

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)
[2025] EWCA Civ 1117 (King, Warby, Whipple LJJ)

BETWEEN:

MICHAEL FARLEY
(and 431 others as set out in Annex 1 to the Claim Form)
Claimants/Respondents

-and-

PAYMASTER (1836) LIMITED
(trading as EQUINITI)
Defendant/Appellant

-and-

THE INFORMATION COMMISSIONER
Intervener

STATEMENT OF FACTS AND ISSUES

FACTS

1. The Claimants who are Respondents to this appeal¹ are 432 police officers (or former police officers) who are members of the Sussex Police pension scheme which was administered by the Defendant.

¹ The original Claim Form contained 474 Claimants, but this appeal only proceeds on behalf of 432 Claimants.

2. In late August 2019, the Defendant sent to each of the Claimants an annual benefit statement (“ABS”) to an out-of-date address. The ABS contained the Claimants’ personal data and provided an overview of the relevant member's accrued benefits under the pension scheme.
3. The ABS took the form of a letter sent in an envelope with a window headed “Private and Confidential”, with the relevant scheme member’s name, but not their job title, and their postal address (“**the Header**”). Scrutiny of an unopened envelope would give no indication that an intended recipient was a police officer. The subject line read “Sussex Police Pension Annual Benefit Statement” and the body of the letter set out further personal data including the member’s date of birth, national insurance number of the scheme member, and pension-related details including their police service, salary details, and their accrued and forecast pension benefits.
4. Each Claimant’s ABS was posted to an out-of-date residential address which they had previously given as their correspondence address, but at which they no longer resided. No other contact information was included.
5. By 24 September 2019 the mistake had come to light, and in early October 2019, Sussex Police sent a notification letter to each affected officer. This informed the officer whether or not their ABS had been returned to the Defendant or to Sussex Police. It reported that “*the risk of harm arising from this breach is assessed as low*”, but gave advice on protective steps which could be taken. Officers were offered the opportunity to sign up to a fraud protection service called CIFAS at the Defendant’s expense. The evidence is that 37 officers (i.e. less than 10%) did so. The letter advised the officers that Sussex Police, , had notified the Information Commissioner’s Office (the “**ICO**”). At about the same time, the Defendant sent out letters of apology with replacement ABSs.
6. On 17 October 2019, the ICO wrote to Sussex Police. It noted that “*the breach was caused by*” the Defendant, which it described as Sussex Police’s data processor. It said that the Defendant had been notified of changes of address but had “*failed to effectively update their systems*”. The ICO further noted that Sussex Police had conducted a risk assessment which concluded that the risk of data subjects suffering significant

consequences was “*unlikely*” since the data disclosed was “*limited in nature*” and each data set had “*only been sent to one household, who can be identified*”. The ICO also noted that advice on identity theft was to be given to the affected data subjects. It concluded that no further action was required.

7. The ABSs of approximately 102 of the Claimants were returned to the Defendant unopened. Others were forwarded unopened to the relevant Claimant and others were forwarded opened: around 60 of the Claimants were able to retrieve their ABS themselves. The Claimants allege that the majority of the ABSs were never recovered and it remains unknown what happened to them.

THE PROCEEDINGS

8. The claims were issued on 22 April 2021 and the Claim Form and a “Master” Particulars of Claim were served the next day. The Claimants alleged that the sending of their respective ABS to an outdated address was a misuse of their private information and an infringement of the General Data Protection Regulation (the “**GDPR**”) and/or the Data Protection Act 2018 (the “**DPA 2018**”).
9. The specific information/data said by the Claimants to have been included in the ABSs and complained of was as follows: (1) name; (2) date of birth; (3) national insurance number; (4) start date in service; (5) salary banding; (6) part time hours worked; (7) police service details; (8) value of final salary benefits; (9) average pensionable pay; (10) annual pension payable; (11) projected pension benefits including lump sum and residual annual pension; (12) death in service benefits; (13) Police Pension Scheme member reference number; and (14) Equiniti account number.
10. The Claimants originally sought damages: (1) pursuant to data protection law for “*anxiety, alarm, distress and embarrassment*” and “*loss of control and/or autonomy*”; and (2) in misuse of private information for “*distress*” and “*loss of control and/or autonomy*”.

