



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Cases EA/2011/0133 and 0134

ON APPEAL FROM:

The Information Commissioner's

Decision Notice No: FS50348852/FS50371802

Dated: 28 March 2011

**Appellant: Heather Graham
Malcolm and Heather Graham**

Respondent: Information Commissioner

Date of consideration: 28 October 2011

Date of decision: 31 October 2011

Before

Richard Fox

Christopher Hughes

Mike Jones

Appearances: This hearing was conducted on the papers.

Subject matter: FOIA S.14 "vexatious"

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal rejects the appeal for the reasons stated.

Signed: Christopher Hughes

Tribunal Judge

Dated this 31 October 2011

REASONS FOR DECISION

1. Mrs Graham is a former employee of Warwickshire County Council and she has been in correspondence with the Council since 2001 in connection with her pension and in particular issues concerning additional voluntary contributions and Equitable Life.
2. On 20/6/2010 Mr and Mrs Graham wrote to the Council in the following terms:-

"We are writing as a result of eventually receiving the bundle of information sent by (name redacted) as a reply to our DPA enquiry and complaints to the Information Commissioner's Office which were needed as usual. We were shocked to discover a letter from (name redacted) to CIS asking for a £250 fee for advice on pension reinstatements (not reinstatement as (name redacted) kept saying). What a nerve in light of what happened to Mrs Graham's pension. We would not pay him or other Warwickshire County Council responsible for the mess, in washers, let alone money, for what we have seen of his department.

The above beggars further questions. As you know, we have always been puzzled as how such senior staff as were involved, could have made such basic mistakes in continuing to use Equitable Life as an additional voluntary contributions provider months after everyone else knew they were fatally overextended due to their GAR policies.

Due to past uncooperativeness, we must ask the following questions under the FOI act.

Did Warwickshire County Council receive any fees or any other advantage, monetary or otherwise, as a result of introducing employees to Equitable Life? Answers are required in 20 working days, in writing to the above address. Failure to comply will result in further complaints to ICO".

3. They did not receive a reply and hand-delivered a further letter dated 5 August 2010 requesting a response. They complained to the Information Commissioner on 7 September 2010 about the non-response; he wrote the Council on 6 October 2010 with a copy of the request and asking the council to provide a response within 20 days. The council replied by sending a copy of the response to Mr and Mrs Graham dated 9 September 2010 which indicated that the request for information had been

treated by the Council as vexatious and repeated. The Council drew attention to the letters it had sent to Mr Mrs Graham on 28 January 2010 and 16 June 2010 in which it indicated that it would consider applying section 14 of the Act to any similar requests. In subsequent correspondence with the Information Commissioner the Council provided a schedule of 41 items of correspondence with respect to the pension's issue involving the Council, the Pensions Ombudsman and Mr and Mrs Graham.

4. Following an investigation the Information Commissioner issued two decision notices dated 31 May 2011 in which he analysed the requests and the history of relations between Mr and Mrs Graham and Warwickshire County Council with respect to this issue and concluded that the Council was correct in applying section 14(1) of the act to these requests in that they were vexatious requests but sufficiently distinct from previous requests not to be repeat requests.
5. He explained his reasoning using the guidance he has developed over a number of years in connection with cases where section 14 is applied by public bodies. This guidance draws on on previous decisions of this tribunal. In conducting his analysis the Commissioner considers each case in its context in the light of five questions and then takes a view of the matter as a whole. The five questions are:-

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- could the request fairly be seen as obsessive?
- Is the request had you are seeing this authority or causing distress to staff?
- Would complying with the request impose a significant burden?
- Is the request designed to cause annoyance and disruption?
- Does the request like any serious purpose or value?”

6. In his review of the case in the light of these questions the Information Commissioner considered the considerable volume of correspondence submitted by the Council going back to 2001 and including correspondence with the Pensions Ombudsman. The Ombudsman had investigated Mrs Graham's concerns and on 1/7/2003 wrote to Mrs Graham concluding his review of the complaint. In it he came to the following conclusions:-

"For reasons which Mr Krishna has explained to you I have taken the view that there is not cause to criticise the Council the continuing to use Equitable Life as the AVC vehicle at that time.

.....

The Council has recognised its failure to offer you a choice and has therefore offered to reimburse the difference between what the money earned in the with-profits fund and what it would have earned had it been invested in the Building Societies fund. That would in my view mean that no injustice was in the event caused to you; alternatively you could look at such a payment has been compensation for what has happened.

Either way it causes me to take the view that there is nothing to be gained by my further involvement.

Let me underline the key points leading to my decision.

1. It was not unreasonable for the council still to be using Equitable Life as its AVC provider in February 2000.

2. Under the regulations the particular payment had to be invested with the Council's AVC fund, i.e. with Equitable Life.
3. You should have been given a choice as to which of the Equitable Life options your money was to be invested in.
4. The council has since offered to transfer your money into a better performing fund and make up the difference in investment return.

The net result is that you have not lost out and thus that no injustice has been caused to you. That being so I am ending my involvement. A copy of this decision is being sent to the respondents to your complaint. The decision is final and binding on all parties subject to an appeal on a point of law. Any such appeal needs to be lodged with the High Court within 28 days."

