Neutral citation number: [2024] UKFTT 92 (GRC)

Case Reference: EJ/2021/0001

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard by: Paper determination
Decision given on: 26 January 2024
Promulgated on: 30 January 2024

Before

TRIBUNAL JUDGE LYNN GRIFFIN
TRIBUNAL MEMBER MARION SAUNDERS
TRIBUNAL MEMBER PIETER DE WAAL

Between

GARY SPIERS

Applicant

and

GARSTANG MEDICAL PRACTICE

Respondent

Decision: The application is refused.

REASONS

Summary

1. We have concluded that there was no failure to comply with the Tribunal's Substituted Decision Notice in appeal reference EA/2019/0317 that would constitute

a contempt of court if these proceedings were proceedings before a court having power to commit for contempt.

2. In the light of our decision above we have not gone on to decide whether or not to exercise our discretion to certify any offence of contempt to the Upper Tribunal.

Preliminaries

3. The parties in this case consented to the paper determination of the application. We are satisfied that we can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended) ("the rules").

4. We have considered the open bundle prepared by the Applicant that has 720 pages as well as his final submissions dated 11 March 2023.

5. We were also provided with and have considered a copy of the directions dated 7 March 2023 and a "closed bundle" containing one document. It is not clear to us whether the directions were acted upon by Dr Spiers in relation to disclosure of the closed bundle. However, we have reconsidered its contents, consistent with our ongoing duty of review and have decided that the document contained in the "closed bundle" is not relevant to the central issues before us. The document sets out the background which is summarised in the open bundle. It therefore carries little if any weight in our deliberations even if it were to be relevant.

6. We note that the open bundle contains personal information about the Applicant's medical conditions and also other personal data relating to the parties in this case and other people whose correspondence is included in the bundle. It is necessary to make an order under rule 14(6) of the rules to protect that data. Thus it is ordered that the Tribunal will hold the documents contained in the open bundle not to be disclosed to any person who is not a party to this application without the leave of this Tribunal. An order will accompany this decision.

Background

7. The parties in EA/2019/0317 were Dr. Gary Spiers and the Information Commissioner. The Information Commissioner is not a party to these proceedings.

The Applicant in this case is Gary Spiers and the Respondent is the public authority, that is the Garstang Medical Practice[1] ("the Practice").

8. The background to the request for information is set out in EA/2019/0317 as follows

"3. … In March 2015 a particular prescription was removed from some treatment that the appellant was using. The appellant says that this caused serious deterioration in his medical condition, which has had both physical and psychological effects on him. He says that the prescription was removed without any prior consultation with him. The appellant has been in correspondence with the Practice (which is his GP practice) about this decision and the way it was made, and he has raised concerns with other bodies including the Care Quality Commission ("CQC")."

9. On 18 October 2018 the Dr Spiers made his request for information from the Practice under the Freedom of Information Act 2000 ("FOIA") as set out below

"…under the Freedom of Information Act 2000 we require digital copies of the General Medical Services (GMS) Contracts for Windsor Road Surgery / Garstang Medical Practice / Kepple Lane Pharmacy from 2014 to 2018. That is the contract between Windsor Road Surgery / Garstang Medical Practice / Kepple Lane Pharmacy and NHS England for delivering Primary care services to the local community. We require this information as we believe that serious breaches of the contracts has occurred by NHS Employees leading to the trauma described above, and we do not want further suffering to occur to innocent Patients"

10. The Practice informed Dr Spiers that it regarded his request for information as vexatious and applied section 14 FOIA in refusing to provide the information under FOIA. The Information Commissioner agreed with the Practice in their decision notice dated 8 August 2019 (reference FS50814768). The Tribunal did not agree with the Information Commissioner's decision although they indicated that the question of whether the request was a vexatious one was finely balanced (see paragraph 32).

