



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

**Appeal Reference: EA/2016/0251**

**Heard at Poole  
On 14th. March, 2017**

**Before**

**Judge**

**David Farrer Q.C.**

**Tribunal Members**

**Jean Nelson**

**and**

**Gareth Jones**

**Between**

**Barry John Faith**

**Appellant**

**and**

**The Information Commissioner ("The ICO")**

**Respondent**

Mr. Faith appeared in person.

The ICO did not appear but made written submissions.

### **Decision and Reasons**

The Tribunal finds that both the requests identified in the Appendix to the Decision Notice ("The DN") were vexatious for the purposes of s.14 of FOIA. It therefore dismisses the appeal. Poole Hospital NHS Foundation Trust ("The Trust") is, therefore, not required to take any further step.

1. Mr. Faith became a governor of the Trust in 2012. In November, 2013 the Council of Governors voted for his removal.
2. Throughout his period in office and subsequently Mr. Faith was concerned about payments made under the Mutually Agreed Resignation Scheme ("MARS") operated by the Trust. As the title suggests, this was a scheme designed to deal with possible redundancies and involved lump sum payments to the employees concerned. It is accepted by the Trust and the ICO that Mr. Faith's concern was initially perfectly legitimate. A question for the Tribunal is whether its expression in the form of FOIA requests and other communications with the Trust and its employees continued to be so. The reason for his removal as a governor was what was said to be the grossly excessive volume of correspondence and requests for information that he directed at the Trust and its officers. It is apparent that Mr. Faith regarded his removal as unfair and unjustified and that much of his correspondence with the Trust and individual officers after November, 2013 related to it.

### **The Requests**

3. On 13th. and 26th. October, 2015, about two years after his removal from the Council, Mr. Faith made requests for information under s.1 of FOIA. They were both voluminous and are not repeated verbatim here because nothing hinges on their detailed content. They are set out in full in an Appendix to the DN. The first referred to the minutes of meetings of the Trust's Remuneration Committee in the summer of

2014 and sought briefing papers, notes, communications with the regulator and a report to the Board of Directors, all concerned with a payment under MARS to a particular individual. It included questions which might fall outside s.1 of FOIA. The second related to the obtaining of legal advice as to Mr. Faith's removal and the handling of his allegation that he had been bullied by Trust officers. Again, it included questions which may not have complied with s.1 since they required answers rather than recorded information. However, in this case, that is irrelevant to our assessment of vexatiousness.

4. Mr. Nicholas, the Trust's Information Governance Manager, replied on behalf of the Trust on 30th. November, 2015, refusing both requests and relying on s.14 of FOIA, on the ground that both were vexatious.
5. He set out succinctly the Trust's case for that assessment :
  - (i) They were just two of 29 FOIA requests made by Mr. Faith in the preceding two years or so, most of them involving multiple demands.
  - (ii) Those requests formed part of a very considerable traffic of more than 800 communications over a period of about eighteen months.
  - (iii) They involved the repetition of enquiries and requests, which had been raised in earlier communications and answered.
  - (iv) No evidence of malpractice in relation to MARS had emerged from these enquiries nor from scrutiny by the auditors or the regulator ("Monitor").
  - (v) The Trust concluded that no response would be accepted by Mr. Faith so as to curtail this series of requests.
  - (vi) Dealing with these requests imposed an unacceptable burden on the Trust's staff and resources.

These contentions are the essence of the case which the Trust presented and the ICO, in due course upheld as justifying reliance on s.14.

6. Although rounded off with the usual reference to internal review, this reply provoked a series of emails questioning in detail its terminology and requiring the production of evidence to justify the case made. The Trust extended the time for a request for an internal review. This,

in turn, led to questions as to the mandate for such a review and the procedure involved. Eventually, an internal review took place. It maintained the refusal. Mr. Faith complained to the ICO.

### The DN

7. The ICO briefly summarised the history of Mr. Faith's relationship with the Trust. She viewed the two requests against the background of the correspondence, including the FOIA requests, that had taken place since 2013 when Mr. Faith ceased to be a governor. She concluded that what may have started as a serious inquiry into the use of public funds had digressed into the pursuit of a personal grudge relating to Mr. Faith's removal and his claim that he had been bullied and humiliated by the Trust's paid senior officials. Unlike the MARS issues, which had been properly pursued but fully answered by the Trust, the matters which dominated later requests and correspondence were of little or no public interest but imposed an unreasonable burden on the Trust. An example was the questioning as to the instruction of solicitors, the questions put to them and the cost incurred. She judged the requests to be vexatious for the purposes of s.14. Mr. Faith appealed.

### The Appeal

8. Mr. Faith's initial ground of appeal consisted of an emphatic denunciation of the account given to the ICO by Mrs. Debbie Fleming, the Trust's CEO, on behalf of the Trust, in a letter dated 22nd. July, 2016, responding to the usual ICO request for an explanation of the action taken by the public authority. Mr. Faith described it as "a mix of facts, partial facts which are unsubstantiated and false evidence". That letter covered much of the same ground as the initial response. Mr. Faith supported this ground with a memorandum entitled "Motivation, Context Rationale and Behaviour Drivers", a twenty - five page critique of the DN, paragraph by paragraph, a detailed analysis of his case as to the MARS payment to a former Trust employee (the subject of the first request) and a ten - page justification of his second request relating to "Bullying", which was particularly critical of Mrs. Fleming and the Company Secretary to the Trust, Mr. Michael Beswick.