7. It may be noted that a specific issue at the core of the request, why the Council had continued to use Equitable Life, was considered and responded to by the Pensions Ombudsman in 2003.
8. The Information Commissioner concluded that the underlying issue-concerns about Mrs Graham's pension, had been fully and impartially investigated by the relevant person in 2003 and that it was manifestly unreasonable to continue attempting to revisit an issue which both the Council and the Pensions Ombudsman had already considered. He concluded that compliance with the request for information would merely trigger further requests. He concluded that it was unlikely that any conclusion to the requests for disclosure would be reached and that the impact of these requests on named individual council employees could be seen as harassing the authority and its staff. The Commissioner concluded that compliance with the requests would involve looking at matters already addressed and would generate further correspondence and impose a significant burden on the Council.
9. In their appeal Mr and Mrs Graham disputed all these points. They felt that the response of the Council was "over the top" and disproportionate to the issue of just answering a few simple questions. They argued that the volume and frequency of the letters was because a large proportion of them were completely ignored; some were returned marked "no further comment". They felt they were persistent not vexatious. They denied harassing staff although they accepted then might have cause distress or annoyance to staff:-

"We think obsessive this is frankly a medical condition but is not in this context. It could not be "diagnosed" from just a few letters."

"We may have been too blunt but, we believe, we have always been factual and fair. The simple fact is that it is a common human trait to dislike being criticised or to be confronted with their limitations."

They admitted that they had accused pensions department staff of incompetence. They noted that much of the correspondence was handled by the council senior solicitor however they felt this was a part of her job and any waste of resources was due to the Council's mishandling of the matter. They indicated that they considered that the Pensions Ombudsman had found many points in their favour and they took exception to a comment from the Council that the complaint to him had not been upheld.

10. In his reply to the appeal the Information Commissioner reaffirmed the contents of his decision notice and his conclusion that:-

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- The Council was justified in deeming the request to be obsessive
- it was reasonable to conclude that the request had the effect of harassing the Council and its staff
- it was reasonable to the Council to have considered that compliance with the request would have involved it in looking again at matters that had already been addressed and this would be likely to generate further correspondence the appellants and thus would impose a significant burden."

Consideration of the Appeal

11. The issue raised in this appeal is whether or not the request for information is vexatious. Section 14 (1) of FOIA provides that:-

" section 1 (1) does not oblige a public authority to comply with the request for information if the request is vexatious".

12. The Tribunal, in considering this appeal has borne in mind that the word "vexatious" is an ordinary English word in everyday usage. While the Information Commissioner may have developed his own guidance with respect to this matter; from the perspective of the tribunal the common sense application of the ordinary meaning of the word to the actual circumstances of an individual case must be the correct approach to adopt. The Oxford English Dictionary provides useful guidance as to the meanings of vexatious which may be summarised as "tending to cause trouble or harassment by unjustified interference".

13. The underlying issue in this matter relates to the Local Government Pension Scheme and the trials and tribulations of Equitable Life and its customers. The tribunal is aware that the issues raised by Equitable Life continued to be considered for a long time. However the complexities of the Equitable Life issue and the LGPS are not matters within the jurisdiction of this tribunal. The question the tribunal has to resolve is whether this request for information is one which can properly be refused by this council.

14. In such cases as this it is important to look at the overall context of the case and its impact on the individuals and the public authority concerned. Specific ideas and analyses developed in connection with one case may be less appropriate in connection with another and the use of some terminology may be unhelpful in enabling individuals seeking information from public bodies to understand why it is appropriate that their request should be refused.

15. In this case the tribunal notes that the Pensions Ombudsman came to his decision in 2003 and concluded that, on the basis that the Council proposed to resolve the issue of Mrs Graham's pension, there was no injustice or loss to Mrs Graham. He concluded that it was not unreasonable for the Council to continue to use Equitable Life. While Mr and Mrs Graham may continue to feel aggrieved at the way they have been treated and may continue to feel baffled and concerned by the complexities of the Local Government Pension Scheme as it has evolved, by the issues concerning Equitable Life and by the twists and turns of the particular matters directly affecting Mrs Graham; the fair resolution of Mrs Graham's position identified by the Pensions Ombudsman eight years ago and his findings draw a line under the matter and are therefore of great significance for this case.

16. Since that date there has been correspondence on quite a large scale with the Council which has undoubtedly consumed significant resources and diverted Council staff away from more productive activities on behalf of the community. There have been criticisms of staff in the correspondence; however the greatest source of the feeling of "harassment" on the part of Council staff may well be derived from the feeling that they need to continue to devote significant time and effort into handling a futile stream of correspondence which ultimately can do no good either to Mr and Mrs Graham or to the people of Warwickshire.
17. The simple truth of the matter is that Mr and Mrs Graham are dissatisfied with the Council; but there comes a time when it is appropriate to acknowledge that further action is unavailing. No serious purpose is now being furthered by seeking information from Warwickshire County Council. The tribunal is entirely satisfied that these requests are "tending to cause trouble or harassment by unjustified interference"-they are vexatious.
18. Accordingly the Tribunal finds that the Information Commissioner, in his decision notice in concluding that these requests were properly viewed as vexatious, came to a determination which was in accordance with the law and therefore the Tribunal rejects this appeal.

Chris Hughes

Tribunal Judge

31 October 2011