



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Appeal No. EA/2014/0215

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50536914
Dated: 7th. August, 2014

Appellant: Dr. Muhammad. S, Humayun (“MSH”)
First Respondent: The Information Commissioner (“the ICO”)
Second Respondent: The General Medical Council (“the GMC”)

Before

David Farrer Q.C.

Judge

and

Paul Taylor and Jean Nelson

Tribunal Members

Date of Decision: 19th. February, 2015

Date of Promulgation: 24 February 2015

Dr. Humayun appeared in person.

Timothy Pitt - Payne Q.C. appeared for the GMC.

The ICO did not appear but made written submissions.

Subject matter: Whether the Appellant's request was vexatious for the purposes of FOIA s.14

Cases: Dransfield v ICO and Devon County Council [2012] UKUT 440
("Dransfield")

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

Dated this 19th. day of February, 2015

David Farrer Q.C.

Judge

[Signed on original]

The Decision

Introduction

1. MSH is a general practitioner practising within Heywood, Middleton and Rochdale PCT ("HMRPCT").
2. On three occasions, the last in about 2008, he has been referred by HMRPCT to the GMC for investigation of his fitness to practise. MSH, in reply, submitted to the GMC a series of serious complaints regarding the doctors in-

volved in the referrals, evidently on the basis that, if such complaints were sustained, their evidence of his alleged unfitness would be undermined or wholly discredited. The resulting investigations involved a temporary suspension of MSH in advance of any finding. They were all concluded by GMC examiners with the assistance of an expert's report. This Tribunal is not concerned with the nature of the allegations involved nor are the examiners' findings material to the issues in this appeal.

3. MSH was dissatisfied with the GMC's handling of the referrals and corresponded with GMC officers from about 2009 and continued until after the requests with which this appeal is concerned. He accused the GMC, expressly or by clear implication, of racial, religious and age - related discrimination.
4. His complaints as to the GMC's handling of his case were reviewed by the GMC's external legal examiners. Significant delays followed, as the GMC acknowledged. Following the examiners' report to the GMC, Christine Couchman, Head of the Deputy Chief Executive's office and Corporate Complaints Manager, wrote a very detailed letter to MSH dated 29th. February, 2012 in which she expressed her satisfaction that the external examiners, in reviewing both the handling of the clinical complaints against MSH and his complaints as to the conduct and motivation of those responsible for the referrals, had acted fairly and impartially and applied the appropriate test as to conducting further investigations. She, as the responsible officer of the GMC, was satisfied that MSH had not been the victim of discrimination on the ground of race, religion, age or any other deliberate injustice.
5. Ms. Couchman's expressed hope that her definitive analysis of the issues and the GMC's conclusions would bring the prolific correspondence to an end was not fulfilled. MSH then wrote a large number of letters to the GMC Chair, Council members and officers which were logged and attached later to a letter from the GMC to the ICO dated 18th. July, 2014, responding to his inquiries into MSH's

complaint (see paragraph 10). Those letters raised with a wide range of senior GMC figures the complaints which arose from the referrals.

6. Additionally, MSH made a series of FOIA requests, four in 2012 and eight in 2013, largely relating to the racial origins and religion of doctors referred to the GMC by PCTs. He also made requests under the Data Protection Act 1998 ("DPA"). The last FOIA request gives rise to this appeal.

The Request

7. By letter of 12th. December, 2013 MSH requested the following information from the GMC -
 - 1 *Copy of conversation between A of Heywood, Middleton and Rochdale PCT and B of the GMC.*
 - 2 *Copy of the Advice given by B to A.*
 - 3 *Job title and job description of B.*
 - 4 *How many advices B has given to the PCTs in the last ten years about the doctors.*
 - 5 *Ethnicity of origin and age of those doctors about whom he gave the advices.*

A and B had featured in the referral procedures in MSH's case.

8. The GMC acknowledged the request on the same day, stating that the GMC would consider it by reference both to FOIA and the DPA.
9. It provided a substantive response on 30th. January, 2014. As to (1) and (2), it stated that the information requested had been provided on 24th. August, 2012

in so far as it was his personal data but other data had been redacted. Clearly, MSH's personal data could not be provided in answer to a FOIA request (s. 40(1)).

10. As to (3) - (5) the GMC treated them as vexatious requests citing s.14(1) of FOIA. MSH sought an internal review on 31st. January, 2014, which was refused on 1st. May, 2014, long after the date for a response prescribed by the ICO.

The complaint to the ICO

11. MSH did not wait for that refusal but complained to the ICO on 1st. April, 2014. The ICO commenced an investigation which produced in response the GMC letter of 18th. July, 2014, already referred to.

The Decision Notice ("the DN")

12. The ICO had regard to the "holistic" approach recommended in Dransfield and the particular features of the request to which the ICO or the Tribunal would need to have regard. He characterised MSH's stance as a stubborn refusal to accept that the issues surrounding his complaints had been determined, albeit not as he would have wanted. He considered the requests taken in the context of the previous history burdensome and of very limited value. They were designed to disrupt and to retaliate against decisions with which MSH disagreed. He upheld the GMC's decision to treat requests 3 - 5 as vexatious.

