



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2017/ 0048

ON APPEAL FROM:

The Information Commissioner's Decision Notice No:
Dated:

Appellant: Dr Andrew Turner

Respondent: The Information Commissioner

Heard on the papers at Fleetbank House EC4

Date of Hearing: 4 September 2017

Before

Chris Hughes

Judge

and

Alison Lowton & Narendra Makanji

Tribunal Members

Date of Decision: 9 October 2017

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 20 February 2017 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Dr Turner is one of a number of employees who transferred from the UKAEA to AEA Technology as a result of a decision by the then Government to privatise much of UKAEA in 1996. They elected to transfer their accrued pension benefits from the UKAEA scheme (a public sector pension) to the private scheme of the new employer. The new employer subsequently experienced financial difficulties and went into administration in 2012. The pension scheme subsequently entered the Pension Protection Scheme and as a result the pension benefits payable will be less than originally envisaged.
2. Dr Turner has complained about information provided to the employees at the time of transfer alleging that it was misleading and he complained to the Pensions Ombudsman Service (POS) in the expectation that the Ombudsman would investigate and provide redress for those affected. By a letter of 15 December 2015 a jurisdiction investigator for the POS declined to investigate under s146(1) of the Pension Schemes Act 1993. The letter explained that Dr Turner's application named two entities against whom he wished to complain AEA Technology PLC (which no longer existed) and the Department for Business, Innovation and Skills (DBIS). However the powers under which the POS acted only allowed it to consider complaints against "*the employer, administrator, trustee or scheme manager*". The POS could not investigate DBIS since it was not in that relation to Dr Turner. The letter also raised the concern that Dr Turner could be outside the time limit for a complaint and there might be an adverse impact on other members of the pension scheme.
3. Dr Turner was dissatisfied and by a letter of 12 January 2016 took up the option offered him of going through the Internal Dispute Procedure. By a letter dated 4 July 2016 a lawyer with POS reviewed the previous decision, looking at Dr Turner's application again. She considered the issues identified in the letter of 15 December and Dr Turner's response. She set out in considerable detail the legal difficulties caused by the length of time since, Dr Turner claimed, he was given misleading information at the time of transfer. She stated that her refusal to investigate was a

final decision and she was acting under delegated authority from the Pensions Ombudsman. She concluded:-

“Please note that I have not considered whether your complaint should be upheld, only whether we are able to investigate under the terms of the legislation governing our work. I appreciate that my decision will be disappointing but I hope this letter explains my reasons for not proceeding with your complaint.”

4. The guidance note explained that the decision was final and the only way to challenge it was by judicial review.

The request for information

5. On 30 July 2016 Dr Turner wrote to POS:-

“I am requesting copies of the files and notes detailing the reasoning justifying the decision NOT to investigate case [case number redacted] by [the lawyer]. This is a complaint submitted by myself and a number of fellow complainants. I considered the explanation given in letters and e-mails to me totally inadequate, based on opinions which I challenge. I enclose a short guidance note which explains the position and outlines the options open to you”

6. The POS responded however Dr Turner was dissatisfied complaining that the documents sent were simply his own correspondence and he was seeking was:- *“a copy of her notes and preparative drafts prior to her writing her letters and e-mails to me.”*

7. POS explained that such information didn't exist and everything had been disclosed. Dr Turner did not accept their explanations and complained to the Information Commissioner (“ICO”) who investigated. During the course of the investigation POS explained how their systems operated to conduct a review of whether there was jurisdiction to conduct an investigation:-

“Once requested it gets flagged on [the case management system] and waits in a queue to be looked at. The reviewer then picks up the file and does a fresh review. There is no communication of the type Dr Turner is seeking between [the original jurisdiction adjudicator] and [the lawyer]. There is no communication between anyone, it is system driven. I can confirm that there were no preparative drafts or

emails by [the lawyer]. The review letter we sent Dr Turner represents the reasons for [the lawyer's] decision – there are no additional documents.”

8. The communication also explained that all data was stored in a network and could not be stored locally. A search with relevant search terms had been conducted but it had not found anything, which was to be anticipated given the way the process worked.
9. In the light of this clear explanation the ICO concluded that no further information existed.

The appeal to the tribunal

10. Dr Turner appealed to the tribunal. He argued that the case he was arguing was of such complexity that both the original investigator and the reviewer must have had notes, have communicated between themselves, *“each came up with multiple reasons not to investigate which must have been linked to specific pieces of data that provided them with that evidence to come to that decision. However no correspondence or noted detailing these references or links were provided – only the letter sent to me. As a professional person, I would never have prepared such a document without supporting information or notes”*
11. Dr Turner in his notice of appeal also raised issues as to whether [the lawyer's] decision was correct in law and stated that it was unrealistic to consider a judicial review because of his financial position and he had hoped that POS would provide *“a semblance of Justice”*. Dr Turner provided a large amount of information concerning his underlying grievance with respect to his pension position, explaining why he considered that the government department and UKAEA had misled him.
12. In resisting the appeal the ICO relied on her decision notice and the explanation that the systems through which POS operated were not driven by the sort of communications which Dr Turner expected. With respect to Dr Turner's argument that his complaint was *“of sufficient complexity”* the ICO responded:-

The Commissioner has no reason to doubt that the POS staff are familiar with all relevant legislation and case law affecting the POS. Accordingly, the Commissioner does not consider that the Appellant's “sufficient complexity” argument provides a basis to disturb the Commissioner's finding that, on the balance of probabilities, the information requested is not held.”

Consideration

13. Dr Turner has set out in considerable detail in various documents his perception of events most of which occurred 20 years ago and which he says demonstrate maladministration from which he has suffered. He considers it a complex story and from his professional experience he has expectations as to how that complex series of events should be handled. He also raises arguments with respect to the Limitation Act. The argument as to the legal robustness of the decision not to investigate his complaint is simply irrelevant to the question of whether further information is held or not.
14. The “complexity” of which Dr Turner speaks is again irrelevant to the issue which the POS officials were dealing with. They were considering whether or not they had jurisdiction to investigate. This reduced the complexity to very simple questions, most significantly whether there was anyone POS could investigate and whether the complaint was in time. To consider this they had the material Dr Turner provided which identified those whom he believed to be the guilty parties and the timescales over which events occurred. POS carried out a legal analysis of the information provided by Dr Turner and [the lawyer’s] letter is the result of that analysis. As the ICO properly points out the staff dealing with Dr Turner will be exceptionally well-versed in the relevant law governing the POS’s jurisdiction to conduct investigations. When writing the letter there will be no need for the complex and document heavy processes with which Dr Turner is familiar, however his experience is likely to be from a very different walk of life from that of providing legal advice to an Ombudsman on whether he has jurisdiction. POS provided the ICO with a very clear explanation of how their systems work and the ICO had no reason to doubt such a clear, transparent and probable explanation.
15. The ICO’s decision is correct in law. This appeal lacks merit and is dismissed.
16. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 9 October 2017

Date Promulgated: 10 October 2017