



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

**Appeal Reference: EA/2019/0286**

**Heard at Riverside House, Edinburgh**

**On 3 February 2020**

**Representation:**

**Appellant: In person**

**First Respondent:**

**Before**

**JUDGE BUCKLEY**

**DAVE SIVERS**

**PAUL TAYLOR**

**Between**

**ALEX CONWAY**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DECISION**

1. For the reasons set out below the appeal is allowed.

**SUBSTITUTE DECISION NOTICE**

Public Authority: UK Research and Innovation

Complainant: Alex Conway

### **The Substitute Decision**

1. For the reasons set out below the Public Authority was not entitled to refuse the Complainant's requests for information made on 27 July 2018 on the grounds that the request was vexatious under s 14 of the Freedom of Information Act 2000 (FOIA).

### **Action Required**

2. The Public Authority has already responded to the request in its response to the internal review. The Public Authority is not required to take any steps.

## **REASONS**

### **Introduction**

1. This is an appeal against the Commissioner's decision notice FS508077193 of 15 July 2018 which held that UK Research and Innovation (UKRI) were entitled to rely on s 14(1) of FOIA. The Commissioner did not require the public authority to take any steps.

### **Evidence and submissions**

2. We have read and were referred to a bundle of documents. We heard oral submissions from Mr Conway and read written submissions from both parties. Mr Conway was permitted by the tribunal to produce further documents during the hearing. Copies of these were sent to the Commissioner and she was given the opportunity to comment.

### **Factual background to the appeal**

3. UKRI is the statutory body responsible for distributing UK research funding. It was established in April 2018 as a new non-Departmental Public Body bringing together the UK research councils, including the Medical Research Council (MRC), Innovate UK and Research England. Mr Conway is the CEO of Mental Illness Research in Children and Young Lives ('Miricyl'). Miricyl campaigns for children and young people affected by mental illness and funds research into mental illness.
4. The background to this particular request is set out at p 102 of the bundle in a letter from Mr Conway to the Commissioner. He states that the request asked substantive questions about UKRI:
  - When it is widely understood MRC has not previously increased funding for mental health because of the lack of quality grant applications the FOI questions what research MRC has conducted as to the effect of its plans to substantially increase funding for mental health

in the future (1 and 9). The question is why had it not been funding at a higher level before?

- MRC prioritised one particular illness, which effects a much lower proportion of people than some other illnesses, for funding without considering any other ones which are less funded and more prevalent (questions 2, 3, 5, 7). This is very poor management of resources.
  - Why MRC does not use a globally recognised measure of the level of disability caused by the illness as a measure for allocating funding to different illnesses (6). MRC allocates funding to mental illness at a level of half the impact of mental health on the population.
5. Mr Conway has a disability which he told us causes him, amongst other things, to be more affected by stress than most people and sometimes to suffer from muddled thoughts and impaired memory. He states that this makes him more likely to inadvertently request information that he has already requested. UKRI were aware of his condition at the time of the internal review, and he had asked them to take it into account when determining whether overlapping requests were an indicator of vexatiousness. They stated that they took this into account when deciding to respond to the request at internal review stage, albeit that they upheld their initial decision to treat the request as vexatious.

## **Requests, Decision Notice and appeal**

### *The Request*

6. This appeal concerns the following request made by email on 27 July 2018:
1. Looking at the recent grants you have announced, if you were to maintain your core level of funding of mental health at c.£25m, I would estimate that you intend to spend an additional £15m on mental health research in 2018/2019. Given your track record and capacity in the sector how will you do this and maintain the quality you desire? Or will your core funding likely reduce?
  2. With respect to this grant, Child and young adult mental health - the underpinning aetiology of self-harm and eating disorders, please explain why you are targeting these two areas, including any discussion, board or research papers comparing these illnesses with your other options
  3. This should answer the questions: What other illnesses did you consider? And why did you reject them? Specifically why did you not choose to target: anxiety: addiction or shizoffective disorder
  4. Please list all the other grants into specific mental illnesses that you have funded in this proactive way (ie not response mode) over the last 5 years.
  5. What % funding from 2 do you estimate the MRC will fund?
  6. Why do you not allocate funding in line with the WHO burden of disease? Both at "family illness" level. ie malignant neoplasms, mental health and behavioural disorders etc and illness level: lung cancer, breast cancer, depression etc

