

ENGLAND AND WALES / JUDGMENT

Paul McGrath v The Information Commissioner

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Neutral citation number: [2026] UKFTT 01269 (GRC) First-tier Tribunal (General Regulatory Chamber) Information Rights Case Reference: FT/EA/2026/0238/GDPR Decided without a hearing Decision given on: 09 September 2026 Before JUDGE HARRIS Between PAUL MCGRATH and THE INFORMATION COMMISSIONER Applicant Respondent Decision: The Application is struck out under Rule 8(2)(a) because the Tribunal does not have jurisdiction to deal with it and under Rule 8(3)(c) because there is no reasonable prospect of it succeeding.

REASONS

1. These proceedings concern an application (the “Application”) under section 166(2) of the Data Protection Act 2018 (“DPA 2018”) for an order to progress the Applicant’s complaints against St Francis Primary School (“the School”) in relation to its handling of personal data, specifically an erasure request. The complaint was submitted to the Information Commissioner (“IC”) on 13 February 2026 and was dealt with under reference IC-480922-X0N1.
2. On 22 July 2026, the IC’s case officer sent an email to the School advising them that the IC had received a complaint from the Applicant about how they had handled personal data. The case officer further advised that they were breach of data protection legislation, namely that they had failed to respond to his request within the statutory one-month time limit. The case officer further advised that the School should ensure that they respond to future requests © CROWN COPYRIGHT 2026 within the one-month statutory time limit, and where there was a need for an extension, that they should inform the requester within the first month that the request had been received. Finally, the case officer directed them to respond to the Applicant’s erasure request within 14 days.
3. On the same day, the case officer wrote to the Applicant confirming that he had written to the School, raising the Applicant’s concerns directly with them, explaining that they had requested that they respond directly to the Applicant as soon as possible, or within 14 days. Further, the case officer also advised that if the school did not provide the Applicant within an appropriate response, the Applicant could consider an application to the court for an order that his request is processed, but to seek independent legal advice if he decided to pursue this course of action. The case officer confirmed that no further action would be taken on the complaint. The Application

4. The Applicant applied to the Tribunal by way of form GRC3 dated 27 June 2026. He stated that the outcome he was seeking was as follows: “Inform me of the progress of my complaint, or its outcome, within a certain time.” 5. In his grounds for the Application, the Applicant stated that he had not received an update on his complaint since submitting it to the IC on 13 February 2026 and noted that the IC’s acknowledgement had informed him of his right to apply to the Tribunal. The strike-out application
 6. The IC applied by way of form GRC5 dated 27 July 2026 to strike out the Application on the basis that there is no reasonable prospect of it succeeding under Rule 8(3)(c) (the “strike-out application”).
 7. The reasons which the IC gave for striking out the application were set out in its Response, particularly at paragraphs 16-18. In summary, these were as follows:
 - a. The IC apologised for his initial delay in responding to the Applicant’s complaint. However, the IC has since provided the Applicant with an outcome letter dated 22 July 2026).
 - b. The IC has taken steps to comply with the procedural requirements set out in section 166(1) of the DPA18, and there is therefore no basis for the Tribunal to make an order under section 166(2) DPA18. (see *Christina Buica v Information Commissioner*
- [2026] UKFTT 972 (GRC) at [10]) 8. I directed that the Applicant should provide representations in relation to the strike out application by 27 August 2026 under Rule 8(4). No response was received from the Applicant, but I am satisfied that the Applicant has had an opportunity to make representations on the proposed striking out under rule 8(4).

Legal framework

9. Section 165 DPA 2018 sets out the right of data subjects to complain to the IC about infringement of their rights under the data protection legislation. Under section 166 DPA 2018 a data subject can make an application to this Tribunal for an order as follows: “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. c. 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 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 - d. to take appropriate steps to respond to the complaint, or e. to inform the complainant of progress on the complaint, or of the outcome of the complaint, within a period specified in the order.”

10. 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 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.
11. Section 165 deals with the complainant's right to make a complaint and states that: "(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 foreign designated authority is necessary."
12. In the case of *Killock v Information Commissioner* [2022] 1 WLR 2241, the Upper Tribunal at paragraph 74 stated - "...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."
13. Mostyn J in the High Court 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..."
14. Mostyn J's decision in *Delo* was upheld by the Court of Appeal ([2023] EWCA Civ 1141) – "For the reasons I have given I would uphold the conclusion of the judge at [85] that the legislative scheme requires the Commissioner to receive and consider a complaint and then provides the Commissioner with a broad discretion as to whether to conduct a further investigation and, if so, to what extent. I would further hold, in agreement with the judge, that having done that much the Commissioner is entitled to conclude that it is unnecessary to determine whether there has been an infringement but sufficient to reach and express a view about the

likelihood that this is so and to take no further action. By doing so the Commissioner discharges his duty to inform the complainant of the outcome of their complaint.” (paragraph 80, Warby LJ).

