Case Reference: EA/2022/0199/GDPR

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard by: remotely by video conference
Heard on: 2 June 2023
Decision given on: 20 June 2023

Before

TRIBUNAL JUDGE OLIVER
TRIBUNAL MEMBER DAVE SIVERS
TRIBUNAL MEMBER EMMA YATES

Between

MICHAEL WATTS, LUCINA WHITELEY AND BRYONY WHITELEY-DARBOE

Applicants

and

THE INFORMATION COMMISSIONER

Respondent

Representation:
For the Applicants: Mr H Gillow, counsel
For the Respondent: Mr C Davies, counsel

Decision: The application is dismissed

REASONS

Mode of hearing

1. The proceedings were held by video (CVP). All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

Background to Application

2. This application is made under section 166 of the Data Protection Act 1998 ("DPA 2018"). The Applicants ask for an order that the Information Commissioner (the "Commissioner") takes certain actions in relation to a complaint about processing of their personal data.

3. On 15 October 2020, the Commissioner received an online complaint form from the Applicants' representative. The complaint was about the way in which HW Fisher Ltd ("HW Fisher") had processed information relating to the Applicants.

4. In brief, the background to the complaint is as follows. The Applicants are two directors and a services provider of Novel, a television production company. Novel entered into an assignment agreement with a publishing group, Orion, to purchase intellectual property rights in a series of children's books. The assignment agreement required Novel to provide quarterly statements showing receipts and the calculation of royalties. It also included a provision that gave Orion the right to examine Novel's books of account (clause 3.4). Orion appointed HW Fisher to examine Novel's books of account. There was a legal dispute about the wording of the assignment agreement and what documents Orion should be permitted to examine under clause 3.4. This resulted in a decision of Mr Justice Vos (the "Vos judgment"), which found: examination must be limited to materials in respect of the 12 month period that is the subject of the examination; the right was only to have material that vouches the accuracy of sums charged rather than for challenging the size of the figure; and use of the materials for ulterior purposes would breach the terms of the assignment agreement.

5. The Applicants discovered that HW Fisher had been preparing tables of the aggregated earnings of the Applicants and providing this information to Orion. They asked for this to stop, on the basis it was misuse of personal data and not relevant to the purpose of verifying the accuracy of royalty statements. HW Fisher relied on Article 6(1)(f) of the General Data Protection Regulation ("GDPR") (processing for legitimate interests).

The complaint

6. The complaint form was submitted on 15 October 2020. The complaint was about misuse of personal data by both Orion and HW Fisher. It included a letter from the Applicants' legal representative which set out the background and five reasons for objecting to the handling of the personal data.

7. The Applicants' complaint was allocated to a case officer on 9 March 2021 and assigned case reference number IC-66926-J3M4. On 21 April 2021, the case officer spoke with the representative on the telephone. It was agreed that the representative would forward a copy of the Vos judgment, which was sent the next day. On 21 May 2021, the case officer sent an email to HW Fisher asking for information. HW Fisher responded by email to the case officer's questions on 18 June 2021.

8. Having reviewed the correspondence, the case officer responded to the representative by email on 22 June 2021 advising that in his view it does not appear that the organisation had infringed their obligations under the GDPR and following a review of the issues raised it does not suggest any wider concerns about their information rights practices. The case officer advised that the Commissioner was not going to take any further steps.

9. On 8 July 2021, the Applicants requested a case review. On 1 September 2021, the reviewing officer advised that she was satisfied that the case officer had made an appropriate determination in

the case and had properly handled the Applicants' concerns in line with service standards, that the case review was the final stage of the case handling process, and that the complaint would not be considered further.

10. On 8 December 2022 (after this application had been made), another case officer provided a letter which reviewed the Commissioner's handling of the complaint and case review, and the concerns raised in the original complaint. This provided further information on why the complaint was not upheld.

The Application

11. The Applicants say that HW Fisher are in continuing breach of the GDPR. They rely on the Vos judgment to show that there is no legitimate interest in compiling and retaining information outside the 12 month limit.