7. List the projects the MRC has funded specifically into shizo affective disorder, with the value, title, duration, amount and abstract 2013-2018.
8. I think I am right in saying that you get an annual budget from The Department for Business, Energy and Industrial Strategy or maybe even direct from parliament but that you don't know your funding any further than a year in advance. Is this correct?
9. If you were a company you would have cost centres with budgets and you would monitor spending against the budget on a monthly basis. How do you manage your spending? What are you equivalent of costs centres and what are their budgets for this year?

### *The Council's reply*

7. UKRI replied by letter dated 23 August 2018, sent by email to Mr Conway on 24 August 2018, stating that it was treating the request as vexatious. UKRI said that they have already provided Mr Conway with information relating to MRC research funding and that they have responded to similar questions on a number of occasions.
8. Mr Conway requested an internal review on 24 August 2018. He complained about the individual who drafted the response. He also provided a commentary to the original request and made three additional requests.
9. On 28 August 2018 Mr Conway submitted a revised request, stating that his request for a review in relation to the original request and his complaint about the individual who wrote the response remained. On 29 August he made a further minor clarification.
10. UKRI responded to the internal review on 19 October 2018. The review upheld the original decision to treat the request as vexatious but answered the request in any event. The reasoning was as follows:

...we have found that Section 14(1) of the Freedom of Information Act (vexatious request) was appropriately applied. As outlined previously this is because responses to similar questions, relating to MRC and other UKRI council research funding, had been provided already. In your request for an Internal Review you also requested some information which was similar to previous requests.

However, in your request for an Internal Review you submitted a document "*Analysis 27072018 and response*", where you provided a commentary on the original request and asked for further information. This document was useful in helping us identify where previous responses could have been clearer and where publicly available information on research council websites may not have been easy to locate. Therefore, we have provided a response to the questions you outlined in the Annexes attached to this letter...we have also provided our responses to the three additional FOI requests within Annex 1, so that the information is easily accessible to you.

11. The responses to each part of the request at issue in the appeal given in the response to the internal review were:

Part 1: not held

Part 2: The 2017/2018 MRC/Medical Research Foundation Call for Proposals on Child and young adult mental health builds on an earlier initiative. MRC participation in the earlier initiative was considered by the MRC Neuroscience and Mental Health Board in March 2016. An extract from the Board papers and minutes relating to this discussion are attached at *Annex2 -R – MRC-MRF Child and adolescent health call 2016*.

Part 3: Information on the Board's consideration of the Call for Proposals is provided at 2 above.

Part 4: This information is publicly available. [*links provided*]

Part 5: The Call for Proposals on Child and young adult mental health is a joint initiative between the MRC and the Medical Research Foundation. Up to £2.5 million is available to support high quality pilot studies and research grants submitted to this call. The Medical Research Foundation is the majority funder and MRC will contribute approximately 40 per cent to the common funding pot.

The final amount of funding committed jointly by MRC and the Foundation is dependent on the scientific excellence and quality of applications received. As reported on the Call web page the Panel meeting where proposal will be considered is on 27 November:

<https://mrc.ukri.org/funding/browse/mrc-mrf/the-aetiology-of-self-harm-and-eating-disorders/>

Part 6: Not held.

Part 7: Not held.

Part 8: Withdrawn therefore no response required.

Part 9: Information provided in *Annex 3 – MRC finance information* with introduction.

12. In summary, UKRI provided answers to each individual part of the request either providing information or stating that it could not be provided because it was not held.