The Appeal

13. MSH appealed, stating, in effect, that the ICO's decision was wrong because he had failed to understand the importance of the information sought in requests 3 - 5. It was essential to the vindication of MSH's belief that B gave vexatious ad-

vice to the GMC and might be guilty of racist and discriminatory conduct in his role with the GMC. He contended that the GMC, in collaboration with HMRPCT, was discriminating against and victimising certain doctors on the grounds of age, race and religion. He accused the GMC of supporting a criminal against MSH, one who defrauded MSH and others. (This was a reference to the conviction in June 2013 of one of the complainants against MSH of offences of fraud for which he received suspended sentences of imprisonment.)

14. The ICO related the guidance in Dransfield to the facts of this appeal and submitted that the DN should be upheld. The GMC adopted a similar approach and reminded the Tribunal that it was not concerned with alleged abuses of power by a public authority.

The evidence

15. Dr. Humayun gave evidence briefly, repeating his concerns over alleged discrimination and the need to resolve his suspicions as to the way that the GMC handled his referrals and similar issues relating in particular to doctors of Pakistani origin. He relied on a witness statement prepared for proceedings in an Employment Tribunal by A of HMRPCT. It was quite impossible, however, to understand how it assisted his case. He adduced other documentary evidence. Some was submitted late in breach of the Registrar's directions. We read everything nevertheless but none of it had any bearing on the issue before us - whether requests 3 - 5 were vexatious.
16. Janet Mauldrige, an information access officer at the GMC, gave evidence on its behalf. She related the history of the requests with which this appeal is concerned and of the GMC's previous dealings with MSH. She stated that, by January, 2014, the GMC Information Access Team had dealt with over one hundred individual questions, often repetitive, overlapping and of no obvious value. She described the burden that such correspondence imposed. She ap-

pendent to her statement a schedule of requests made by MSH since January, 2014, most but not all of which had been refused. She was the author of the letter of 18th. July, 2014 to the ICO setting out very clearly the GMC's case and appending two Annexes. Annex A contained correspondence with MSH beginning with the important Couchman letter referred to in paragraph 4 and continuing to January, 2014. Annex B contained a sequence of requests from MSH and GMC responses, which are further considered at paragraphs 22 and 23.

Our Reasons

17. The Tribunal is aware that the Court of Appeal has, as at the date of this Decision, reserved judgment on an appeal from the UT in *Dransfield*. However, it will not delay delivery of a decision pending that judgment, the date of which is uncertain but will apply the guidance in the UT decision, which is binding upon it unless or until it is overruled.
18. We are concerned only with the treatment of requests 3 - 5 as vexatious, since that is the only decision contained in the DN. We should add, however, that 1 and 2 were clearly subject access requests which cannot be made pursuant to FOIA (see s.40(1)). We understand that the requested information had been substantially provided over a year earlier.
19. As to requests 3, 4 and 5, we have no doubt that, taken in the context of the history of the previous four years' correspondence, they constituted a clear abuse of the rights conferred by FOIA s.1 and the GMC was fully entitled to treat them as vexatious. In reaching that emphatic conclusion we take account of both the previous FOIA and DPA requests and the related letters and emails in Annex A. That conforms to the "holistic" approach advocated in *Dransfield*.

20. The long sequence of emails, requests and complaints stems from MSH's refusal or inability to accept that his complaint as to the handling of his case had been fully and independently investigated by external solicitors and that, whatever his disappointment, the matter could be taken no further, unless he thought that he could challenge their conclusions by way of judicial review. A time comes when further banging on the same door will not bring anyone to open it. Mere repetition of the same points through an endless list of questions will achieve nothing but merely impose a heavy burden on those called upon to answer them. The burden is not just the time and energy required to satisfy an unceasing stream of inquiries but the knowledge that no answer, however definitive, will ever halt or even slow it down.

21. So it is necessary to consider not just the volume but the futility of the requests made from 2009 onwards. Furthermore, the Tribunal has to ask itself whether MSH was really interested in the answers or simply asking questions to keep the GMC occupied. It is noteworthy that he was told at an early stage of the correspondence that the GMC did not keep records of the race (as distinct from ethnicity) or the religious affiliations of doctors referred; yet he continued to request percentages for Muslim doctors as though quite blind to the GMC response.

22. We were assisted in our assessment by the provision in Annex B to the GMC's letter to the ICO of 18th. July 2014, of the exchanges of letters relating to the nineteen requests made by MSH under FOIA and/ or the DPA from April, 2009 to 29th. October, 2013, the immediate predecessor to the requests featured in this appeal.

23. They demonstrate a remorseless repetition, in slightly varying forms, of requests that had already been answered or previously identified as requiring information which the GMC did not hold – such as the religion and race of a doctor. A single letter of request often contained a long list of wide - ranging and detailed questions often far removed from MSH's case or any issue of obvious

public interest. They include inquiries, covering wholly unrelated appeals over a ten - year period, as to -

- how expert witness statements were prepared,
- the method of selection of expert witnesses;
- ages of doctors referred;
- how many Jewish doctors were referred;

24. The disproportionate burden on the GMC of this barrage of inquiries would be plain to anyone of MSH's obvious intelligence and sophistication. The Tribunal concludes that it was in part an expression of anger and disappointment and was designed to harass an authority, which MSH regarded, without a shred of justification on the evidence of this appeal, as unreasonably hostile and biased against him. He evidently took the same view of HMRPCT.

25. The impression made by MSH on the Tribunal, whether testifying or arguing his case, tended to reinforce rather than weaken the sense that he was engaged in a feud rather than legitimately seeking information.

Conclusion

26. For these reasons we dismiss this appeal.

27. Our decision is unanimous.

David Farrer Q.C.

Tribunal Judge

19th. February, 2015