

ENGLAND AND WALES / JUDGMENT

Marcel Bard v The Information Commissioner

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NCN: [2026] UKFTT 01346 (GRC) First-tier Tribunal General Regulatory Chamber Information Rights Case Reference: FT/EA/2026/0267/GDPR Decided without a hearing Decision given on: 28 September 2026 Before JUDGE STEPHEN ROPER Between MARCEL BARD and THE INFORMATION COMMISSIONER Applicant Respondent Decision: The application is struck out

REASONS

Preliminary matters 1. In this decision, I use the following terms to denote the meanings shown: Applicant: Application: Marcel Bard. The Applicant's application (via Form GRC3 dated 16 July

2026) for an order by the Tribunal under section 166(2) in respect of the Complaint. Case Management Directions: The Case Management Directions dated 10 August 2026 issued by Judge Barrett. Commissioner: The Information Commissioner (the Respondent). Complaint: The Applicant's complaint to the Commissioner, dated 20 May 2026, concerning a subject access request made to Blacks Solicitors LLP. DPA: The Data Protection Act 2018. Tribunal Rules: The Tribunal Procedure (First-tier Tribunal) (General © CROWN COPYRIGHT 2026 Regulatory Chamber) Rules 2009. UK GDPR: The General Data Protection Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018. 2. Unless the context otherwise requires (or as otherwise expressly stated), references in this decision: a. b. to a section are references to the applicable section of the DPA; and to a rule are references to the applicable rule of the Tribunal Rules. Summary of this decision 3. 4. 5. This decision relates to the Applicant's application for an order by the Tribunal under section 166(2). Pursuant to rule 8(3)(c), the Tribunal may strike out proceedings if it considers that there is no reasonable prospect of a case succeeding. However, in accordance with rule 8(4), the Applicant is to be afforded the opportunity to make submissions in relation to any proposed strike out. As noted below, the Applicant has provided such submissions. Having considered the relevant evidence and submissions, I conclude that the Application should be struck out as having no reasonable prospect of success. I set out my reasons below. The Application 6. 7. 8. 9. The Application sought an order for the Commissioner to progress the Complaint, specifically by issuing an enforcement notice to Blacks Solicitors LLP. The Application stated that the Complaint was made on 20 May 2026, a date less than two months before the date of the Application. The Case Management Directions requested the

Applicant's submissions in respect of the potential strike out of the Application. The Applicant provided his submissions in response to the Case Management Directions, which I have taken into account. The Applicant's submissions did not, however (despite the specific requirement of the Case Management Directions) address how the section 166 and case law requirements were met in respect of the Application, other than a brief reference to the Applicant's view that no 'outcome' had been given in respect of the Complaint. The Tribunal's powers and role

10. The relevant powers of the Tribunal are set out in section 166(2) (as supplemented by section 166(3)). In summary, the Tribunal is empowered to make an order requiring the Commissioner either:
 - a. to take appropriate steps to respond to an applicable complaint;
 - b. to inform the complainant of the progress on that complaint, or of the outcome of that complaint, within a period which the Tribunal may specify.
11. However, an application under section 166 permits the Tribunal to make any such order only if the Commissioner has failed in some procedural respect, as specified in section 166(1) which is referred to below. The relevant statutory framework The right to complain to the Commissioner
12. An individual (a 'data subject') has a right to make a complaint to the Commissioner if that individual considers that there is an infringement of the UK GDPR and/or Parts 3 or 4 of the DPA in connection with their personal data. Section 165 sets out the position as follows: "(1) Articles 57(1)(f) and (2) and 77 of the UK GDPR (data subject's right to lodge a complaint) confer rights on 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."
13. So far as is relevant, section 165 then goes on to provide: "(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...”. 14. In essence, therefore, section 165(4) requires the Commissioner to take appropriate steps, as well as the specified other actions, when he receives a relevant complaint from an individual. The appropriate steps which the Commissioner must take include (in summary) investigating the complaint and informing the individual about its progress. The right to apply to the Tribunal 15. Section 166 provides individuals with a right to make an application to the Tribunal for an order requiring the Commissioner to take appropriate steps to respond to a relevant complaint, or to inform the individual of the progress on (or outcome of) the complaint, if the Commissioner has failed to take certain procedural actions in relation to it. So far as is relevant, section 166 provides: “(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.”.
- Discussion and findings The nature and effect of section 166 16. I start by addressing the nature and effect of section 166. I consider that it is appropriate to briefly summarise the legal position based on case law authorities. In essence (and so far as is relevant for current purposes) the following are the relevant legal principles.
17. An application under section 166: a. b. is not concerned with the merits of the relevant complaint; and does not provide a right of challenge to the substantive outcome of the Commissioner’s investigation into that complaint. 18. In other words, an application under section 166 does not address the merits or substance of a complaint but rather is merely procedural in nature: it is concerned only with procedural actions which the Commissioner is required to take in respect of the complaint.