*The Decision Notice*

13. In a decision notice dated 15 July 2019 the Commissioner decided that the Council had correctly applied s 14(1) FOIA (vexatious request).
14. The Commissioner found that the series of 14 requests submitted to UKRI up to 28 July 2018 are often multi-part and sometimes overlapping. They are on similar matters. UKRI's response to one request often generates another request, further questions and requests for opinions. The Commissioner concluded that if this request was fully complied with, Mr Conway is likely to submit a further request on the same or similar subject.
15. UKRI has already provided Mr Conway with a significant amount of information in response to previous requests. There is no reason to doubt UKRI's assertion that it has spent over 350 hours dealing with previous requests, given the volume and nature of the requests which are often multi-part, complex and require the input of various teams. Mr Conway has not put forward a wider compelling public interest.
16. On this basis the Commissioner concluded that complying with the request would be a continuation of what has been a significant burden to UKRI and that the burden is disproportionate to the request's value.
17. The Commissioner found that there was no breach of s 16 because there is no duty to offer advice and assistance if a request is vexatious.

### *Notice of Appeal*

18. Mr Conway attached a number of documents to his grounds of appeal, but it appears that his main arguments are that:
  1. The decision notice is biased and incompetent.
  2. The Commissioner ignored Mr Conway's complaints that showed a pattern of behaviour by UKRI.
  3. The Commissioner gave no reasons for not answering his complaints.
  4. In a document attached to the decision notice the Commissioner asked Mr Conway to make the complaints again. This is abusive and incompetent and biases the decision.
  5. The Commissioner ignored the FOI Code of Practice and the UKRI complaints procedure.
  6. The Commissioner has been dishonest.
  7. The Commissioner was wrong to decide that the request was not in the public interest. Mr Conway's FOI requests have created the largest research related Equality Impact Assessment ever seen in the UK.
  8. The Commissioner accepted without question UKRI's assertion that Mr Conway's FOI requests took 370 hours to respond to, which means that each request took more than 26 hours.
  9. The Commissioner did not analyse the request to see which questions might have been vexatious.

10. The Commissioner decided that Mr Conway's previous requests were overlapping without seeing those requests.
19. Mr Conway provides further detail of his criticisms of the decision notice in a table attached to the notice of appeal. From this document we have extracted the following challenges to the decision:
  11. Not all 9 parts are requests for information under the FOIA. Parts 1, 6 and 9 are general enquiries or requests for an opinion. The Commissioner should not have included them.
  12. It is incorrect to state that he subsequently sent three further requests. He only sent one further request.
  13. The Commissioner did not include in the decision notice the conduct of UKRI when dealing with the request.
  14. The meeting with the MRC was only provided after seven months and a complaint to the Commissioner.
  15. The Commissioner did not mention in the decision notice the further complaints made by Mr Conway to the Commissioner between 4 December 2018 and 25 April 2019 and Mr Conway was asked to resubmit these complaints.
  16. The Commissioner failed to review the internal review.
  17. The UKRI complaints procedure states that a complaint about the internal review should be made to the Parliamentary and Health Service Ombudsman p 24 of bundle.
  18. Mr Conway refers to the Commissioner's guidance on dealing with vexatious requests at para 36 and 37. The panel assumes that he asserts that the Commissioner did not follow this part of its guidance.
  19. If previous requests to all of the separate legal entities are to be taken into account, then the number of separate entities should be taken into account as context: the Commissioner claims 14 requests across what were previously 9 organisations.
  20. Making on average 1 request per month is not excessive.
  21. The Commissioner did not have due regard to the need to make reasonable adjustments for Mr Conway's disability.