11. Thus in EA/2019/0317 the Tribunal allowed the appeal and substituted its decision for that of the Information Commissioner as follows

"SUBSTITUTE DECISION NOTICE
The Garstang Medical Practice (the "Practice") was not entitled to rely on the exemption in section 14 of the Freedom of Information Act 2000 in order to withhold the information

[1] The Garstang Medical Practice (The Practice) is defined in these proceedings (as it was by the Information Commissioner in her Decision Notice of 8 August 2019 which was the subject of the appeal in EA/2019/0317) as meaning Dr J Williamson, Dr S McKimmie, Dr F Laing, Dr J Miles, Dr M Oliver, Dr G Dingle, Dr K Dingle, Dr U Desai, Dr O Kadir, Dr R Morgan and Dr G Russell - each of whom are described by the Information Commissioner as being an individual public authority (see paragraph 4 of the Information Commissioner's Decision Notice).

requested by the Appellant. The Practice is to provide the information to the Appellant by 14 December 2020 unless the Practice wishes to rely on any alternative permitted exemptions to disclosure."

12. The decision in EA/2019/0317 was promulgated on 3 November 2020. On the same day it was sent by the Information Commissioner's office by email to a person at the Practice, not one of the partners. The covering email drew attention to the terms of the substituted decision notice and the date for compliance being 14 December 2020.

13. On 10 November 2020 an email was sent to Dr Spiers in the name of the Practice that stated *"The ICO have requested that we send you the attached."*. Although that was a misstatement of the origin of the request this is understandable since it was the Information Commissioner's office that had notified the Practice of the Tribunal's substituted decision. In any event we find that this was an action taken within the time period set for compliance with the substituted decision by the Tribunal in EA/2019/0317.

14. The attachment to the email of 10 November 2020 was identified in the documents by Dr Spiers as "SPIERS_5_12-03-19_P81006_GMS_Contract.pdf". This document is a lengthy contract entitled the NHS England Standard General Medical Services Contract 2017/18 which was first published in January 2018. Schedule 1 to that contract includes the names of the partners at the date of signature and these provisions -

"If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice in writing to the other party as soon as is reasonably practicable.
…
The Contract is made with the partnership as it is from time to time constituted and shall continue to subsist notwithstanding:
(1) the retirement, death or expulsion of any one or more partners; and/or
(2) the addition of any one or more partners.
The Contractor shall ensure that any person who becomes a member of the partnership after the Contract has come into force is bound automatically by the Contract whether by virtue of a partnership deed or otherwise."

15. On 12 November 2020 Dr Spiers wrote to the Practice and the Information Commissioner (copied to the Tribunal) to raise the issue that in his opinion the email of 10 November 2020 did not satisfy the terms of the substituted decision (and purported to extend the terms of the request to the year 2020, see below). He wrote

again on 21 November 2020 chasing a response and asking for contact details of the person to deal with.

16. At 09.31 on 14 December 2020 Dr Spiers followed up his two previous emails and drew attention to the impending deadline due to expire at close of business that day. He attached a further copy of the Tribunal's decision in EA/2019/0317. He informed the Practice that if he did not hear further he would "escalate" the issue to the Tribunal and thus a prompt response would be welcomed in order to avoid "wasting the Tribunal's time and Public money".

17. At 21.32 on 14 December 2020 Dr Spiers wrote to the Tribunal and copied in the Practice and the Information Commissioner. In that email he requested enforcement of the Tribunal's decision in EA/2019/0317.

18. On 5 February 2021 the Practice wrote to the Tribunal in response to case management directions and stated

"I would like to point out that the GMS contract we hold is a national core contract. We never actually physically sign a contract (each year). There is no local variation to this contract for individual practices. There is no local negotiation around this contract in any area of England. The CCG is not able to vary the core GMS contract.
It is a matter of public record and is readily available online. I have listed several links which provide the GMS contract in full.
https://www.england.nhs.uk/gp/investment/gp-contract/
https://www.england.nhs.uk/wp-content/uploads/2020/12/20-21-GMS-Contract-October-2020.pdf
Given the information I have outlined I do not see what else we could have provided in answer to this information query, and I hope this further update is sufficient to satisfy the follow up matter raised."