19. The test (in section 166(1)(a)) as to whether the Commissioner has failed “to take appropriate steps to respond to the complaint” is exactly as it says – namely “appropriate steps” and not an ‘appropriate outcome’ (or similar). Likewise, the Tribunal’s powers where the Commissioner has failed to take appropriate steps include making an order that the Commissioner must “take appropriate steps to respond to the complaint” (and not to ‘take appropriate steps to resolve the complaint’).
20. Where the Commissioner has provided an outcome to a complaint, there may still be some scope for the First-tier Tribunal to make an order under section 166(2). However, in practice, once an outcome has been provided then the First-tier Tribunal will have limited scope to find that an “appropriate step” has been omitted. 21. It is also well established that the Tribunal does not undertake an oversight role over the Commissioner’s exercise of his functions or internal processes. In considering an application under section 166, the Tribunal must bear in mind that the Commissioner is the expert regulator and so is in the best position to consider the merits of a complaint and to reach a conclusion as to its outcome. Likewise, the Commissioner has a very broad discretion as to how he investigates complaints. However, whilst the Commissioner’s view carries weight, it is not decisive. The potential strike-out
22. The Case Management Directions specified that the Application may be struck out pursuant to rule 8(3)(c) if the Tribunal considers there is no reasonable prospect of it succeeding.
23. Case law has established the principles to be followed by the Tribunal when considering whether to strike out a case as having no reasonable prospect of success. In essence, the Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of the case succeeding at a full hearing. Whether there was a procedural failing by the Commissioner
24. As I have noted, section 166 is concerned with providing a remedy for any procedural failings on the part of the Commissioner after a complaint is made to him (not the merits of the complaint or its outcome). The Tribunal may only make an order under section 166(2) only if the Commissioner has failed in some procedural respect.
25. The procedural failings in question are those set out in section 166(1), which (in summary and paraphrasing) are as follows: a. b. c. not taking appropriate steps to respond to the complaint; not updating the complainant about progress on, or of the outcome of, the complaint within three months of the Commissioner receiving the complaint; not updating the complainant during a subsequent period of three months if the Commissioner has not concluded matters within the first three months.
26. As I have noted, the Application stated that the Complaint was made on 20 May 2026. This was also reflected in the evidence supporting the Application. Whether there is a reasonable prospect of the Applicant’s case succeeding

27. As I noted above, the Tribunal is only empowered to make an order under section 166 if there was a failure by the Commissioner to take certain procedural actions as referred to in that section.
28. The Commissioner did respond to the Complaint, as he contacted the Applicant by email on 1 July 2026, stating that he still had the Complaint, which hadn't yet been allocated to a case officer. Accordingly, I cannot conclude that the Commissioner has failed to take appropriate steps to respond to the Complaint, as a response had been given to it (albeit that it was a 'holding' response at that stage).
29. For there to be any further procedural failing, a period of at least three months had to have passed from the date of the Complaint to the date of the Application.
30. As the Application was made less than two months after the date of the Complaint, there would be no basis for the Tribunal to make any order under section 166(2). Consequently, I find that there is no reasonable prospect of the Applicant's case succeeding and accordingly I have decided to strike out the Application.
31. This decision does not preclude the Applicant from making a further application to the Tribunal under section 166 in respect of the Complaint in future, if there are appropriate circumstances.
- Final conclusions
32. For the reasons I have given, the proceedings are struck out under rule 8(3)(c) on the basis that there is no reasonable prospect of the Applicant's case succeeding.
- Signed: Stephen Roper Judge of the First-tier Tribunal
- Date: 25 September 2026
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Prepared on 25 October 2026 · Esheria