### *The ICO's response*

20. The Commissioner submits that UKRI's matrix setting out its communications with Mr Conway is credible. On the basis of this matrix the Commissioner summarises these communications at paras 10-29 identifying 11 requests for information. This summary will not be repeated here but we have taken it into account.
21. The Commissioner took a common sense and holistic approach. The request was unreasonable looked at in the round, taking account of prior correspondence that lasted over a year, involved at least eleven requests and numerous other

emails and letters. Many of the earlier requests were repetitive, overlapping and highly complex and frequently sought commentary and opinion.

22. The requests placed a significant burden on UKRI's resources and there was little public interest to outweigh that burden. Mr Conway was free to make his central claim of underfunding with the information he already had. It was a misuse of the FOI regime to keep hounding the MRC and UKRI for ever more detailed spending breakdowns, policy justifications and analysis that he ought to be doing himself. Any public interest did not outweigh the fact that the request was vexatious viewed in context and against the prior correspondence.
23. The Commissioner was entitled to take account of Mr Conway's behaviour which occurred after UKRI had refused to comply with the request in line with the holistic approach in **Dransfield**.
24. The Commissioner was entitled to take account of UKRI's efforts to comply with the letter and spirit of the FOIA in its dealings with Mr Conway.
25. In summary, the history of the requests showed them to be vexatious; they were disproportionate and sought to use the FOIA as a means to carry on a policy disagreement with UKRI; Mr Conway eventually began to display open hostility to UKRI staff members; Mr Conway's use of the FOIA procedure was, in all the circumstances, unjustified and inappropriate.
26. The Commissioner then deals briefly with each of Mr Conway's complaints referred to above as his 'main arguments'.

### *Issues*

27. The issue for the Tribunal to determine is whether or not the request is vexatious. Any matters raised by Mr Conway which do not relate to this issue are not within our remit, and we have not made findings on those issues.

### **Legal framework**

#### *S 14(1) Vexatious Request*

28. Guidance on applying s 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC):
29. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA (para 10). That formulation was approved by the Court of Appeal



subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).

30. The test under section 14 is whether the request is vexatious not whether the requester is vexatious (para 19). The term 'vexatious' in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account (para 25). The IC's guidance that the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request (para 26).
31. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic check-list.
32. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.
33. As to burden, the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether the request is properly to be described as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor [para 29]. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [para 32].
34. Ultimately the question was whether a request was a manifestly unjustified, inappropriate or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous

course of dealings, the lack of proportionality that typically characterises vexatious requests [paras 43 and 45].

35. In the Court of Appeal in Dransfield Arden LJ gave some additional guidance in paragraph 68: 'In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...'
36. Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.
37. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a 'trump card'. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

### *The role of the tribunal*

38. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

## Submissions

### *Summary of the Appellant's oral submissions*

39. Mr Conway submitted that his request could not be described as a request with no reasonable foundation and that it was not vexatious taking account of the factors of burden, motive, serious purpose and harassment.
40. Mr Conway set out the other relevant work undertaken by Miricyl as context to the request. Miricyl's campaign is centred on the apparent difference between the disease burden of mental health according to the World Health Organisation and the percentage of funding allocated to mental health research.
41. The other main strand of Miricyl's work focusses on the equality impact of UKRI's research funding policies because of a concern that these policies have a disparate impact on mental health researchers. Miricyl has highlighted the fact that public bodies that allocate funding are obliged to carry out an Equality Impact Assessment ('EIA') of research funding policies in accordance with the public sector equality duty. As a result of Miricyl raising this issue, the Equality and Human Rights Commission has become involved in ensuring that these bodies comply with the PSED. It is at least partly because of Miricyl's work that Health and Care Research Wales and the Scottish Government's Chief Scientist Office will be carrying out EIAs of their new strategies. UKRI also confirmed in May 2019 that Research England would be producing an EIA in connection with its general duties.
42. Miricyl has submitted evidence to two commons select committees on this issue and Mr Conway tells us that the select committee is considering a committee on equalities in research funding. Mr Conway has asked 11 questions in parliament and spoken to a number of MPs on this issue. As part of its campaign Miricyl has instructed Leigh Day and David Wolf QC in a proposed judicial review action and has issued pre-action judicial review letters to UKRI in relation to its alleged failure to comply with the public sector equality duty.
43. Mr Conway also explained the reason behind the different parts of the request.