11. The Defence was filed on 9 July 2021. The Defendant admitted that it had sent the ABSs to out-of-date addresses and gave its explanation for how that error had occurred. The Defendant denied that the information was private and, with regard to data protection, that it was the data controller. The Defendant denied that the Claimants were able to plead their case regarding damage and loss on a generic basis but, in any event, denied that such damage could have been suffered so as to cross the applicable thresholds of seriousness and, further, pleaded that the claims constituted an abuse of the court's process pursuant to the principles from Jameel v Dow Jones [2005] EWCA Civ 75, [2005] QB 946, given that lack of damage.
12. In a Reply dated 24 August 2021, the Claimants: (1) stated that they did not know what had happened to all of the ABSs but alleged that they had been "*put at significant risk of being opened and read by unknown third party recipients*"; (2) contended that it was for the Defendant to prove that each ABS was not opened and read by unintended and unknown third-party recipients; and (3) contended that the damage caused to each of them was not "*trivial*". No further information was provided at that stage of the damage suffered by each Claimant.
13. Following an Order of Master Dagnall in response to an application made by the Defendant pursuant to CPR Part 18 for each of the Claimants to plead his/her respective case on loss and damage in full pursuant to CPR PD53B, the Claimants each served individual schedules relating to harm verified by a statement of truth (the "**Individual Schedules**") on 25 July 2022. The Individual Schedules included details of the distress or other emotions alleged to have been suffered by the Claimant. 41 of the Claimants claimed that they had suffered a psychiatric injury (or an exacerbation of existing psychiatric injury) and served an expert report from a psychologist or psychiatrist in support of their claims.
14. The Defendant subsequently issued an application to strike out the claims and/or for summary judgment to be entered in its favour (the "**Application**") on 17 October 2022. This was on the following grounds:
- (1) The Claimants had not suffered damage or distress above a *de minimis* level such as to cross the applicable threshold of seriousness;

(2) The claims constituted an abuse of the court's process pursuant to the principles established in *Jameel*; and

(3) With regard to certain of the Claimants, no pleaded case of actionable damage (distress) having been suffered had been advanced. The Defendant argued that thirty five Claimants had pleaded that they: (a) would not describe the feelings they suffered as "*distress*"; (b) did not suffer distress; (c) considered "*distress*" to be too strong a word to describe the impact on them or said that they were too resilient to have suffered "*distress*"; or (d) suffered "*stress*" rather than "*distress*". In addition, 15 Claimants had pleaded that their reactions were "*mild*", "*minor*" or "*temporary*".

JUDGMENT OF MR JUSTICE NICKLIN

15. The Defendant's application for summary judgment and/or to strike out the Claimants' claims was heard by Nicklin J on 27 and 28 February 2023. Further written submissions were filed by the parties on 18/19 May 2023 and 1 June 2023.

16. The judgment (*Farley v Paymaster (1836) Ltd t/a Equiniti* [2024] EWHC 383 (KB)) was handed down on 23 February 2024. Nicklin J held that fourteen of the original cohort of Claimants could show an arguable case that the mis-addressed envelope had been opened and their ABS read. Those claims were subsequently settled.

17. However, Nicklin J further held that none of the current Claimants, who advanced an inferential rather than a positive case in that regard, had any tenable case that their ABS had been opened and read. On the basis that the mere posting of the ABSs did not constitute misuse of private information or the processing of personal data, their statements of case were struck out as disclosing no reasonable basis for a claim.

IN THE COURT OF APPEAL

18. By an Appellant's Notice dated 15 March 2024, the Claimants appealed against the order of Nicklin J. Following an oral hearing on 11 July 2024, by an order dated 9 July 2024 Jackson LJ and Warby LJ gave the Claimants permission to appeal on ground 1 [2024] EWCA Civ 781.
19. By ground 1, the Claimants contended that; (1) the cause of action pursuant to Article 82 of the GDPR and s. 168 of the DPA 2018 is complete when there is an infringement by a data controller and material or non-material harm is suffered; (2) the Claimants had each provided details of the distress (or equivalent emotion) he or she claimed to have suffered as a result of the Defendant's infringement and/or processing and that evidence should not have been rejected at a summary stage; and (3) that Nicklin J was wrong to regard disclosure of personal data as an essential ingredient of a viable data protection claim.
20. The Claimants did not challenge Nicklin J's conclusions that they could not show that their respective ABS had come to anyone's attention. The Claimants also did not challenge Nicklin J's decision to strike out their misuse of private information claims, such that only their claims in data protection have continued.
21. The Defendant did not defend the Nicklin J's finding or reasoning that disclosure of personal data was an essential ingredient of a viable data protection claim, which, despite being relied upon by Nicklin J, had not been the basis of its Application to strike out the claims. Instead, the Defendant sought to uphold the first instance decision on the grounds set out at paragraph 14 above, which the Defendant had taken before the court of first instance, but on which Nicklin J did not rely in his judgment.
22. The Court of Appeal hearing before Lady Justice King, Lord Justice Warby, Lady Justice Whipple was heard over two days on 17-18 June 2025. In their judgment (*Farley v Paymaster (1836) Ltd t/a Equiniti* [2025] EWCA Civ 1117, [2026] EMLR 1, the Court of Appeal held as follows:
- (1) As to infringement, Nicklin J was wrong to strike out the data protection claims for the reason he gave: each of the Claimants had pleaded a reasonable basis for

