



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

**Information Rights**

**Appeal Reference: EA/2017/0029**

**Application decided without a hearing**

**Before**

**JUDGE DAVID THOMAS**

**TRIBUNAL MEMBERS DAVE SIVERS AND GARETH JONES**

**Between**

**WILLIAM STEVENSON**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

First Respondent

**and**

**DEPARTMENT OF HEALTH**

Second Respondent

**RULING ON APPLICATION FOR COSTS BY THE SECOND RESPONDENT**

1. By its decision promulgated on 2 March 2018, the Tribunal dismissed Mr Stevenson's appeal against the rejection by the Information Commissioner (the Commissioner) on 12 January 2017 of his complaint that the Department of Health (the DH) had wrongly refused to disclose certain information to him pursuant to two requests he had made under section 1(1)(b) Freedom of

Information Act 2000 (FOIA) (the requests). The Commissioner had upheld the DH's decision that the requests were vexatious within section 14(1) FOIA.

2. Mr Stevenson has not sought permission to appeal the Tribunal's decision.
3. The DH has now, by its application lodged on 16 March 2018, applied for its costs against Mr Stevenson. It quantifies them at £15,078. Mr Stevenson opposes the application. The Commissioner has not expressed a view and has not made a claim for her own costs.

### **The power to award costs**

4. The power to award costs is found in rule 10 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended), which insofar as is material provides.<sup>1</sup>

*'(1) ... the Tribunal may make an order in respect of costs only—*

*...*

*(b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings;*

*...*

*(2) The Tribunal may make an order under paragraph (1) on an application or on its own initiative.*

*(3) A person making an application for an order under this rule must—*

*(a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and*

*(b) send or deliver a schedule of the costs or expenses claimed with the application.*

*(4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends—*

*(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or*

*...*

*(5) The Tribunal may not make an order under paragraph (1) ... against a person ("the paying person") without first—*

*(a) giving that person an opportunity to make representations; and*

*(b) if the paying person is an individual, considering that person's financial means.*

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<sup>1</sup> SI 2009 No 1976

*(6) The amount of costs or expenses to be paid under an order under paragraph (1) may be ascertained by—*

*(a) summary assessment by the Tribunal;*

*(b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (“the receiving person”); or*

*(c) assessment of the whole or a specified part of the costs or expenses, including the costs or expenses of the assessment, incurred by the receiving person, if not agreed.*

...’.

5. The power is an exceptional one. The normal principle is that citizens should be free to pursue their constitutional right to information by bringing an appeal against an adverse decision of the Commissioner without being deterred either by fees or the prospect of an adverse costs ruling. However, the right to appeal must be exercised responsibly.

6. The questions in the present case are (i) whether Mr Stevenson has acted unreasonably in either bringing or conducting the appeal (or both); (ii) if so, whether the Tribunal should exercise its discretion by making an order for costs against him; and (iii) if so, how much it is reasonable for him to pay.

7. The DH accepts that costs should be awarded only rarely and that the prospects of a costs order should not act as a deterrent to parties, particularly members of the public, from bringing appeals. The fact that an appeal fails does not mean that it was unreasonably brought (or prosecuted), and that applies to section 14(1) cases as much as to others.

### **The basis of the DH’s application**

8. The DH argues that Mr Stevenson acted unreasonably (i) in bringing the appeal and (ii) in how he conducted it. Discretion should be exercised in its favour. It seeks its full costs.

9. As to (i), the DH says the appeal was ‘ultimately hopeless’. Mr Stevenson did not dispute the presence of classic indicia of vexatiousness such as burden on the public authority and harassment and distress. He had failed to demonstrate any value in the requested information. His Grounds of Appeal said that he no longer

required the information. Much of the requests were predicated on the false premise that the inquiry team ran a private website. The Commissioner's extremely detailed decision was unimpeachable.

10. As to (ii), the DH makes the point that, during the course of the appeal, Mr Stevenson continued his practice of making wholly unsubstantiated allegations against the DH. He admitted that he was engaged in repeated harassment of the department. He insisted on including nearly 600 pages of (additional) material in the appeal bundle, which the DH felt constrained to answer.
11. Mr Stevenson had been warned that he might face a costs application, both in the present appeal and a previous one.

### **The grounds on which Mr Stevenson resists the application**

12. Mr Stevenson's response is typically discursive. He does not address the arguments made by the DH. Rather, he focuses on issues relating to the University Hospitals of Morecombe Bay NHS Foundation Trust and far beyond. He is clearly troubled by many aspects of NHS governance but they have no relevance to the costs application.
13. He declined to provide information about this financial means which the Tribunal requires under rule 10(5)(b):

*'I fail to see how this [information] could be verified except by highly intrusive means and I am unenthusiastic about handing any such information over to the DoH. Suffice it to say that I have never had any 'private means' and have had no significant income for several years'.*

### **Discussion**

14. The DH makes powerful submissions and the Tribunal was initially minded to accede to them, to the extent of making at least a partial costs order. Mr Stevenson acted unreasonably both in bringing the appeal and how he prosecuted it.

15. What has ultimately counted against the department is a point which it, quite properly, took against itself. This is that it had brought any costs on its own head by seeking to be joined as a party to the appeal. This is relevant to the discretion which the Tribunal has under rule 10.
16. The department answers the point by arguing that it was entirely appropriate for it to apply to be joined given Mr Stevenson's history of making requests (including the present ones) and penchant for unsubstantiated allegations against both it and individual officials. The Commissioner had played an essentially passive role in resisting the appeal after serving her Response (in other words, the department took the lead).
17. The Tribunal accepts that it was entirely proper for the DH to apply to be joined. As a responsible employer, it no doubt wished to be seen to be protecting the reputation of its employees. Its difficulty with regard to the present application is that it acknowledges that the appeal was hopeless. In paragraph 12, the phrase it uses is 'ultimately hopeless'. In truth, the appeal was hopeless from the outset. As the DH acknowledges, the Commissioner's decision was unimpeachable. It was also comprehensive. So was her Response. She was well able to defend her decision without the DH's assistance. The outcome would have been the same with or without the DH as a party and that should have been apparent to the department from the outset. This was not a case where the participation of the public authority in the appeal could realistically make any difference to the outcome.
18. As the Tribunal said in its decision, much of the additional material Mr Stevenson wanted included was at best of tangential relevance and therefore did not require the detailed response the DH provided.
19. The DH was entitled to enter the fray but in the particular circumstances it is not entitled to its costs of doing so.

20. The best way for the DH to safeguard its interests in future is, if appropriate, to reject on the grounds of vexatiousness the further requests Mr Stevenson has promised to make. If Mr Stevenson persuades the Commissioner that a future request is not, in fact, vexatious, the department will, of course, be entitled to bring an appeal and, if Mr Stevenson then conducts himself in an unreasonable manner, to seek its costs.
21. Mr Stevenson should not take this ruling as a green light to continue to make unreasonable and valueless FOIA requests along the lines of the present requests, spraying serious allegations about all and sundry without condescending to substantiate them. As the Tribunal said in its judgment, he is fully entitled to campaign against what he sees as bad practice in the NHS or elsewhere in public life. What he is not entitled to do is to use his rights under FOIA – precious rights denied to much of the world’s population – in an abusive manner. He should count himself fortunate that the application for costs was not made by the Commissioner, and particularly fortunate that his refusal to give information about his means has not ultimately counted against him.

### **Conclusion**

22. For these reasons, the application is dismissed.

Signed Judge David Thomas

Judge of the First-tier Tribunal

Date: 7 June 2018