#### *Part 1*

44. This is not a request for information – it is a general enquiry or a request for an opinion. UKRI had said previously that there was not enough capacity, i.e. not enough academics, in mental health. When they announced an additional 15 million pounds worth of funding, Mr Conway thought it was important to know how UKRI thought this would work.

#### *Part 2 and 3*

45. Mr Conway thought it was important to understand the reasoning and/or critical analysis behind the decision to fund research on self-harm and eating disorders rather than, for example, on anxiety and addiction, which is the least funded.

*Part 4*

46. Mr Conway accepts that this is available on the website but says that it is 'impossible to find'. He had not been able to locate it on the website before he made his request.

*Part 5*

47. The funding for the grant for self-harm and eating disorders was going to be partly funded by the MRC.

*Part 6*

48. This is a general enquiry in line with Miricyl's central argument that funding should be allocated in line with the burden of disease.

*Part 7*

49. UKRI had already provided Mr Conway with 2011-2016 figures. This was a request for an update. The overlap is a mistake – it should have been limited to 2017 and 2018.

*Part 8*

50. This was withdrawn.

*Part 9*

51. Mr Conway thought that the budgetary decisions might hold the key to the disparity in funding. This was intended to cast light on that.

52. Mr Conway spent some time addressing us on the conduct of UKRI and the Commissioner after the request and internal review. For the reasons set out in our discussion and conclusions below, this is not relevant to the question of whether or not the request was vexatious and so we do not summarise this part of the submissions here.

***UKRI's position***

53. UKRI were not a party to the appeal and did not provide any written submissions. Their position is set out in correspondence to the Commissioner.

In a letter to the Commissioner dated 24 May 2019 UKRI state that the request was:

initially refused as a vexatious request. This was on the basis that much of the information requested had been addressed in response to previous FOI requests and correspondence and the remainder of the request largely involved questions or requests for opinions... In considering the Internal Review we took account of the commentary and found it helpful in identifying areas in previous FOI responses and correspondence that could have been more clear. In responding to the Internal Review the initial decision, that the request was vexatious was upheld, however we did also provide a response to all nine of the original questions and the three new requests. In the response we tried to be clear where there was any relevant recorded information, we provided links to publicly available information which had been identified previously and copies of information where relevant. In cases where there was no relevant information this was confirmed. We also provided a response to the questions asked, including those identified by Mr Conway as asking for an opinion. As you will see from the letter we were also offered a meeting with the MRC's head of Neuroscience and this was taken up by Mr Conway.

54. UKRI provided further detail in support of its conclusion that the request was vexatious to the Commissioner in a letter dated 4 July 2019 (at page 177 of the bundle). In summary its position is as follows. The request references questions that had been addressed previously and information that had been provided in response to previous requests. UKRI provided a summary of all requests from Mr Conway. This request was the tenth from Mr Conway to UKRI and its predecessor councils, nine of which related directly to health and mental health research. Since July 2018 Mr Conway has submitted a further eleven requests to UKRI, of which eight related directly to health and mental health research.
55. In many cases the requests involved multiple information requests, questions about strategy, budgets and decision making processes. They have sought information on health and mental health research for MRC and across UKRI. The requests have been broad and have involved requests for recorded information and extensive and repeated questions about MRC strategy and approaches to funding mental health research.
56. The questions posed have evolved over time but the information and general responses requested all relate broadly to the the same information regarding:
  - How the MRC funds research, including the specifics of decision-making processes
  - How the MRC funds mental health research, including the specifics of decision-making processes for mental health proposals.
  - Information relating to the distribution of the MRC's research funding across all areas of research supported.
  - Information relating to MRC and UKRI budget plans and spending for mental health research.

