



Appeal No. EA/2015/0095

Between

William Stevenson (“WS”)

Appellant

and

The Information Commissioner (“the ICO”)

First Respondent

and

Lancashire North Clinical Commissioning Group (“LNCCG”)

Second Respondent

The First – Tier Tribunal’s Decision on an Application by the Appellant for
Permission to Appeal to the Upper Tribunal

1. This application is made pursuant to Rule 42 of the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules, 2009.
2. The Tribunal declines to review this decision pursuant to Rule 44 because it is not satisfied that an error of law is involved, as required by Rule 44(1)(b).

3. The application raises no arguable point of law. Its principal complaint relates to the Tribunal's finding of fact, namely that LNCCG did not hold the disputed information at any material time. I therefore refuse permission to appeal pursuant to Rule 43(2).
4. Following the adjourned hearing on October, 2015 it was apparent that there were four possible issues for the Tribunal's determination -
 - (i) Did LNCCG hold information within the scope of WS's request at or about the date of the request (i.e., within FOIA s.3(2)(a)) ?
 - (ii) Did Blackpool Victoria Hospital hold such information at or about that date ?
 - (iii) If so, did it do so as agent for LNCCG ? (FOIA s.3(2)(b)) ?
 - (iv) If so, would the cost of complying with the request exceed the limit provided for in FOIA s.12 ?

Issue (i) was the “original” issue and was addressed at paragraph 19. Issues (ii) – (v) were described as the “new issues” at paragraph 14.

Clearly (iv) did not require an answer if the answers to (i), (ii) and (iii) were “No”. It appeared that LNCCG abandoned this exemption before my determination.

5. WS expressly or impliedly raised three supposed errors of law in Section D of his Grounds of Appeal
 - i) He did not get a fair trial.

- ii) The Tribunal should have made findings on his accusations of fraud against LNCCG.
- iii) The Tribunal was wrong to find that LNCCG did not hold the disputed information, when it had itself conceded that it did.

These points were developed in a further undated 23 – paragraph email (“the full grounds”), to which I now refer.

6. Paragraphs 1 – 9 of the full grounds were devoted to WS’s intricate and inherently implausible allegations of dishonesty by LNCCG in its handling of his request. His complaints were largely directed to LNCCG’s explanations for failures to respond within the proper time to his request or request for an internal review, which, he asserted, were wilfully false and demonstrated that it must be or was probably lying when it denied possession of the requested information, either directly or through Blackpool Victoria, as agent.
7. In my opinion, a detailed investigation of these matters was most unlikely to assist me in determining the issues recited above. LNCCG is an organization, not an individual. Evidence undermining the credibility of an individual on extraneous matters may, in some circumstances, affect his credibility in relation to the issues. Examination of the arguments advanced by WS as to how his request was handled by LNCCG’s Information manager (i.e., dishonestly and with the intention of evading or delaying a proper response) was most unlikely to shed any light on whether those in charge of LNCCG’s affairs after 2013 had decided that his request should be met with lies as to either its possession of the relevant documents or the fact that Blackpool

Victoria held some of them as LNCCG's agent. I conclude that such an investigation would have been a futile, lengthy and disproportionate judicial exercise.

8. There was ample evidence to indicate that LNCCG was not deliberately hiding this information. Those conducting LNCCG's business had nothing to hide; it was a newly created body with no responsibility for any failings of the predecessor organization. The fact that, alone of the previous leadership, the previous finance director remained in place did not alter the position. Moreover, there is no sensible reason why LNCCG should take possession of material relevant to the Kirkup inquiry when the DoH itself was responsible for producing it, when required by Dr. Kirkup. So far from attempting to conceal it, LNCCG alerted the ICO to the possibility that Blackpool Victoria held it.
9. I refer to these matters simply to indicate that there was cogent evidence to justify my finding at paragraph 19 on issue (i).
10. The following paragraphs of the full grounds relate to various matters and it is not entirely easy to identify the grounds of appeal to which they relate. In so far as LNGCC failed to serve evidence relating to s.12 (cost of retrieval), that would have weakened its case on that issue, had it been necessary to decide it. Its case as to holding the information was perfectly clear once it had complied with my directions as to stating the case that it was presenting when joined. The further directions which followed the preliminary hearing by telephone conference did not require LNCCG to file specified evidence; they simply

placed a time limit on doing so. WS does not accurately recall hence relate what I said at the October hearing, though I doubt whether his error affects this application.

11. As to the agency issue, LNCCG never conceded that Blackpool Victoria held information on its behalf. Indeed, from the outset it insisted that this was “legacy” information which was held by the DoH, either directly or through an agent. The unexpected development in the evidence was LNCCG’s disclosure in about July, 2015 that Blackpool Victoria might hold some or all of the information but on behalf of the DHS.
12. For the reasons already stated, it was highly likely, if not certain, that it held (as it turned out) the August 2010 documentation on behalf of the DHS. Again, that was a factual issue for me and there was clear evidence to justify such a finding.
13. Finally I turn to the question of a fair trial. I assume that this relates to the cancellation of the oral hearing on 25th. February, 2016 and my decision, prior warning of which was given to WS, to determine the appeal on the written material. I have reread the series of emails that preceded cancellation. It is certainly true that WS expressed his wish for an oral hearing when initially appealing and attended such a hearing on 15th. October, 2015. Following the adjournment on that day and subsequent directions and a preliminary telephone hearing it was far from clear that he still wished to attend and make further oral submissions. The Tribunal fixed the date of 25th. February, 2016 after consultation with the parties (though neither respondent planned to appear) and then learnt that WS was not likely to attend. Hence a message

was sent to him requiring an immediate answer as to whether he intended to be present. After his reply he was contacted again to tell him that cancellation would take place immediately, unless he stated his intention to attend. He chose not to do so and pleaded another commitment undertaken because he thought that the hearing was already cancelled.

14. This matter is, in the event, irrelevant since WS, in his email of 23rd February, 2016, stated that he had not intended to appear at the hearing of 25th February anyway because LNCCG had filed no further evidence and did not propose to attend. Furthermore, there is no mention in his grounds of appeal of any point that he would have raised at a hearing but had not referred to anywhere in his copious written submissions. I do not believe that there was any valid argument that he would or could have advanced, had a hearing proceeded.
15. Accordingly, I reject any claim to unfair treatment as a ground for an appeal to the Upper Tribunal.
16. For these reasons I refuse permission to appeal to the Upper Tribunal on any of the grounds specified in the grounds of appeal.

David Farrer Q.C.
Tribunal Judge
17th. April, 2016