12. The Applicants say that in handling the complaint the Commissioner has:

a. Failed to take appropriate steps to respond to the complaint (the complaint has been misconstrued and/or ignored);
b. Failed to provide the complainant with information about the progress of the complaint, or the outcome of the complaint, before the end of the period of 3 months beginning when the Commissioner received the complaint;
c. Failed to provide reasons for the decision reached, and specifically failed to provide the Applicants with a copy of the HW Fisher's response upon which the Commissioner principally relied (instead of providing reasons);
d. Failed to inform the Applicants of their rights under s.166 DPA 2018.

13. The Applicants also say that, in his response to the complaint, the Commissioner has:

a. Had no regard to the Vos judgment, of clear relevance in determining the legitimate interest exception; and
b. Failed to uphold information rights in the public interest. If the Commissioner has decided it cannot have regard to the Vos judgment, then it follows that, in discharging its regulatory functions, it must give reasons, as in this case the issue of misuse of personal data overlaps with a Court judgment which provides clear assistance in interpreting the extent to which measures taken by a data processor are lawful under the GDPR. The Vos judgment gives the Commissioner a clear basis on which to structure its investigation and response. It has done neither, with no explanation as to why.

14. The Applicants seek:

a. An order under s166(2) (a) and (b) that the Commissioner take appropriate steps to respond to the complaint, having specific regard to the issues raised by the Applicants, including that the Commissioner properly considers the complaint, fully taking into account the Vos judgment;
b. An order that the Commissioner provide the Applicants with a copy of the HW Fisher response to the original complaint (if not already provided);
c. An order that the Commissioner provides full reasons for any decision;

d. In the light of the failure on the part of the Commissioner to address concerns prior to the issue of this application, an order for costs under Rule 10 of The Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009.

The Commissioner's response

15. The Commissioner says that disagreement with the Commissioner's findings is not an adequate basis upon which to seek an order under section 166 DPA 2018. This is limited to correcting procedural failings, and there has been no such failing in this case.

16. The Commissioner says that he has conducted a thorough investigation by considering the Applicants' complaint, engaging with HW Fisher and enquiring as to its handling of the Applicants' complaint, and providing the Applicants with both an outcome on 22 June 2021 and a case review on 1 September 2021. A case officer also responded separately to an information access request from the Applicants on 8 July 2021. The Commissioner has clearly taken appropriate steps to respond to the Applicants' complaint and information access request within the requirements of the legislation. As the Commissioner has taken steps to comply with the procedural requirements set out in section 166(1) DPA 2018, there is no basis for the Tribunal to make an order under section 166(2) DPA 2018.

17. The Commissioner applied for the application to be struck out as it was significantly out of time, and had no reasonable prospect of succeeding. This was declined by Registrar Bamawo on 24 November 2022. In relation to prospects of success, the decision states, "*The Tribunal cannot direct, under section 166(2) DPA, the Commissioner as to what the outcome of his investigation should be. However, it seems to me that the Tribunal can consider whether the Commissioner has provided an outcome to a complaint; in this instance a direction might be an outcome that provides sufficient detail as to why the Commissioner concluded that HW Fisher's legitimate interest assessment was considered and balanced. By way of example, by stating what the legitimate interest was, why the processing was necessary to achieve it and how the balance against the rights of the Applicants was struck. This would be in accordance with the Data Protection Principles (GDPR Article 6(1))*."

Applicable law

18. Section 165 of the Data Protection Act 2018 provides as follows:

165 Complaints by data subjects

(1) Articles 57(1)(f) and (2) and 77 of the UK GDPR (data subject's right to lodge a complaint) give rights to data subjects to complain to the Commissioner if the data subject considers that, in connection with personal data relating to him or her, there is an infringement of the UK GDPR.

(2) A data subject may make a complaint to the Commissioner if the data subject considers that, in connection with personal data relating to him or her, there is an infringement of Part 3 or 4 of this Act.

(3) The Commissioner must facilitate the making of complaints under subsection (2) by taking steps such as providing a complaint form which can be completed electronically and by other means.

(4) If the Commissioner receives a complaint under subsection (2), the Commissioner must-
(a) take appropriate steps to respond to the complaint,
(b) inform the complainant of the outcome of the complaint,
(c) inform the complainant of the rights under section 166, and
(d) if asked to do so by the complainant, provide the complainant with further information about how to pursue the complaint.

