Isle of Man Data Protection Tribunal

Data Protection Act 2018 ("the Act")

and

GDPR and LED Implementing Regulations 2018 ("the Regulations")

and

The Isle of Man Data Protection Tribunal Rules 2003 ("the Rules")

IN THE MATTER of an application ("the application") to the Isle of Man Data Protection Tribunal ("the Tribunal") dated 28 October 2019 in terms of Regulation 123 of the Regulations by for an Order under Regulation 123(2)(a) and 123(3)(a) requiring the Information Commissioner ("IC") to take appropriate steps to respond to Complaint CN2019/0027.

DECISION OF TRIBUNAL

Introduction.

1. On 28th October 2019 the Tribunal received a letter from stating that wished to "appeal" against the "findings" of the IC regarding complaint CN2019/0027. The letter continued by saying that would like a tribunal hearing to "clear up some outstanding issues". The letter enclosed a copy of a letter dated 23rd October 2019 to from the Deputy IC which outlined the outcome of complaint which indicated that it had been considered and investigated to the extent appropriate and was, therefore, closed. The copy outcome letter had on it a number of manuscript underlinings, asterisks and comments which the Tribunal have understood to highlight s "issues".

Law and Procedure.

2. The Tribunal Chairman took the view that s letter was an application under regulation 123 of the Regulations. Regulations 122 and 123 read as follows:

"122 Complaints by data subjects

(1) A data subject may make a complaint to the Information Commissioner if the data subject considers that, in connection with personal data relating to him or her, there is an infringement of data protection legislation.

(2) The Information Commissioner must facilitate the making of complaints under paragraph (1) by taking steps such as providing a complaint form which can be completed electronically and by other means.

(3) If the Information Commissioner receives a complaint under paragraph (1), the Information 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 regulation 123; and

(d) if asked to do so by the complainant, provide the complainant with further information about how to pursue the complaint.

(4) The reference in paragraph (3)(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 another supervisory authority or foreign designated authority is necessary.

(5) If the Information Commissioner receives a complaint relating to the infringement of a data subject’s rights under provisions adopted by a Member State other than the Island pursuant to the applied Law Enforcement Directive, the Information Commissioner must,—

(a) send the complaint to the relevant supervisory authority for the purposes of the applied LED;

(b) inform the complainant that the Information Commissioner has done so; and

(c) if asked to do so by the complainant, provide the complainant with further information about how to pursue the complaint.

(6) The requirements of Article 52 of the applied LED are to be taken as having been, by this regulation, provided for and, accordingly, the enforceable stipulations in that Article have the force of law.

(7) In this regulation,—

"foreign designated authority" means an authority designated for the purposes of Article 13 of the Data Protection Convention by a party, other than the Island, which is bound by that Convention;

"supervisory authority" means a supervisory authority for the purposes of Article 51 of the applied GDPR, or of Article 41 of the applied Law Enforcement Directive, in a member State other than the Island.

123 Orders to progress complaints

(1) This regulation applies where, after a data subject makes a complaint
Under Article 77 of the applied GDPR or regulation 122, the Information 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 with the day on which the Information Commissioner received the complaint; or 

(c) if the Information 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 Information 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 paragraph (2)(a) may require the Information Commissioner, — 

(a) to take steps specified in the order; or 

(b) to conclude the investigation, or take a specified step, within a period specified in the order. 

(4) Regulation 122(5) applies for the purposes of paragraphs (1)(a) and (2)(a) as it applies for the purposes of regulation 122(3)(a).”

3. In relation to this complaint, the Chairman felt that, in the absence of any suggestion by to the contrary, it had been investigated by the IC and that had been informed of the outcome as required by regulation 122(3)(b) and that had been informed, in accordance with regulation 122(3)(c), of rights under regulation 123. This was self-evident from the outcome letter and had not raised any issue in that respect. Consequently, the Tribunal’s remit was confined to a consideration of whether the IC had taken appropriate steps to respond to the complaint and, if not, whether an order should be made under regulation 123 requiring the IC to take appropriate steps to respond to the complaint and, if necessary, to specify the steps he should take.

4. In the Tribunal’s decision dated 18th December 2018 in relation to a similar application in respect of complaint CN2018/0002, the Tribunal outlined the then (and continuing) situation regarding the introduction of new rules in relation to the functions and procedures of the Tribunal following the wholesale revision of the data protection legislation in 2018. In particular, that decision recorded that HM Attorney General’s Chambers advised that, as the 2003 Rules have not as yet been replaced, some procedural flexibility based on the 2003
Rules, is called for on the part of the Tribunal when dealing, inter alia, with applications under regulation 123.