- Information on the MRC's strategy for Lifelong Mental Health, published in April 2017 and covering the period 2017-2022.
- Specific information relating to the MRC's mental health research portfolio and asking for a substantial amount of additional analysis work to be done.
- Information relating to health and mental health research by other UKRI councils.

57. Clarification has been required in a number of cases. Refinement and prioritisation have been necessary to take account of the appropriate limit because of the level of detail requested or additional analysis or new analysis requested. Requests have also asked for comments on recommendations or analyses undertaken by Mr Conway.

58. Responses provided were often followed by further multiple questions and queries. Sometimes discussions led to clarification that previous responses and information was relevant, and sometimes additional information was required. Mr Conway also contacted research council staff directly on similar issues. Several aspects of the different requests were duplicative or overlapping, and required significant coordination across UKRI.

59. In relation to the request in issue, UKRI stated that parts 1 and 3 concerned information that was not held, part 2 sought background information on a funding call, the majority of the information requested in parts 4, 5, 7 and 8 was publicly available and parts 6 and 9 asked for an opinion.

60. UKRI stated that as many of the questions addressed similar issues to previous requests/correspondence the request was assessed and found to be vexatious under s 14(1). UKRI concluded that the request has the potential to cause a disproportionate level of disruption because of the relationship with previous requests/correspondence and the likely burden it would place on the organisation.

61. The request for an internal review followed a similar pattern to previous correspondence in making further requests. The pattern of overlapping and duplicate requests was repeated. The language used by the Appellant was increasingly critical, distressing and began to be directed at individuals.

62. The letter then addresses the issues of burden, frequent or overlapping requests and unreasonable persistence.

### *Burden*

63. The request followed a similar pattern to previous requests with multiple questions addressing similar issues. Therefore UKRI took a view on the significant effort involved in responding to similar questions in the past. UKRI

also considered the impact of any subsequent repeated, related and overlapping requests any response might generate. UKRI also took account of the significant staff time (370 hours) that had been taken up in responding to previous requests. Mr Conway would be aware of the burden because he had been advised that consultation across different groups had been necessary due to the breadth of the requests. Mr Conway had made a number of requests seeking information on research spend by health area etc, where the analysis required to identify and extract the information would exceed the appropriate limit.

#### *Frequent or overlapping requests*

64. A number of the requests addressed points that had been raised in previous requests and correspondence. The evolution of further questions and new FOIA requests which formed a feature of correspondence following previous requests was relevant. There were a number of occasions where multiple requests and questions were being taken forward at the same time.

#### *Unreasonable persistence*

65. The requestor appeared to be attempting to reopen questions which had already been comprehensively addressed. Question 6 asked why the MRC did not use a particular method of budget allocation. Responses to questions on how the MRC funded research and allocated budgets had previously been provided on several occasions.

#### *The position at the time of the internal review*

66. The internal review request helped to identify more clearly the information the requestor expected to see. It identified areas where the initial response could have been more explicit in identifying where in previous correspondence the issues had been addressed and how publicly available information might be used to address the questions. The requestor also disclosed that they had a diagnosed mental health condition and requested reasonable adjustments in particular where the requests were overlapping. Although the internal review upheld the original decision it aimed to provide as full a response as possible to try and draw the matter to a close.

67. The letter then summarises the responses provided in the internal review. It identifies a number of areas in which the initial response could have been done differently as follows:

...

Links to publicly available information that could be combined to address the question were provided. Information had been provided previously on calls for proposals (22/06/18) and funded research (21/09/18). We accept that the initial response to the request could have been more explicit on this point and could have provided the links

to this information and views on how it might be combined with the MRC mental health research portfolio information. (Part 3)

...

In the internal review response an estimate of the percentage of funding available for each area under the Call was provided along with a link to where funding decisions would be confirmed as the Call progressed. We accept that the initial response could have been more clear on the interpretation of this part of the request. (Part 5)

...