(5) The reference in subsection (4)(a) to taking appropriate steps in response to a complaint includes-
(a) investigating the subject matter of the complaint, to the extent appropriate, and
(b) informing the complainant about progress on the complaint, including about whether further investigation or co-ordination with a foreign designated authority is necessary.

19. There is the following redress for a failure to meet that statutory duty under section 166:

166 Orders to progress complaints

(1) This section applies where, after a data subject makes a complaint under section 165 or Article 77 of the UK 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.

(4) Section 165(5) applies for the purposes of subsections (1)(a) and (2)(a) as it applies for the purposes of section 165(4)(a).

20. The Tribunal can only make an order under section 166(2) if one of the conditions at section 166(1)(a), (b) or (c) is met. There are further rights of action against the data controller or data processor in sections 167-169, but these may only be pursued in the High Court or the county court.

21. The DPA 2018 implements Article 78 of the UK General Data Protection Regulation ("UK GDPR"). This sets out a right to an effective judicial remedy where the Commissioner "*does not*

handle a complaint or does not inform the data subject within three months on the progress or outcome of the complaint...".

22. There have been a number of appeal decisions which have considered the scope of section 166. It is clearly established that the Tribunal's powers are limited to procedural issues, rather than the merits or substantive outcome of a complaint.

a. ***Leighton v The Information Commissioner (No.2)*** [2020] UKUT 23 (AAC), paragraph 31 – "*I note that in Platts v Information Commissioner (EA/2018/0211/GDPR) the FTT accepted a submission made on behalf of the Commissioner that "166 DPA 2018 does not provide a right of appeal against the substantive outcome of an investigation into a complaint under s.165DPA 2018" (at paragraph [13]). Whilst that is a not a precedent setting decision, I consider that it is right as a matter of legal analysis. Section 166 is directed towards providing a tribunal based remedy where the Commissioner fails to address a section 165 complaint in a procedurally proper fashion. Thus, the mischiefs identified by section 166(1) are all procedural failings. "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. Furthermore, if the FTT had the jurisdiction to determine the substantive merits of the outcome of the Commissioner's investigation, the consequence would be jurisdictional confusion, given the data subject's rights to bring a civil claim in the courts under sections 167-169*."

b. ***Scranage v Information Commissioner*** [2020] UKUT 196 (AAC), paragraph 6 - *"In my experience – both in the present appeal and in many other cases – 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."* (emphasis in original).

c. ***Killock v Information Commissioner*** [2022] 1 WLR 2241, Upper Tribunal at paragraph 74 - "…*It is plain from the statutory words that, on an application under section 166, the Tribunal will not be concerned and has no power to deal with the merits of the complaint or its outcome. We reach this conclusion on the plain and ordinary meaning of the statutory language but it is supported by the Explanatory Notes to the Act which regard the section 166 remedy as reflecting the provisions of article 78(2) which are procedural. Any attempt by a party to divert a tribunal from the procedural failings listed in section 166 towards a decision on the merits of the complaint must be firmly resisted by tribunals*."

23. Section 166(1)(a) refers to a failure to take "*appropriate steps*" to respond to a complaint, which includes investigating the subject matter of the complaint "*to the extent appropriate*". In ***Killock***, the Upper Tribunal made it clear that the assessment of what is "appropriate" requires the Tribunal to take into consideration and give weight to the views of the Commissioner as an expert regulator. It was their view that, "…*in the sphere of complaints, the Commissioner has the institutional competence and is in the best position to decide what investigations she should undertake into any particular issue, and how she should conduct those investigations."* (paragraph 85). These decisions are informed by the nature of complaint and other matters such as regulatory priorities, other

investigations in the same subject area, and judgment on how to deploy limited resources. This does not mean that the Tribunal can never challenge the Commissioner's decision - the Upper Tribunal went on to say that the Tribunal need not in all cases "*tamely accept the Commissioner's judgment which would derogate from the judicial duty to scrutinise a party's case."* However, where the Commissioner has exercised a regulatory judgment, "*the Tribunal will need good reason to interfere (which may, in turn, depend on the degree of regulatory judgment involved) and cannot simply substitute its own view.*" (paragraph 86).