9. In reply to the ICO's Response, which largely endorsed the DN, Mr. Faith served a "Counter Response" of twenty pages, structured in the same way as his critique of the DN and supported by annexes amounting to about twenty further pages. Mr. Faith continued to serve

evidence on the Tribunal almost to the eve of the hearing. The Tribunal read it, though much was repetitive and directed to issues which are not a matter for the Tribunal's decision. It included a schedule

10. We summarise these very extensive and rather diffuse written submissions, backed by the oral evidence of a former fellow governor, Mr. Geoffrey Hermsen and the oral submissions of Mr. Faith at the hearing, as follows -

- (a) His concerns as to the operation of MARS were entirely legitimate and pursued in the public interest, as had been his earlier inquiries into the terms of a merger with Bournemouth Hospital.
- (b) The persistence of his inquiries was due to a policy adopted by senior paid staff of the Trust, such as those already named, of avoiding answers and concealing the truth, whatever the issue. They failed to back up their false claims, when challenged or to define clearly their use of particular terms.
- (c) He was the victim of bullying by such staff, who appeared to believe that elected governors, such as Mr. Faith, should simply follow the instructions of the professionals and refrain from asking questions.
- (d) He was compelled to maintain a stream of inquiries because, after about April, 2015, his reasonable requests for information were not met.
- (e) His inquiries as to the obtaining of legal advice were not intended to breach legal professional privilege but to ascertain when, for what purpose and at what cost advice had been sought.
- (e) He did not accept the number of communications alleged by the Trust.
- (f) Any burden on the Trust resulted from the refusal to give clear answers to straightforward questions, the failure to define terms and the inability to produce documents or other evidence to justify assertions made by senior managers such as Mrs. Fleming and Mr. Beswick

(g) All his requests were in the public interest and were in no way vexatious.

11. Mr. Faith's evidence as to (b) and (c) was supported by the evidence of Mr. Hermston who claimed to have received similar treatment from senior managers and to have respected Mr. Faith as one governor who stood up to such overbearing conduct and performed his duty as an independent scrutineer of the way the Trust was run. His evidence was seriously undermined, however, by his contrite admission that he had voted with the other governors to expel Mr. Faith, notwithstanding his supposed respect for Mr. Faith's stance.
12. Mr. Faith exhibited a wealth of email correspondence passing between him and managers of the Trust, including two schedules covering email strings involving Mr. Beswick, Mrs. Fleming and Mr. Nicholas. The agreed bundle also contained the series of FOIA requests referred to by Mr. Nicholas in his refusal letter. The Tribunal counted twenty - six requests rather than twenty - nine but the difference is of no consequence.

#### The Tribunal's findings

13. The hearing strongly confirmed our provisional assessments that these were vexatious requests.
14. Contrary to Mr. Faith's initial understanding, the previous history may shed a great deal of light on the nature of the requests under consideration. It did so here.
15. The sheer volume of questions and requests from 2013 onwards is a significant factor. Whether or not they exceeded eight hundred, we find that they were grossly excessive in number, given the time span and the subject matter. Even had they consistently raised fresh issues, rather than ploughing the same ground, they would have imposed a disproportionate burden on the Trust. The number and nature of the mostly multiple FOIA requests, which preceded those on which we adjudicate are a strong indication of a crusade that has degenerated into an almost petty vendetta.
16. We find that the MARS issue had been fully answered by 2015 and that the lack of adverse comment from auditors of the 2014 accounts or the regulator ("Monitor") strongly supports the Trust's contention on this point. Yet Mr. Faith battled on regardless.

17. We accept the Trust's assertion that this was a series of questions and requests to which there would be no end, so long as they elicited replies. That conclusion was amply born out by the exhibited emails. Good examples are to be found in Mr. Faith's emails to the Trust (pp.189 - 210) following its refusal of 30th. November, 2015 (see §§4 and 5 above). His simple remedy was an application for an internal review. Yet he proceeded to launch a lengthy and detailed written cross examination of Mr. Nicholas. He repeatedly demanded definitions of perfectly conventional terms, "the same issues or concerns", "extensively canvassed (p.202), "a considerable burden" (p.195), "substantial". He required endless documents to "substantiate" every simple claim that was made. He asked for a copy of the solicitor's fee note believed by him to relate to advice on his allegation of bullying. Who instructed the company secretary to obtain the advice? He even questioned whether the instruction was by letter or email and the date of the response (p.205).
18. The string of FOIA requests was in the same vein. Almost every response was subjected to close interrogation as to the supporting evidence, the use of a particular word and a demand for any piece of paper to which the respondent had referred. Requests for information were expanded in subsequent emails, whether or not apparently relevant to the original issue raised. The general effect was a sense of infinite regression.
19. Taken in isolation that string of twenty - six requests would have been formidable evidence of the vexatious character of the two requests October, 2015. The first of those two requests eight separate documents or classes of document, the existence of the latter requiring research by the Trust, together with answers to seven further questions.
20. The subjects raised are predominantly those relating to Mr. Faith personally, which are of very limited public significance, especially when they have been repeated and extensively refined.
21. Giving evidence, Mr. Faith tended to strengthen that assessment of his whole campaign against the Trust. He is plainly a public - spirited man who has become obsessed by a desire to make his point against those whom he considers, wrongly in the Tribunal's view, to be hostile to his legitimate inquiries. The result is the relentless pursuit of, relatively trivial issues, in which almost all sense of proportion has disappeared.

22. His requests fully satisfy the demanding requirements for a finding of vexatiousness laid down by the Upper Tribunal and thereafter the Court of Appeal in *ICO v Devon C.C. and Dransfield* [2012] UKUT 440 AAC and *Dransfield v ICO and Devon C.C.* [2015] EWCA Civ 454.

23 For these reasons we dismiss this appeal.

24 This decision is unanimous.

Signed David Farrer, QC

Judge of the First-tier Tribunal

Date: 11th. April, 2017

Promulgated: 18th. April, 2017