



NCN: [2023] UKFTT 425 (GRC)
Case Reference: EA/2022/0119/GDPR [V]

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

Heard by Cloud Video Platform

**Heard on: 24 August 2022
Decision given on: 1 September 2022**

Before

TRIBUNAL JUDGE NEVILLE

Between

RICHARD RODNEY WILLSSHER

Applicant

and

INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: The applicant in person.

For the Respondent: No attendance

Decision: The proceedings are struck out pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASONS

1. On 26 November 2021 the applicant made a complaint to the Commissioner concerning a refusal by Devon and Cornwall police to rectify inaccurate information held about him. Following the correspondence between the three parties, an outcome was issued by the Commissioner on 21 April 2022. The applicant's complaint was summarised as follows:

When being charged of an offence in 2003, your name was mistakenly spelt as 'Wiltshire' on the charge sheet. This inaccurate name was then transferred onto Devon & Cornwall Police systems and entered onto the Police National Computer.

You have expressed concern to the ICO that Devon & Cornwall Police have refused to rectify this inaccurate information.

2. The Commissioner's decision on the complaint was as follows:

I have considered the information available to me in relation to this complaint and I am of the view that Devon & Cornwall Police has complied with its obligations under data protection law in this instance.

In a letter dated 25 November 2021, the organisation provided a response to your concerns. In this response it was explained that the incorrect spelling of your name is referred to as an 'alias' on the police system. The response states that the term 'alias' acts as a catch all term to include previous married names, names changed by deed pole [sic], inclusion of middle names and misspelt names.

Devon & Cornwall Police go on to explain that as the recording of 'Wiltshire' is a matter of fact, even though it is spelt incorrectly, it is not possible to change the record. Factually, the name 'Wiltshire' was recorded on your charge sheet in 2003 and therefore your record will continue to hold the name of 'Wiltshire' which will remain as an 'alias' on the Police National Computer.

This response falls in line with the guidance found on our website:

'It can be complex to decide whether data is inaccurate if it refers to a mistake that has then been put right. An organisation could argue that the fact the mistake was made is an accurate thing to record, so it should record the mistake alongside the correct data.'

<https://ico.org.uk/your-data-matters/your-right-to-get-your-data-corrected/>

Since Devon & Cornwall Police hold up-to-date information relating to your correct name on its system and it is aware of the misspelling of 'Wiltshire' and has recorded this specifically as an alias, we are of the view that your record is not inaccurate and should not need correcting.

As a result, we view the organisation's refusal of your right to rectification to be reasonable in this instance. Consequently, we do not propose to take any additional action in relation to this matter.

3. Dissatisfied, the applicant made the present application to the Tribunal on 5 May 2022. His grounds of application observe that the alias on PNC records does not match the charge sheet, and that there is no legal reason for the Commissioner to turn down the complaint. He asserts that the Commissioner's office did not read his complaint properly.
4. The Commissioner provided a response to the application pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. Within the response the Commissioner requests that the application be struck out as having no reasonable prospects of success. The Commissioner argues that the Tribunal's jurisdiction under s.166 of the 2018 Act relates only to procedural matters concerning the complaint, not its outcome.
5. The Tribunal listed a hearing on 24 August 2022 to determine whether the proceedings should be struck out. The Commissioner confirmed that he would not be represented and relied only on his written representations. The applicant did attend and addressed me on the merits of his application.

6. The principles are as follows. The statutory scheme only allows the Tribunal to address procedural failings by the Commissioner, rather than decide on a different substantive outcome to the complaint: Leighton v Information Commissioner (No.2) (Information rights - Data protection) [2020] UKUT 23 (AAC). Contrary to many data subjects' expectations, s.166 does not provide a right of appeal against the substantive outcome of the Commissioner's investigation on its merits: Scranage v Information Commissioner [2020] UKUT 196 (AAC). While the Tribunal does have the final say in considering the appropriateness of investigative steps, the Tribunal will be bound to take into consideration and give weight to the views of the Commissioner as an expert regulator. In the sphere of complaints, the Commissioner has the institutional competence and is in the best position to decide what investigations he should undertake into any particular issue, and how he should conduct those investigations. This will be informed not only by the nature of the complaint itself but also by a range of other factors such as his own registry priorities, other investigations in the same subject area and his judgement on how to deploy his limited resources most effectively: Killock & Ors v Information Commissioner [2021] UKUT 299.
7. As to when it is appropriate to strike out proceedings due to a lack of reasonable prospects of success, in HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation) [2014] UKUT 329 it was held that the approach should be similar to that taken in the civil courts pursuant to r.3.4 of the Civil Procedure Rules. The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of being entirely without substance) prospect of succeeding on the issue on full consideration. A 'realistic' prospect of success is one that carries some degree of conviction and not one that is merely arguable. The Tribunal must avoid conducting a 'mini-trial'. The power to strike out must be exercised in accordance with all aspects of the overriding objective (at r.2 of the Procedure Rules) to deal with cases fairly and justly, its effect being to debar a litigant from a full hearing of his claim. Yet striking out will be the correct course of action, and support the overriding objective, where an appeal or application raises an unwinnable case and continuance of the proceedings would be without any possible benefit to the parties and a waste of resources.
8. During the hearing I referred the applicant to these principles. His representations, which I consider in full, can for present purposes be described as asserting that the Commissioner failed to consider three issues. First, the mistake went beyond the spelling of his surname. He has also had had difficulty with his given names. The name held did not match the charge sheet anyway. Second, the errors had real consequences because he had been mixed up with other individuals. Examples of where those two factors had arisen were shown to me in the documents provided. Third, the Commissioner had ignored that on complaint to a different police force concerning different records, that police force had been able to remove the alias as requested.
9. None of those factors demonstrate reasonable prospects of success in these proceedings. First, whether or not the complaint actually raised the applicant's given names is unclear, but even if it did then the outcome of the complaint is unaltered. Second, while the applicant may have suffered maladministration from other bodies due his being mixed up with others (for example, arranging NHS treatment), there is no reasonable prospect of his establishing that this arises from an alias recorded on the PNC. Those events are unconnected to the present issue. Third, the ability of the other police force to remove the alias plainly arises due to the recency of that record. The response from Devon and Cornwall police shows that removal from the PNC becomes impossible only after a certain period of time. In any event,

there is no reasonable prospect of the applicant establishing that failure to consider that factor justifies an order under s.166. The Commissioner has the appropriate knowledge to decide whether explanations from data controllers should be accepted, and the extent to which the circumstances are investigated, and disagreement by the Tribunal is subject to the legal principles set out already.

10. On any fair reading, this application simply seeks to change the outcome of the complaint rather than the procedure that was followed. I am entirely persuaded that the proceedings have no reasonable prospects of success, and that there is no useful purpose in them continuing. They are accordingly struck out.

Signed

Date:

Judge Neville

30 August 2022