In the First-tier Tribunal
General Regulatory Chamber
Information Rights

Case FT/EA/2024/0424

Before: **District Judge Moan**

Appellant: **Chris Hart**
Respondent(s): **Information Commissioner**
Neutral Citation Number: [2025] UKFTT 00381 (GRC)

Upon the application dated 19th February 2025 by Chis Hart for permission to appeal/review under rule 44 the decision dated 23rd January 2025 and promulgated the same day to parties.

Permission to appeal is refused

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1. The Appellant submitted a 41 page document which contained his grounds of appeal and was as times indecipherable. The discernible grounds for appeal are -

   Ground 1 – whether a section 166 application can be used for a complaint that has received an outcome;

   Ground 2 – whether the Tribunal has to have regard to human rights;

   Ground 3 – the case of EW is justification for wining back the clock;

   Ground 4 – appears to refer to language and the presumption of bias;

   Ground 5 – the Judge confirmed the position of the Commissioner and whether those cases were based on the pleadings of the Appellant.

ORDER:

Permission to appeal is refused.

REASONS:

1. The Appellant appeals against the decision to strike out his application for an order to progress.

2. The basis of the original complaint was that the Appellant could not access his online medical records. He wanted access to his records for the purposes of a complaint in 2023. He hade a complaint to the Commissioner about this. The Commissioner wrote to the medical practice who confirmed that –

   (i) Access to his prospective (future) medical records was available online as had been notified to him;
   (ii) Access to the historical medical records was not available online due to IT structures and redactions needed but that the practice would supply a full copy of his medical records either in a printed format or pdf.

   The Commissioner was content that the Appellant was not being denied access to his medical records and provided an outcome response which was affirmed at a case review. The Appellant makes claims about serious harm tests and exemptions that do not relate to this complaint. It is acknowledged that the Appellant has made other complaints. The reason for non-access online of historical records was IT and a workaround was provided. The obligation to provide online access only applied to records on or after October 31st 2023. There was no obligation on medical practice to provide online access to medical records prior to that date.

3. The Appellant remained unhappy about not being able to access his historical records online. He was unhappy with the response of his medical practice and that of the Commissioner. He wanted the Commissioner to question the medical practice about their responses to other complaints which he perceived to be inconsistent. He conflates this complaint with other complaints.

4. The Tribunal will only give permission to appeal only if there is a realistic prospect of an appeal succeeding, unless there is exceptionally some other good reason to do so or exceptional circumstances of the kind described in Christie v Information Commissioner [2022] UKUT 315 (AAC), that would justify a grant of permission to appeal; see by analogy Lord Woolf MR in Smith v Cosworth Casting Processes Ltd [1997] 1 WLR 1538.

5. Ground 1 – this ground is unarguable because numerous previous cases have determined that section 166 applications can only be made during the life of the complaint or in the exceptional case of EW where the Respondent had incorrectly concluded that they could not deal with the complaint. The legal framework was set out in the extant decision. Neither EW nor section 166 allows a dissatisfied complainant to use an order to progress application to look at the steps taken by the Commissioner or to appeal the outcome. The Commissioner has the discretion to decide how he wishes to proceed with the complaint and it was clear that appropriate steps had been taken in this complaint; it will be rare case where an Appellant can demonstrate that appropriate steps have not been taken. This Appellant is dissatisfied with the outcome and wishes for the Commissioner to raise issues highlighted by other complaints with this one.

6. Ground 2 – the Appellant has not demonstrated how his human rights are engaged. He has a right of redress in the High Court or in the County Court against the data controller. He does not have any right to have his complaint dealt with in his chosen Tribunal when Parliament has not provided for that particular recourse. This is not an arguable ground.

7. Ground 3 – the decision in EW is confined to the special circumstances of that case. It does not create a general proposition that the Tribunal can re-open the complaint. The Commissioner can determine what steps he takes in a proportional manner to the complaint. This ground overlaps with ground 1. The Appellant's case was not like EWs. There was no error of law.

8. Ground 4 – the Appellant has not demonstrated that the Tribunal had any bias in determining his application. The Tribunals' agreement with the Commissioner is not an indication of bias nor is it rubber-stamping. There is no identifiable basis for the allegation of bias or dishonesty that the Appellant pleads. The appeal was originally considered to be a FOIA appeal as the GRC1 appeal form was submitted and standard directions including the proviso of agreed and disputed acts was issued. When the application was considered by a Registrar it was identified that this was a section 166 application and the correct directions were issued. Applications are initially responded to by administrative staff and the wrong application form may have been confusing as to the nature of the application.

9. Ground 5 – the Appellant's pleadings have been fully considered and addressed in the nine page determination in a proportional way.

10. The Appellant has not identified an error of law or some other good reason why permission to appeal should be granted. He disagrees with the decision of the Commissioner and then also the Tribunal. His vulnerabilities do not give him a right to appeal that do not otherwise exist. His vulnerabilities can only be considered in the context of his statutory rights to apply to the Tribunal.

11. Although the Applicant may not be satisfied with the Tribunal's decision, in my view the Applicant has not identified an arguable error of law. Accordingly, I refuse permission to appeal.

12. The Applicant is entitled to renew this application to the Upper Tribunal.

Signed: District Judge Moan sitting as First Tier Tribunal Judge

Date: 28th March 2025