The internal review response provided an explanation of how to review the MRC portfolio (provided previously) to extract the information now requested. A link was also provided to publicly available information that could be searched to find updated information. We accept that the initial response could have been more explicit on how to search the information provided previously/publicly available. (Part 7)

68. The internal assessment of the internal review also contains certain additional points relevant to UKRI's position:
22. Elements of the internal review request show a similar pattern.
  23. The new requests are overlapping because they request information on spend by illness which is essentially the same as the previous request FOI2008/0008.
  24. There is some evidence of a scattergun approach with correspondence addressed to the FOI team, MRC's evaluation team and a MRC Scientific Programme Manager.
  25. The tone of some of the comments in the internal review application indicates an intransigent position.
  26. The proposed response aims to address Mr Conway's request for a reasonable adjustment to be applied where requests were overlapping, by fulfilling the duty to advise and assist the requestor.

## **Discussion and conclusions**

69. The tribunal considers the four factors identified by the Upper Tribunal in **Dransfield** to be a helpful framework to structure its consideration of whether the request was vexatious but has regard to the fact that it is not intended to be an exhaustive definition or a checklist for determination of this issue and that a holistic approach must be taken, with no one factor acting as a trump card.
70. In our view the date at which we should determine whether or not the request was vexatious is the date of the internal review. Although the case law states that a holistic approach should be taken and that we should take account of all the relevant circumstances, the matter should be considered in the light of the information available to the public authority at the time. As part of this, it is legitimate to take into account the likely future conduct by the requestor.
71. We are not aware of any case law which explicitly deal with this point. The authorities on vexatiousness refer to a prior or past course of dealings. None of them refer to matters that took place after the internal review. In our view, a similar approach to the timing of the assessment of the public interest should be



taken. The first tier tribunal is assessing past compliance with FOIA, not monitoring ongoing compliance. We must consider how the public authority dealt with the request and then whether the Commissioner erred in law. Evidence of conduct post internal review can be taken account if it informs our decision as to the likely future conduct of Mr Conway at the date of the internal review.

### ***Burden***

72. UKRI provided a response to the request at internal review stage, but there is no evidence on the amount of time it took to respond to this request or any other evidence as to its specific burden. In the absence of this evidence and taking a common sense approach in the light of the content of the response the tribunal takes the view that this request taken alone is not burdensome.
73. In accordance with the case law we take into account the context and history of the request and the previous course of dealings between Mr Conway and UKRI. UKRI assert that they have spent 'around 370 hours' dealing with the requests, but we have been provided with no explanation of how this 370 hours was calculated. Without any breakdown or explanation of how this figure was reached, we are not prepared to accept it.
74. We have been provided with a table headed 'summary of requests' which we accept summarises the correspondence and freedom of information requests received from Mr Conway. Looking at the summary of requests and correspondence received prior to the internal review, it is clear that UKRI and its predecessors have spent a significant amount of time dealing with requests and correspondence from Mr Conway. It is also clear that Mr Conway often follows a response with a request for clarification or additional information. Sometimes he asks for information that has already been provided. The requests are often broad and contain multiple parts. The correspondence or requests for information also regularly contain or are accompanied by requests for opinions or comments on Mr Conway's analysis.
75. Although most of the requests are for different or more detailed/clarified information virtually all of them relate to the same broad areas. This is unsurprising because these are the areas primarily of interest to Miricyl i.e. the apparent difference between the disease burden and the percentage of funding allocated to mental health research and the equality impact of UKRI's research funding policies.
76. The table shows that there has been, on occasion, a repeated request for the same information. Where there is any direct overlap we take into account that some of this is likely to have been caused by Mr Conway's disability, a factor that was known to the public authority at the time of the internal review.

