed there must be a realistic prospect of its success. For the reasons set out above, I have concluded that this Tribunal would not be able to provide Mrs. Britton with the outcome(s) she seeks and that therefore the application is hopeless, or in other words has no reasonable prospect of success.

48. I know this decision will be a disappointment to Mrs. Britton however, this Tribunal can only act within the scope of its power and cannot provide her with the remedy she seeks.

49. Having taken account of all relevant considerations, I strike out this application pursuant to 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 because there is no reasonable prospect of the application succeeding.

Date: 13 April 2021

**Lynn Griffin
Tribunal Judge**

Promulgated

Date: 14 April 2021

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