19. A further email dated 22 March 2021 from NHS England, addressed to the Practice, states

"I have checked and the contract variations on file all seem to relate to partnership changes and a change to the practice name. These contract variations are just specific to your practice/contract. The other contract variations referred to would be national ones and would affect all practices – these were amalgamated into the new contract that I sent to you and so there is nothing separate that you are missing, but if there is anything other than this that you need please let me know and I will get it across to you."

We note that those national changes would have been included in the versions of the contracts publicly available on the internet.

20. The email of 22 March 2021 was in answer to an exchange in which the Practice was querying whether there had been any substantive change to the standard "core" contract between 2014 and 2018. In that exchange of correspondence a primary care manager stated

"The practice would have a standard contract which would be updated as and when there were any changes eg national variations and if you had a partner coming on or off the contract etc. These updates would be via a contract variation which would be signed by the commissioner ie CCG or previously NHSE/ I before delegation. A new whole contract document is not issued as such."

21. On 10 February 2023 the Practice wrote again to the Tribunal enclosing the exchange of emails referred to above and stating

"Please also find attached an email trail between GMP and NHSE in which we were trying to ascertain/confirm that there was no other version of the contract that we could send to Dr Spiers to fulfil his FOI request regarding copies of our contract from 2014-2018. NHSE confirmed that the copy of the contract they had provided for us to send to Dr Spiers was correct and that there was nothing missing. The only other information they held on record related to specific partnership changes and not to the content of the contract."

22. On the basis of this evidence we find that the contract provided to Dr Spiers on 10 November 2020 by the Practice was in substance the same that had applied in the years 2014-15, 2015-16 and 2016-17.

The application to certify a contempt

23. Dr Spiers sent a Notice of application for certification of a contempt of court to the Upper Tribunal on 22 December 2020. That notice sought enforcement of the decision in EA/2019/0317 pursuant to rule 7A of the Tribunal rules and s61 FOIA.

24. The act or omission relied upon in the grounds that Dr Spiers said would constitute contempt of court (rule 7A(3)(e)) was an allegation that the Practice had not provided the information ordered by the Tribunal in EA/2019/0317 even though he had reminded them more than once by email of their obligations.

25. Dr Spiers stated that the outcome he sought was the provision of documents and asked that the dates of his request be extended to 2020 due to the delay in providing the information. He later asked for the dates to be extended to 2021. As pointed out by District Judge Worth, sitting as a Tribunal judge in her directions of 7 March 2023, the only information which was within the scope of the FOIA request and thus the

scope of the Tribunal's decision in EA/2019/0317 was that which was held on the date of the request, therefore that held on 18 October 2018. We agree with DJ Worth that later documents, if any, dating from the period after 18 October 2018 are not part of this Tribunal's consideration.

26. The only power of this tribunal is to decide whether or not to certify an offence of contempt to the Upper Tribunal

27. Throughout the documentation Dr Spiers referred to the Pharmacy that was attached to the Practice, as well as the Practice itself. However, the public authority to whom the substituted decision was directed was the Practice. We again agree with DJ Worth who said "*The only provider involved is the Practice, namely Garstang Medical Practice. This is the Public Authority from whom Dr Spiers requested information and the Practice is the only public authority from whom the Tribunal could require compliance with the Freedom of Information Act 2000.*" The substituted decision was directed to the Practice and not the Pharmacy and thus the Pharmacy were not subject to any duty to comply.