5. The Chairman of the Tribunal therefore issued Directions on 1st November 2019. These called for to lodge with the Tribunal a written submission outlining the precise nature of complaint and the relief which sought from the IC together with copies of supporting documents. In an effort to assist in focussing submission, the Directions drew attention to the limited remit of the Tribunal under regulation 123, asking that indicate with precision what steps or further steps argues that the IC should have taken to respond to the complaint and to particularise the appropriate steps that argues should now be taken.

6. responded on 4th November 2019 by providing the following:

(i) a copy of and letter of complaint dated 16th September 2019 with an endorsement dated 30th October 2019;

(ii) a copy of the IC’s casework officer’s letter of 23rd September 2019 which acknowledged the complaint and outlined the procedure to be followed, including the rights under regulation 123; and

(iii) a further copy of the Deputy IC’s outcome letter of 23rd October 2019 with the manuscript annotations.

There was no covering submission as called for by the Directions and the documents submitted did not address the specific points made in the Directions. Consequently the Chairman directed that the Secretary to the Tribunal write, on 6th November 2019, to give a further opportunity to clarify the steps or further steps that the IC should have taken in responding to the complaint and to particularise those steps and that this should be done by 22nd November 2019, being the date for the submission as originally given by the Directions.

7. On 7th November 2019, contacted the Tribunal office, initially by telephone when was advised of the thrust of the letter then on its way to at which point stated that would deal with the matter and, later, in person saying that would not be "jumping through any more hoops", that would take a more "direct route" and that the matter was now "closed". declined a request to confirm this in writing and added that there would be no more correspondence with the Tribunal office.

8. Following the expiration of the 22nd November time limit, the Chairman directed that the Secretary again write to to ascertain more formally if application was withdrawn. The letter was dated 27th November 2019. did not respond.

9. In the absence of any clarification of’s position and having in mind the manuscript comments on the outcome letter, the Chairman concluded that the safest and most appropriate way to proceed was to invite the IC to provide a response to the application as it stood. The IC provided a detailed response with a number of supporting documents on 13th December 2019.
10. The Tribunal consisting of Paul Morris (Chairman) and Angela Main Thompson (Member) met to consider the application and the IC's response on 9th January 2019. Mr Paul Harper the third member of the Tribunal had given his apologies. Having regard to the flexibility which the Tribunal is obliged to exercise in relation to its own procedures, the Tribunal was satisfied that the guidance offered by Schedule 8, paragraph 3 of the Regulations dealing with Appeals under regulations 120 and 146(3) meant that the Tribunal was duly constituted for the purpose of considering this application.

's position.

11. In view of the foregoing, 's position cannot be said to be clear. His complaint concerns CCTV installed by neighbours . He refers to a "complete disregard for GDPR and to "total ineptitude to operate his highly intrusive camera system". The signage is "totally inept and pathetic" because there is no contact number and merely an email address. The complaint continues by saying that the one sign is not clear and prominent as suggested by the IC's guidelines. also says that has not received CCTV footage that has requested which also disregards GDPR. adds that have been hassled and distressed and that is not a fit and proper person to be in charge of a highly intrusive system.

12. The thrust of the manuscript comments on the outcome letter are directed to the multiple use of the expressions "would appear", "appeared to be" or "would not appear to be", probably because such wording gives the impression of uncertainly or assumptions from which conclusions have been drawn. Presumably, takes issue with such assumptions. Against the statement that the CCTV signs "have been viewed in situ", comments "by who?". As to the asterisks and underlining, apart from where they highlight the expressions above, in the absence of further assistance from , it is impossible to understand the points being made.

The response of the Information Commissioner.

13. The IC's detailed response and the documents accompanying it form part of the Tribunal record and it is unnecessary to record it in its entirety.

14. The IC says that the background is discord between neighbours and that his office has been involved since July 2019. His office has had numerous conversations with and with the CCTV installer. There has also been contact with Douglas Corporation and the IOM Constabulary.

15. According to and the installer, the CCTV was installed because of a number of issues which had occurred over the previous 12 months. Evidently this was confirmed by the IOM Constabulary.