24. The breadth of the Commissioner's discretion in relation to complaints investigation was considered by Mostyn J in the recent High Court decision in ***R (Delo) v Information Commissioner*** [2023] 1 WLR 1327, paragraph 57 - *"The treatment of such complaints by the commissioner, as before, remains within his exclusive discretion. He decides the scale of an investigation of a complaint to the extent that he thinks appropriate. He decides therefore whether an investigation is to be short, narrow and light or whether it is to be long, wide and heavy. He decides what weight, if any, to give to the ability of a data subject to apply to a court against a data controller or processor under article 79. And then he decides whether he shall, or shall not, reach a conclusive determination..."*

25. There are potentially conflicting authorities on whether section 166 can be used to reopen a closed complaint.

26. In ***Killock***, the Upper Tribunal described section 166 as a "*forward-looking provision, concerned with remedying ongoing procedural defects that stand in the way of a timely resolution of a complaint*." However, they went on to say that it is possible for complaints to be reopened – "*We do not rule out circumstances in which a complainant, having received an outcome to his or her complaint under section 165(4)(b), may ask the Tribunal to wind back the clock and to make an order for an appropriate step to be taken in response to the complaint, under section 166(2)(a). However, should that happen, the Tribunal will cast a critical eye to assure itself that the complainant is not using the section 166 process to achieve a different complaint outcome."* (paragraph 87).

27. In contract, Mostyn J in the High Court appears to have taken a different view in ***Delo***, paragraph 131 – "*For my part, if an outcome has been pronounced, I would rule out any attempt by the data subject to wind back the clock and to try by sleight of hand to achieve a different outcome by asking for an order specifying an appropriate responsive step which in fact has that effect. The Upper Tribunal [in Killock] rightly identified in para 77 that if an outcome was pronounced which the complainant considered was unlawful or irrational then they can seek judicial review in the High Court."* We deal with this conflict in the discussion below.

Issues and evidence

28. The issue in this case is whether the Tribunal should make any order under section 166(2) DPA 2018.

29. By way of evidence and submissions we had the following, all of which we have taken into account in making our decision:

a. An agreed bundle of open documents.
b. A witness statement with two exhibits from Lucinda Whiteley.
c. Written final submissions from the parties.
d. Skeleton arguments from the parties.
e. Oral submissions from the parties at the hearing.

30. The Tribunal has read and taken into account Ms Whiteley's statement. She was not required to give oral evidence as the Commissioner did not wish to ask her any questions. We therefore accept the content of the statement as correct. The statement explains what personal data was collated by HW Fisher, how this involved an assessment of reasonableness of amounts paid rather than simply their accuracy, and why she says the legitimate interests condition for processing that data should not apply in light of the Vos judgment. She complains that the Commissioner does not see the Vos judgment as relevant to its determination and has refused to consider that judgment in the context of the Appellants' complaint. She says, "*The ICO has never properly considered the complaint, and that is all we are asking them to do*", and "*I also don't believe that the ICO has weighed up the impact that the processing of this personal data has had upon us as individuals, as against the need to process it, considering the judgment*."

Discussion and Conclusions

31. We had thorough written and oral submissions from the parties, and we thank both representatives for their clear presentations. In essence, their arguments are as follows. The Appellants say that the Commissioner's failure to take proper account of the Vos judgment is a procedural matter which falls within the Tribunal's powers under section 166(2). The Commissioner says that it is a substantive matter which the Tribunal cannot interfere with, following the various authorities set out above.

32. The first issue is whether we have power at all under section 166(2) to make an order because the Commissioner's decision has already been issued. The Commissioner argues that this is a forward-looking provision, the conclusion of the complaint was reached a long time ago and re-opening it now would be directly contrary to the statutory purpose. The Applicants argue with reference to ***Killock*** that the Tribunal can make an order even where the Commissioner has provided an outcome to the complaint. They say that ***Killock*** should be preferred to the passage from ***Delo*** quoted above because it is a decision of the specialist Upper Tribunal which is not bound by the High Court. They also say that this is not what ***Delo*** says in any event, as it refers to not using section 166 to achieve a different outcome (a substantive rather than procedural issue).