28. The reason Dr Spiers says that the document provided by the practice on 10 November 2021 is insufficient to comply with the Tribunal's substituted decision was that it is the NHS England **Standard** General Medical Services (GMS) Contract 2017/18 (emphasis added). It is suggested by Dr Spiers that as the document is the 'standard' contract for 2017/18 it did not meet the terms of the request which was for the full contract(s) that the Garstang Medical Practice had with the NHS from 2014 to 2018, which he says would have been signed by them. Dr Spiers drew attention to paragraph 28 of the Tribunal's decision which stated "*It may be that the standard obligations from a GMS contract are already publicly available, but it is arguable that the full contracts with the Practice are relevant to assessing if there has been a breach of those specific contracts.*"

29. Dr Spiers suggests that the Practice has failed to comply with the substituted decision because the Practice:
    a. Failed to supply the contracts for 2014-17 inclusive;
    b. Did not provide a copy of the contract provided that was signed;
    c. Failed to supply details of partnership changes or changes to the practice name, CCG name, or details of the changes to the standard contract, nationally or with the practice.

30. The Practice has submitted that it could not have complied further as it provided the only document relevant to the terms of the request.

31. The Practice has not provided a final written submission to us, albeit the provision of such a document was not mandatory. Although the Practice appeared at a case management hearing before the Chamber President, its engagement in the substance of the process before us is encompassed in the emails summarised above.

The legal framework

32. The Upper Tribunal ruled in the case of Information Commissioner v Moss and the Royal Borough of Kingston upon Thames [2020] UKUT 174 (AAC) that it was a matter for the First-tier Tribunal (FTT) to enforce its decisions and not the Information Commissioner.

33. There is no power to compel a public authority to comply with a substituted decision notice but the power to certify an offence of contempt may operate as an incentive to comply.

34. The FTT's jurisdiction as regards certification of offences of contempt to the Upper Tribunal is set out in section 61 FOIA. This section reads, as relevant

S.61
…
(3) Subsection (4) applies where –
(a) a person does something, or fails to do something, in relation to proceedings before the First-tier Tribunal on an appeal under those provisions, and
(b) if those proceedings were proceedings before a court having power to commit for contempt, the act or omission would constitute contempt of court.
(4) The First-tier Tribunal may certify the offence to the Upper Tribunal.
…

35. This section came into force on 25 May 2018 and therefore applies in this case.

36. Section 61 FOIA is supplemented by rule 7A of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Tribunal rules) as follows

Certification

7A. – (1) This rule applies to certification cases.
(2) An application for the Tribunal to certify an offence to the Upper Tribunal must be made in writing and must be sent or delivered to the Tribunal so that it is received no later than 28 days after the relevant act or omission (as the case may be) first occurs.
(3) The application must include –
(a) details of the proceedings giving rise to the application;
(b) details of the act or omission (as the case may be) relied on;
(c) if the act or omission (as the case may be) arises following, and in relation to, a decision of the Tribunal, a copy of any written record of that decision;

(d) if the act or omission (as the case may be) arises following, and in relation to, an order of the Tribunal under section 166(2) of the Data Protection Act 2018 (orders to progress complaints), a copy of the order;

(e) the grounds relied on in contending that if the proceedings in question were proceedings before a court having power to commit for contempt, the act or omission (as the case may be) would constitute contempt of court;

(f) a statement as to whether the Applicant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate, and

(g) any further information or documents required by a practice direction.

(4) If an application is provided to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time) –

(a) the application must include a request for an extension of time and the reason why the application was not provided in time, and

(b) unless the Tribunal extends time for the application, the Tribunal must not admit the application.

(5) When the Tribunal admits the application, it must send a copy of the application and any accompanying documents to the respondent and must give directions as to the procedure to be followed in the consideration and disposal of the application.

(6) A decision disposing of the application will be treated by the Tribunal as a decision which finally disposes of all issues in the proceedings comprising the certification case and rule 38 (decisions) will apply.

37. No order will be enforced by committal unless it is expressed in clear, certain and unambiguous language: Harris v Harris [2001] 2 FLR 895 per Munby J at paragraph 288. So far as is possible, the person affected should know with complete precision what it is that they are required to do or abstain from doing.

38. The application notice should be sufficiently particularised to ensure that the person alleged to be in contempt knows exactly what they are said to have done or have omitted to do, so as to properly defend themselves: Kea Investments Ltd v Eric John Watson & Ors [2020] EWHC 2599 (Ch) per Lord Justice Nugee at paragraph 23.

