



Neutral Citation Number: [2023] UKFTT 838 (GRC)

Case Reference: EA-2023-0274-GDPR

First-tier Tribunal  
General Regulatory Chamber  
Section 166 DPA 1998

Decision Given on: 13 October 2023

Before

TRIBUNAL JUDGE BUCKLEY

Between

BENJAMIN AARON RUTT

Applicant

and

THE INFORMATION COMMISSIONER

Respondent

JUDGE BUCKLEY

Sitting in Chambers  
On 11 October 2023

DECISION

1. The application under section 166 of the Data Protection Act 1998 is struck out.

REASONS

2. In this decision, 'the Application' is a reference to the application made to the tribunal by Mr Rutt under section 166 of the Data Protection Act 1998 (DPA) and 'the Applicant' is a reference to Mr Rutt.

*Application and response*

3. The Commissioner applies for the Application to be struck out under rule 8(3)(c) (no reasonable prospects of success) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.
4. The Commissioner submits that the Applicant simply disagrees with the conclusions reached by the Commissioner on his complaint. An application under section 166 DPA18 permits a Tribunal to make an order against the Commissioner only if he has failed in some procedural respect. The Commissioner has taken steps to respond to this complaint and provided an outcome to the Applicant's complaint on 13 April 2023.
5. The Applicant was given the opportunity to make representations in response to the strike out application but did not provide any representations.

*Discussion and conclusions*

6. I have read the grounds of the Application in detail. It is apparent from the grounds that the Applicant is of the view that the data controller did not comply with the law in relation to sensitive personal data, and that the Commissioner should either have reached a different decision and/or should have dealt with certain aspects of the complaint in more detail.
7. The Commissioner provided an outcome to the Applicant's complaint on 13 April 2023, in which he concluded that the data controller had complied with their data protection obligations.
8. On an application to the tribunal under section 166, the tribunal has no power to deal with the merits of the complaint to the Commissioner or its outcome (**Killock & Veale & ors v Information Commissioner** [2021] UKUT 299 (AAC) and **R (on the application of Delo) v Information Commissioner and Wise Payments Ltd** [2022] EWHC 3046 (Admin)).
9. I have considered whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of the Application succeeding at a full hearing.
10. In my view, there are no reasonable prospects of the Application under section 166 succeeding. The Application is based on the following assertions:
  - 10.1. That the data controller acted in breach of its data obligations;

10.2. That the conclusions reached by the Commissioner were wrong; and  
10.3. That the Commissioner should have dealt with certain aspects of the complaint in more detail.

11. None of these matters fall within the remit of the Tribunal on an application under section 166.
12. I have considered whether I should exercise my discretion to strike the Application out. Taking into account the overriding objective, it is a waste of the time and resources of the Applicant, the tribunal and the Commissioner for this Application to be considered at a final hearing. In my view it is appropriate to strike the Application out.
13. For the above reasons the Application is struck out under rule 8(3)(c).

Signed Sophie Buckley

Judge of the First-tier Tribunal  
Date: 11 October 2023