33. We find it is unclear whether the comments in ***Delo*** were intended to say there was a complete bar on section 166 being used at all once a complaint outcome had been provided. In any event, we accept the Applicants' submissions that ***Killock*** should be preferred as a decision of the specialist Upper Tribunal. We also note that the comments in ***Delo*** were obiter - they were not directly relevant to the decision as no substantive outcome was provided in that case. We have therefore gone on to consider whether in the circumstances we should make an order under section 166(2).

34. The Applicants' argument is that the Tribunal can intervene under section 166 where the Commissioner has failed to take any steps to respond, or where any steps taken are not "appropriate". They say that taking "appropriate" steps requires particular things where the Commissioner chooses to examine certain information as part of his investigation and decides to provide a reasoned decision. He must: (i) take the information into account properly and not make manifest errors of assessment; and (ii) provide proper and intelligible reasons for his decision which allow a complainant to understand that decision.

35. We have considered the orders requested by the Applicants as follows.

36. ***Take appropriate steps to respond to the complaint, having specific regard to the issues raised by the Applicants, including that the Commissioner properly considers the complaint, fully taking into account the Vos judgment.*** The Applicants say that this would be an order about a procedural matter which is permitted under section 166(2). The Commissioner says that this is in essence challenging the substance of the Commissioner's decision and asking it to be reopened almost two years after the outcome was issued.

37. In relation to failure to take information into account, the Applicants argue that the Commissioner has failed to take three elements of the Vos judgment into account – the 12 month time period over which information could be examined, the restrictions on use of that information for verifying accuracy only, and it being irrelevant whether charges were reasonable. The Applicants say that the processing by HW Fisher is incompatible with all of these elements, and this is of critical importance to the assessment of their legitimate interest. The Applicants complain that the Commissioner's first response to the complaint entirely misconstrued the Vos judgment, and the second response appears to have had no regard to it. The Applicants say that the Commissioner was obliged to take the Vos judgment into account "properly", and not make manifest errors in his consideration of it.

38. The Commissioner says that the Applicants are trying to use section 166 to ventilate their dissatisfaction with the outcome of the complaint and the actions of HW Fisher, pointing to the fact that all of the documents filed by the Applicants (including the witness statement) complain at length about the substance of the decision. The correct forum is proceedings against HW Fisher in the civil courts. The Commissioner has taken "appropriate" procedural steps. The handling of the complaint is a matter of regulatory judgment. As confirmed in ***Delo***, the statutory complaints process allows the Commissioner to decide, after a limited investigation, that no further action should be taken – meaning he must be entitled after more detailed consideration to determine what further action is appropriate. In any event the Commissioner did take the Vos judgment into account. An order that the Commissioner "properly consider" the complaint by "fully taking into account" the Vos judgment is clearly a substantive rather than a procedural matter.

39. Having considered the detailed arguments of both parties, we find that the order sought by the Applicants goes beyond what the Tribunal is permitted to do under section 166(2). This is not simply a procedural step. It is effectively saying that the Commissioner has not done his job correctly because the Applicants are dissatisfied with the interpretation of the relevance of the Vos judgment and its impact on the complaint outcome. The Commissioner has exercised regulatory judgment in terms of how to conduct the investigation, including the relevance of the Vos judgment. The Applicants clearly disagree with the Commissioner's view. By ordering the Commissioner to reconsider the complaint and Vos judgment, and do so "properly", the Tribunal would in essence be disagreeing with the Commissioner's interpretation of information provided during the investigation and the outcome itself. Whether the Commissioner has looked at something "properly", or "fully" taken it into account, can only be assessed by looking at the merits of the complaint. ***Killock*** makes it clear we should not do this under section 166. This is a substantive rather than a procedural matter.

40. At the hearing, the Applicants' representative submitted that this was a procedural matter only, because the Applicants were not saying that the outcome decision should be changed. They were simply asking for the Commissioner to look again at the Vos judgment. We disagree. We accept that an "appropriate step" might involve looking at the Commissioner's investigation in terms of procedure. For example, if the Commissioner refused to accept supporting evidence from a complainant, or accepted some evidence but then refused to look at it. This might be an appropriate

exercise of regulatory power, but in other cases it might be an example of circumstances where the Tribunal should not "tamely accept" the Commissioner's judgment. However, that is not the case here. The Commissioner did consider the Vos judgment and referred to it in the first outcome letter. The Applicants are not happy with how the Commissioner took the Vos judgment into account, but this is a substantive matter.