39. The burden of proof lies on the Applicant and the standard of proof is the criminal standard: JSC Mezhdunarodniy Promyshellnniy Bank v Pugachev [2016] EWHC 192 (Ch).

40. In Navigator Equities Ltd & another v Deripaska [2021]EWCA Civ 1799 (hereinafter "Navigator") the Court of Appeal set out the principles to be applied and the relevant considerations see para 70 et seq. At paragraph 82 the Court of Appeal stated

The following relevant general propositions of law in relation to civil contempts are well-established:

i) The bringing of a committal application is an appropriate and legitimate means, not only of seeking enforcement of an order or undertaking, but also (or alternatively) of drawing to the court's attention a serious (rather than purely technical) contempt. Thus a committal application can properly be brought in respect of past (and irremediable) breaches;

ii) A committal application must be proportionate (by reference to the gravity of the conduct alleged) and brought for legitimate ends. It must not be pursued for improper collateral purpose;
iii) Breach of an undertaking given to the court will be a contempt: an undertaking to the court represents a solemn commitment to the court and may be enforced by an order for committal. Breach of a court undertaking is always serious, because it undermines the administration of justice;
iv) The meaning and effect of an undertaking are to be construed strictly, as with an injunction. It is appropriate to have regard to the background available to both parties at the time of the undertaking when construing its terms. There is a need to pay regard to the mischief sought to be prevented by the order or undertaking;
v) It is generally no defence that the order disobeyed (or the undertaking breached) should not have been made or accepted;
vi) Orders and undertakings must be complied with even if compliance is burdensome, inconvenient and expensive. If there is any obstacle to compliance, the proper course is to apply to have the order or undertaking set aside or varied;
vii) In order to establish contempt, it need not be demonstrated that the contemnor intended to breach an order or undertaking and/or believed that the conduct in question constituted a breach. Rather it must be shown that the contemnor deliberately intended to commit the act or omission in question. Motive is irrelevant;
viii) Contempt proceedings are not intended as a means of securing civil compensation;
ix) For a breach of order or undertaking to be established, it must be shown that the terms of the order or undertaking are clear and unambiguous; that the respondent had proper notice; and that the breach is clear (by reference to the terms of the order or undertaking).

41. If a contempt is proven to the required standard, the Tribunal must then consider whether, in all the circumstances of the case, the discretion in section 61(4) FOIA should be exercised to certify the contempt to the Upper Tribunal.

42. In Rotherham Metropolitan Borough Council v Harron & The Information Commissioner's Office and Harron v Rotherham Metropolitan Borough Council & The Information Commissioner's Office [2023] UKUT 22 (AAC) Farbey J pointed out that

54. The principle that proceedings for contempt of court are intended to uphold the authority of the court and to make certain that its orders are obeyed is longstanding (for a recent restatement, see JS (by her litigation friend KS) v Cardiff City Council [2022] EWHC 707 (Admin), para 55). A person who breaches a court order, whether interim or final, in civil proceedings may be found to have committed a civil contempt. Given the nature and importance of the rights which Parliament has entrusted twenty-first century tribunals to determine, the public interest which the law of contempt seeks to uphold – adherence to orders made by judges – is as important to the administration of justice in tribunals as it is in the courts. There is no sound reason of principle or policy to consider that any different approach to the law of contempt should apply in tribunals whose decisions fall equally to be respected and complied with.

43. Farbey J went on to emphasise that where an order has not been complied with the FTT should consider all the circumstances in deciding whether certification is a proportionate step. She said that *"The interests of the administration of justice are not served by disproportionate contempt orders"*, see paragraph 82 of the Harron decision (supra).

44. Section 50 FOIA gives the Information Commissioner the power to issue a decision notice determining whether a request for information made to a public authority has been dealt with in accordance with FOIA:

50. Application for decision by Commissioner.

(1) Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.