16. The IC's office advised and the installer that recording of a public area engaged the data protection legislation and that images of private property should not be recorded without consent. They were provided with advice notes and advised of their obligations including fair processing in the form of signs and the rights of individuals. As a
result the installer positioned and configured one camera so that it only recorded images of the rear garden and the installer produced evidence to this effect. A second camera was positioned to record images of the public parking area to the rear of the premises. An application for an entry in the Register of Controllers and Processors which was made on 7th August 2019 was advised that the IC’s office does not authorise the installation of CCTV but that such systems must comply with data protection legislation. was advised of their rights and given advice notes.

17. On receipt of the complainant’s complaint, the IC sought information from which was provided on 7th October 2019. This included images of the signs and copies of correspondence received from and sent to the local authority also provided details of the history of the matter and copies of correspondence with Douglas Corporation and details of interaction with the Police. The IC visited the area on 12th October 2019. The outcome letter was issued on 23rd October 2019. The conclusion was that there had been no infringement of the legislation but was provided with good practice advice.

18. A number of relevant documents are exhibited to the IC’s response. The casework officer’s letter of 23rd September 2019 (see 6(ii) above) states that the complaint appeared to raise two matters:

(i) Failure to comply with a subject access request

(ii) Insufficient signage for notifying that CCTV was in use

Having considered the complaint of 16th September 2019, the Tribunal were satisfied that this was a correct assessment of the issues raised. Indeed, this does not seem to have been challenged by

19. Dealing with signage, the IC says that the complainant’s response to his office of 7th October 2019 explained the location of the signs and provided photographs. This was confirmed during the IC’s unannounced visit on 12th October. The IC concluded that the signs are clearly visible and provide sufficient information to identify and contact the controller,

20. As to compliance with a subject access request, the complainant’s response included a copy of a reply to their request that no personal data was held. The IC had no reason to suspect that this was false. Given its prior knowledge of the matter, the IC’s office considered it highly unlikely that any personal data of the complainant would have been recorded by the first camera and that if any personal data had been recorded by the second camera, it would have been fleeting. In any event the system automatically deletes data after 30 days which means that any relevant data would have been deleted by 14th September 2019.

21. The IC’s response concludes by saying that in all the circumstances and mindful of the discord between the neighbours, he believes that appropriate steps have been taken to respond to the complaint.
Conclusion

22. Despite having been given ample opportunity to do so and despite specific guidance both in the Directions and in the Secretary’s letter of 6th November, has failed to provide any further particularisation regarding the issues has with the IC’s investigation of complaint. Such issues as may have, have of necessity and in an effort to be as fair as possible, been inferred from the correspondence and, in particular, from the manuscript annotations on the outcome letter. In addition to that, and despite the lack of any clarification from as to his position following visit to the Tribunal office on 7th November, the Tribunal has adopted a cautious approach by seeking a response from the IC and by convening the Tribunal. Every accommodation has been afforded to .

23. In contrast, the IC has promptly and comprehensively responded to the Tribunal’s request. The response is detailed and addresses the key issues in the application and it exhibits a number of relevant documents which have assisted the Tribunal. If the Tribunal have one minor criticism, it would be the use of some vague language in the outcome letter. The Tribunal felt that the use of the expressions referred to in paragraph 12 above in circumstances where, in fact, the finding or conclusion was actually clear has seemingly led to have concerns about the thoroughness of the investigation.

24. Having carefully considered the matter, the Tribunal was unanimously of the view that the IC had taken all appropriate steps to respond to the complaint and they were not persuaded that any order in terms of regulation 123(2) or (3) should be made. The steps taken by the IC’s office have been set out in detail in the IC’s response which shows clearly that the IC complied with his obligations under regulation 122(3) and (4).

Costs

25. Rule 8 of the 2003 Rules deals with the question of costs before this Tribunal. The Tribunal is conscious that in dealing with the Tribunal’s request for a response, the IC and his office have had to deploy resources to undertake additional work which, arguably, would have been unnecessary had been more helpful. The Tribunal is grateful to the IC. The Tribunal is disappointed by the absence of further engagement from and decision to initiate an application and then leaving it hanging when asked to provide essential information and despite a specific request for clarification of position which ignored. In relation to this application, however, by a narrow margin, the Tribunal concluded that the appropriate order is that there be no order as to costs.

Dated this 17th day of January 2020

P.D. Morris, Chairman