41. ***Provide the Applicants with a copy of the HW Fisher response to the original complaint***. Section 132(1) DPA 2018 provides that the Commissioner must not disclose without lawful authority information which has been provided for the purposes of the Commissioner's functions, relates to an identifiable individual or business, and is not publicly available from other sources. The HW Fisher response falls within this section. Section 132(2) sets out when a disclosure is made with lawful authority. This includes where "*the disclosure was made for the purposes of, and is necessary for, the discharge of one or more of the Commissioner's functions*" (section 132(2)(c)).

42. The Commissioner says that the Applicants have not identified any obligation to provide this information, and so it is a matter for the Commissioner's discretion whether to do so. The Applicants say that this is the simplest way of resolving what they see as the Commissioner's failure to give proper reasons for his decision. We find that we should not make the order sought by the Applicants. It is not at all clear that disclosure of HW Fisher's response would be "necessary" to discharge the Commissioner's function of responding to the complaint, and so it may not be lawful. The Applicants also suggested disclosure would be in the public interest under section 132(2)(f), but again we do not see that this applies to the current situation. In any event, this is a matter for the Commissioner's discretion. It is not an "appropriate step" within the meaning of section 166(2).

43. ***Provide full reasons for any decision***. The Applicants complain that they do not have a proper explanation from the Commissioner in either of the outcome letters of what HW Fisher's legitimate interest is, why it is said to apply, and how the Applicants' own rights have been taken into account and balanced. The Applicants submit that they need these reasons to properly understand whether and how they could challenge the Commissioner's decision by way of judicial review, and also potentially bring a legal action against HW Fisher for unlawful processing of their data. They say that this is a further failure to take "appropriate steps" to respond to the complaint. They point to the strike-out decision of Registrar Bamawo as suggesting it would be appropriate for the Commissioner to explain clearly what the legitimate interest is said to be, why processing is necessary to achieve this, and how the balance against the Applicants' rights has been struck.

44. The Commissioner says that the obligation under section 165(4) is to inform the complainant of the outcome of the complaint. The level of detail is a matter for the Commissioner. In this case, the Commissioner has provided detailed reasons for the decision in the first response, the case review response, and the second response in December 2022.

45. We understand the Applicants' position is that they would like full information about the reasons behind the Commissioner's decision before taking the potentially time-consuming and costly step of further legal proceedings against the Commissioner and/or HW Fisher. We find, however, that this does not fall within the Tribunal's powers under section 166.

46. We are not bound by the Registrar's view in the strike-out decision, which was considering whether the proceedings had no reasonable prospects of succeeding, rather than the detailed merits of the application. We also note that the second, more detailed outcome letter was provided after this decision. The UK GDPR requires a judicial remedy where the Commissioner "*does not handle a complaint or does not inform the data subject within three months on the progress or outcome of*

the complaint". The Applicants have been provided with an outcome. There is no requirement in the UK GDPR or the DPA 2018 for specific reasons to be provided. In fact, the only obligation in relation to outcome is that this should be provided within three months (section 165(4)). As described in ***Killock***, the separate requirement to take "appropriate steps" to respond to the complaint is forward-looking and directed at the handling of the complaint, not the outcome decision itself. ***Delo*** is authority for the fact that the Commissioner does not need to even provide a conclusive determination for every complaint. The Applicants argue that nevertheless the Commissioner must explain his reasons properly if he decides to provide a definitive outcome. We do not agree. We do not see how the Commissioner can be required to provide detailed reasons when he is not even required to determine every complaint. In light of these authorities, the order sought by the Applicants goes beyond the Tribunal's powers.

47. As put simply by their representative, the Applicants want to understand in more detail what the Commissioner says about the Vos judgment and why he says it. We can see why they would like to have this information. They make the point that this would ensure an effective use of resources by avoiding High Court challenges that are not necessary. However, our view is that the Tribunal is not able to make such an order under section 166 DPA 2018.

48. For the reasons given above, we do not make any of the orders sought by the Applicants and we dismiss the application.

Signed Judge Hazel Oliver Date: 19 June 2023

Promulgated Date: 20 June 2023