45. A complainant may appeal against the Commissioner's decision notice, under section 57 FOIA:

57. Appeal against notices served under Part IV.

(1) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice.

46. The Tribunal's jurisdiction in any appeal under FOIA is to consider the Commissioner's decision notice:

58. Determination of appeals.

(1)If on an appeal under section 57 the Tribunal considers –

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b)to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

47. Under section 58 FOIA the Tribunal conducts a full merits appeal (de novo) of the Commissioner's handling of the decision under appeal. The Tribunal does not have jurisdiction to consider and determine whether requests for information that are not part of the decision notice under appeal were dealt with properly by the public authority as recognised by the Upper Tribunal in Birkett v Defra and IC [2012] AACR 32, paragraph 50 "*The consideration is limited by the terms of the request for information*".

48. Thus there are two stages to any decision to certify an offence of contempt. The first is to decide whether we are satisfied that the alleged contemnor has done something, or failed to do something, in relation to proceedings before the First-tier Tribunal on an appeal under those provisions, which if those proceedings were proceedings before a court having power to commit for contempt, the act or omission would constitute contempt of court. The second is to decide whether to exercise the discretion to certify the offence to the Upper Tribunal pursuant to s61(4) FOIA.

49. The standard of proof to be applied is the criminal standard of beyond reasonable doubt. In other words we must be satisfied so that we are sure of any fact before finding it proved. This reflects the serious nature and potential consequences of allegations of contempt of court.

50. In considering whether to exercise the discretion to certify the contempt the Upper Tribunal the circumstances of any proven act or omission will be relevant. In this regard if the Tribunal is satisfied that the conduct was intentional or reckless may be a factor tending towards certification while on the other hand accidental, or unintentional non-compliance will not carry the necessary quality of contumacy.

51. This application has been before the Upper Tribunal in relation to interlocutory matters. In dealing with those matters Upper Tribunal Judge Wright said as follows

My decision on this appeal by the Information Commissioner to the Upper Tribunal is not concerned with the merits of Dr Spiers's certification application under rule 7A. However, the terms of section 61(3)(b) of FOIA and its correlate in rule 7A(3)(e) of the GRC Rules may give rise to an arguable point about whether a finding of contempt or punishment for contempt could be made in the absence of any 'penal notice' attached to the First-tier Tribunal's substituted Decision Notice: see, by analogy, MD v SSWP (Enforcement Reference [2010] UKUT 202 (AAC); [2011] AACR 5.

52. Dr Spiers referred us to the case of JS (by her litigation friend KS) v Cardiff City Council [2022] EWHC 707. That case involved breaches of a mandatory order which the Court found amounted to a contempt of court. Steyn J referred with approval to a decision of Collins J in R (JM) v Croydon London Borough Council [2009] EWHC 2474 (Admin), to the effect that a penal notice is not necessary to enable the court to deal with public bodies by means of proceedings for contempt as public bodies would seldom find themselves in the position where committal would be contemplated.

53. This is consistent with the words of Farbey J in Moss v Royal Borough of Kingston-upon-Thames and the Information Commissioner [2023] EWHC 27. At paragraph 128 Farbey J said in the context of an application made before the coming into force of section 61(3) and (4) FOIA,

128. Although it is not necessary for me to make findings on the matter, I was less impressed with Mr Coppel's argument that the absence of a penal notice on the FTT's decision should weigh against a finding of contempt. A reasonable and competent public authority should know from the scheme of FOIA that tribunals may substitute decisions and should know that tribunals do not as a matter of procedure or practice attach penal notices to decisions. That does not alter their force. I would not hold that it is necessary for the FTT to attach a penal notice to a substituted decision to enable the court to deal with a public authority as a contemnor…

The issues

54. This case is about whether the Practice has complied with the substituted decision notice in the case of EA/2019/0317. Dr Spiers alleges that the Practice's email of 10 November 2020 was insufficient to comply and that the non-compliance was of such degree that the Tribunal should certify an offence of contempt to the Upper Tribunal.

