



Neutral citation number: [2024] UKFTT 188 (GRC)

Case Reference: EA/2023/0267

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

**Decided without a hearing
Decision given on: 6 March 2024**

Before

JUDGE LYNN GRIFFIN

Between

MARGARET CAMPBELL (DECEASED)

Appellant

and

INFORMATION COMMISSIONER

Respondents

Decision – the appeal is struck out under rule 8(2) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

Reasons

1. In accordance with my directions dated 29 February 2024, the direction below took effect automatically at 12 noon on 6 March 2024

The appeal is lapsed as the tribunal does not have jurisdiction to continue to hear the appeal after the death of the appellant.

This means that the Tribunal will take no further action on the appeal and the file will be closed.

It is struck out under rule 8(2).

2. The tribunal received notice that Mrs Campbell, the appellant has died.
3. I made directions on 29 February 2024 indicating that the tribunal was proposing to strike out the appeal for want of jurisdiction and inviting submissions pursuant to rule 8(4) by 5pm on 5 March 2024.
4. The tribunal received a response from the representatives of the appellant stating “There will be no submissions made in this matter on behalf of the Appellant (deceased) pursuant to your Direction of 29 February 2024.”
5. An email was received from the Information Commissioner (sent on 4 March 2024 at 17:29).
6. No objection to the proposed strike out was received.
7. The Law Reform (Miscellaneous Provisions) Act 1934 section 1 provides for causes of action to survive death for the benefit of the deceased’s estate. However, this does not apply if there is no “cause of action”. There is no statutory definition of a cause of action. The higher courts have determined that a cause of action may be identified as "a factual situation the existence of which entitles one person to obtain from the court a remedy against another person." See *Letang v Cooper* [1965] 1 QB 232 at 243 per Diplock LJ.
8. In *Campbell v Secretary of State* [2018] UKUT 372 (AAC) the Upper Tribunal found that a challenge to the Issue of a National Security certificate under the Data Protection legislation was not a cause of action.
9. I have concluded that even though a person’s rights under the data protection legislation dies with them, an appeal under FOIA is akin to the appeal taken to the Upper Tribunal in that case in that it may be described thus “[the] procedure is no more than a statutory appeal route, a procedural mechanism, for challenging”, in this case, the issue of the decision notice by the Information Commissioner.
10. The Information Commissioner has drawn my attention to *Sugar (deceased) v BBC & another* [2012] UKSC 4. However, I note that in that case their Lordships did not hear argument and a representative for Mr Sugar’s estate continued the appeal “by consent” of the parties. Thus, the matter was not subject to argument determined by the court and does not bind the tribunal. I have not been referred to any other authority neither have I found any other authority dealing specifically with this jurisdiction.

11. In accordance with rule 8(4) I provided an opportunity for submissions to be made on the topic. No objection was received to the proposed strike out.
12. I do not exercise the power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them as there is no other court or tribunal that would have jurisdiction to hear the proceedings.
13. Thus the appeal is struck out under rule 8(2).

Signed: *Judge Griffin*

Date: 6 March 2024