alleging that the Defendant's mistake involved an infringement of the GDPR. Proof that the data had been disclosed was not an essential ingredient of an allegation of processing or infringement.

(2) As to compensation:-

- (a) The Defendant was not entitled to judgment on the grounds that the Claimants' factual allegations were incredible.
- (b) An allegation of "distress" is not an essential ingredient of a tenable claim in data protection.
- (c) The claims could not be dismissed for failing to meet a threshold of seriousness: there is no such threshold in EU data protection law; the Court of Appeal was not bound to hold that such a threshold exists in domestic data protection law; and nor was there any other good reason to do so.
- (d) The Defendant was, however, entitled to contend that any individual Claimants' fears of third-party misuse were not well-founded and hence could not qualify as non-material damage for which compensation was recoverable under the GDPR.
- (e) The claims as a class could not be categorised as *Jameel*, abuse, although the question of whether any individual case is abusive would remain for consideration.
- (f) The issues at paragraphs (d) and (e) above should be remitted back to the High Court for determination.

23. The High Court proceedings arising out of the remittance at paragraph 22(2)(f) above were subsequently stayed by consent pending this appeal to the Supreme Court.

THE ISSUE

24. The only finding of the Court of Appeal above which is the subject of the present appeal is that at paragraph 22(2)(c).

25. The sole issue for determination is whether a threshold of seriousness applies, and, as part of that analysis, should apply in this jurisdiction in relation to damages claims under the GDPR and the DPA 2018.

ANDREW SHARLAND KC

HANNAH READY

Counsel for the Appellant

OLIVER CAMPBELL KC

PEPIN ASLETT

Counsel for the Respondents

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

[2025] EWCA Civ 1117 (King, Warby, Whipple LJJ)

BETWEEN:

MICHAEL FARLEY

(and 431 others as set out in Annex 1 to the Claim Form)

Claimants/Respondents

-and-

PAYMASTER (1836) LIMITED

(trading as EQUINITI)

Defendant/Appellant

-and-

THE INFORMATION COMMISSIONER

Intervener

AGREED CHRONOLOGY

August 2019	Defendant sent to each of the Claimants an annual benefit statement to an out-of-date address
Early October 2019	Sussex Police notified the Claimants of the fact that their annual benefit statements had been sent to an out-of-date address. Sussex Police also notified the ICO
17 October 2019	ICO wrote the Sussex Police concluding that no further action was required in relation to the matter
22 April 2021	The Claimants issued a claim form and Master Particulars of Claim

9 July 2021	The Defendant filed a Defence
24 August 2021	The Claimants filed a Reply
27 April 2022	The Court ordered the Claimants to file individual schedules relating to harm
25 July 2022	The Claimants filed individual schedules relating to harm
17 October 2022	The Defendant applied to strike out the claims and/or for summary judgment
27/28 February 2023	Hearing of the application for strike out and/or summary judgment before Nicklin J
23 February 2024	Nicklin J handed down his judgment striking out all the claims save for 14 where there was evidence that the annual benefit statement had been opened (these 14 claims have been settled)
15 March 2024	The Claimants filed an Appellant's Notice
11 July 2024	The Court of Appeal granted the Claimants permission to appeal on one ground of appeal relating to whether disclosure of personal data was an essential ingredient of a viable data protection claim
17-18 June 2025	The Court of Appeal heard the appeal
22 August 2025	The Court of Appeal handed down judgment concluding, inter alia, that no threshold of seriousness applied to the claims
17 December 2025	The Supreme Court grants the Defendant permission to appeal on one ground relating to whether the threshold of seriousness applies to the Claimants' claims under the GDPR and Data Protection Act 2018