15. The decision of the Upper Tribunal in *Cortes v Information Commissioner* (UA-2023-001298-GDPA) which applied both *Killock* and *Delo* confirmed that the nature of section 166 is that of a limited procedural provision only. “The Tribunal is tasked with specifying appropriate “steps to respond” and not with assessing the appropriateness of a response that has already been given (which would raise substantial regulatory questions susceptible only to the supervision of the High Court).... As such, the fallacy in the Applicant’s central argument is laid bare. If Professor Engelman is correct, then any data subject who is dissatisfied with the outcome of their complaint to the Commissioner could simply allege that it was reached after an inadequate investigation, and thereby launch a collateral attack on the outcome itself with the aim of the complaint decision being re-made with a different outcome. Such a scenario would be inconsistent with the purport of Article 78.2, the heading and text of section 166 and the thrust of the decisions and reasoning in both *Killock* and *Veale and R* (on the application of *Delo*). It would also make a nonsense of the jurisdictional demarcation line between the FTT under section 166 and the High Court on an application for judicial review.” (paragraph 33).
16. The case of *Dr Michael Guy Smith v Information Commissioner* [2025] UKUT 74 (AAC), noted at paragraph 60 that “it is for the Tribunal to decide, applying an objective test, if an “appropriate step” has been omitted, but observe that, in practice, that is unlikely to be the case where an ‘outcome’ has been produced. That is for two main reasons: first, because section 166 is a procedural provision and, as the principal mechanisms for enforcing rights or challenging the Commissioner are either claims against the data controller or judicial review of the Commissioner, section 166 should not be used to obtain ‘by the back door’ a remedy normally only available in those proceedings; secondly, because, if the Commissioner has already produced an outcome then, given the very wide discretion that the Commissioner has, both as to what and how to investigate and as to outcome, the scope for the Tribunal to say that an appropriate step has been omitted is limited.” In considering this the Tribunal must, as set out in paragraph 85 of *Killick* “when deciding objectively whether any (further) appropriate step needs to be taken by the Commissioner, take into account and give weight to the views of the Commissioner as an expert regulator.”
17. Paragraph 85 of *Killick* reads as follows: “However, in considering appropriateness, the Tribunal will be bound to take into consideration and give weight to the views of the Commissioner as an expert regulator. The GRC is a specialist tribunal and may deploy (as in *Platts*) its non-legal members appointed to the Tribunal for their expertise. It is nevertheless our 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. As Mr Milford emphasised, her decisions about these matters will be informed not only by the nature of

the complaint itself but also by a range of other factors such as her own regulatory priorities, other investigations in the same subject area and her judgment on how to deploy her limited resources most effectively. Any decision of a Tribunal which fails to recognise the wider regulatory context of a complaint and to demonstrate respect for the special position of the Commissioner may be susceptible to appeal in this Chamber.” Discussion and conclusions

18. I have decided to deal with this matter without a hearing, as the Appellant indicated that he wished the Application to be determined without a hearing. I note also that Rule 32(4) permits the Tribunal to strike out a case under Rule 8 without an oral hearing.
19. The first question is whether the IC provided an outcome to the Applicant’s complaint. The IC provided the Applicant with a response to his complaint on 22 July 2026. I consider that this response was in fact an outcome to the complaint, because provided an answer to all outstanding issues and demonstrated that the IC had given consideration to whether there were other appropriate steps which could be taken to progress the Applicant’s complaint.
20. This is sufficient in my view to demonstrate that the IC has complied with the requirements of section 165(4).
21. It appears to me therefore that there are no further appropriate steps which the IC ought reasonably to take to progress the complaint. In making this decision I have given significant weight to the view of the IC as the expert regulator that there are no further appropriate steps he should have taken.
22. Because I consider that there was an outcome determining the complaint and that there were no further appropriate steps which should be taken, I find the complaint has already been determined and therefore the Tribunal has no jurisdiction over it. I am also satisfied that there is no reasonable prospect of the case, or any part of it, succeeding because, in light of the fact that an outcome has been provided to the complaint, the outcome sought by the Applicant in the Application is not something which is within the Tribunal’s power to grant.
23. The proceedings are therefore struck out under Rule 8(2)(a) because the Tribunal does not have jurisdiction to deal with them and under Rule 8(3)(c) because there is no reasonable prospect of them succeeding. Signed: Judge Harris Date: 2 September 2026 6

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Prepared on 28 October 2026 · Esheria