77. Given the focus of Miricyl's work we do not think that it is surprising, nor an indicator of vexatiousness that the requests and correspondence relate to the same broad areas. Further, although the level of correspondence and requests taken together is high, this is not a case where Mr Conway is relentlessly bombarding UKRI with email traffic. Much of the correspondence appears to be part of genuine and effective communication between UKRI and Mr Conway intended to assist Mr Conway in obtaining the information he requires.
78. Although in February 2018 Mr Conway did submit multiple requests within days of each other, in general the requests are months rather than days apart.
79. In the light of all these factors, we recognise that these requests and the related correspondence have placed a significant administrative burden on UKRI and we take that into account. We accept that the evidence suggests that there was likely to be further requests and correspondence from Mr Conway in the future. We have concluded that this burden is not disproportionate, taking a holistic approach and in the light of our conclusions below.

*Motive/value or serious purpose of the request*

80. Given the background information provided by Mr Conway on the work carried out by Miricyl, it is clear to us that this is not a request which has no reasonable foundation. There is no evidence in this case to suggest that the request was made deliberately to annoy or out of vengeance for some action by the authority. We disagree with the Commissioner's findings that there is no wider compelling public interest.
81. We find that the information sought would be of value to the requester, to the public in general and in particular to the section of the public directly or indirectly affected by mental health. There is a very high public interest in the question of the allocation of large amounts of public money to research in particular areas, and the impact of those funding decisions either in terms of the equality impact, or in terms of the impact on particular conditions. The information requested is valuable to inform the debate on that important issue.
82. Mr Conway has explained very clearly why the particular information requested is of importance to understanding how and why funding is allocated in a particular way. It is not the case that this information has already been provided (save for the mistaken overlap in dates in part 7), nor that the question of how funding is or should be allocated has already been comprehensively dealt with. It is clear from the response provided at internal review stage that valuable information was made available as a result of the request.
83. We note that some of the correspondence post-internal review suggests that Mr Conway may be beginning to focus more on complaints about the conduct of UKRI and the Commissioner, and less on the important issues with which

Miricyl is concerned. If Mr Conway's future requests continue to become distant from his starting point, he risks 'vexatiousness by drift' (see Wise v Information Commissioner (GIA/1871/2011; EA2010/0166)). In our view he had not drifted from his starting point at the date of the internal review, nor, at that stage, was it likely that he would do so.

### *Harassment/distress*

84. We accept that the wording of the request for an internal review was critical and directed at an individual. It stated:  
'I would like to raise a complaint about the anonymous person who signed of the response to my request to their supervisor. Your response was ill judged, poorly conceived and vexatious'
85. We do not accept that this can be classed as 'harassment'. Although an individual might understandably feel unhappy about having a complaint made against them in these terms, we do not accept that a reasonable employee would suffer from anything that might be termed 'distress' in response to this complaint.
86. The request for an internal review also stated:  
'You can only deflect individual questions not stop me from making any further requests. I have taken advice from the ICO and I strongly recommend that you collaborate with me in my lines of enquiry.'
87. Whilst this is strongly stated, in the panel's view it does not necessarily indicate that Mr Conway has adopted an intransigent position.
88. We note that after the internal review Mr Conway's language has become increasingly critical and his criticisms increasingly personal, both in relation to individuals at UKRI and at the Commissioner's office. Mr Conway's subsequent conduct does not lead us to decide that the public authority was correct to conclude at the time that the request was vexatious, but Mr Conway should note that using this type of language greatly increases the risk of future requests being correctly classified as vexatious.

### **Summary of conclusions**

89. We have taken a holistic and broad approach and have looked at the request in the light of the past course of dealings and Mr Conway's likely future conduct. We have considered in particular the significant burden on UKRI, and the value and purpose of this request. We note that the public interest should not be seen as a 'trump card', but we have balanced the public interest against the resource implications of this request and its predecessors, in the light of the other relevant factors set out above. Looking at all these factors we find that the request was

not vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of the FOIA.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 5 March 2020

Date Promulgated: 6 March 2020