55. There are therefore two questions for the Tribunal to decide

    a) Is the Practice guilty of any act or omission in relation to proceedings before the Tribunal which, if those proceedings were proceedings before a court having power to commit for contempt, would constitute a contempt of court?

    b) If the Practice is "guilty of an act or omission in relation to proceedings before the Tribunal which, if those proceedings were proceedings before a court having power to commit for contempt, would constitute a contempt of court", should the Tribunal exercise its discretion to certify a contempt to the Upper Tribunal ?

56. Within the first question above the Tribunal considered

    a) Whether the terms of the Substituted Decision Notice in EA/2019/0317 were sufficiently clear and unambiguous so as to be capable of founding a finding of contempt for breach thereof;

    b) If so, what were the obligations imposed on the Practice by the Substituted Decision Notice?

    c) Whether the Practice's email of 10/11/20, and/or any other action taken as a result of the substituted decision notice, was sufficient to comply with the decision of the Tribunal in EA/2019/0317?

    d) Does the Applicant, have a right to complain to the Information Commissioner pursuant to section 50(1) of the Freedom of Information Act 2000 ("FOIA") in

relation to an assertion that the Practice's response to the Substituted Decision Notice was not in accordance with Part I of FOIA?

57. Question 2 encompasses consideration of whether any breach or failure to comply that has been proven was accidental or wilful.

58. Dr Spiers made the following submissions as regards the contract provided by the Practice, compliance with the Tribunal's substituted decision, and the Practice's email of 5 February 2021, in summary that:
    a) The contract provided does not clearly show the parties to enable regulatory action to be taken against the signatories if appropriate. The names are necessary to fulfil the FOIA request he made;
    b) The contract was the standard general medical services contract and although said not to be specific to the practice sections are struck out, thus demonstrating that specific variation was made;
    c) He has been unable to progress complaints to the Parliamentary and Health Service Ombudsman (and other regulators) due to the delays in providing the information;
    d) Breaches of the contracts requested under FOIA demonstrate wilful disobedience to the Tribunal;
    e) The Practice has not adhered to its statutory/professional duties including the "duty of candour".

59. Dr Spiers also made many submissions about aspects of his care, the way in which prescribing decisions were taken, management of the Practice's list of patients, his records and his concerns that arise about adherence to the various regulatory frameworks he has brought to our attention. None of these matters are issues for us to decide.

60. Dr Spiers made at least one subject access request to the Practice and others to various bodies including the Information Commissioner. This Tribunal is not seized of those matters. The material requested would be most unlikely to assist the Tribunal in determining the issues in this case because it relates to those bodies' dealings with Dr Spiers rather than compliance with the substituted decision notice.

Analysis and conclusions

61. There was no issue in this case between the parties that the terms of the Substituted Decision Notice in EA/2019/0317 were sufficiently clear and unambiguous so as to be capable of founding a finding of contempt for breach thereof. The Practice were ordered to disclose the information Dr Spiers had requested under FOIA unless it

sought to rely on another exemption under FOIA. The deadline set by the Tribunal was clearly stated.

62. The obligation imposed by the order was to disclose the requested information by 14 December 2020 or to notify Dr Spiers that the Practice was refusing to disclose the information requested pursuant to another exemption, not section 14.

63. It is not in dispute that the Practice responded to the obligation imposed upon them and we have found that information was provided to Dr Spiers before the expiry of the deadline for compliance, in the form of the NHS England Standard General Medical Services Contract 2017/18.

64. The heart of Dr Spiers' case is that the information that was disclosed pursuant to the substituted decision was not that which he had requested. He submits that the Practice's email of 10/11/20, and/or the further information provided about the way the contract was constructed and updated, was insufficient to comply with the decision of the Tribunal in EA/2019/0317.

65. We have reminded ourselves that the request made by Dr Spiers that was the subject of his successful appeal in EA/2019/0317 was as follows -
"…under the Freedom of Information Act 2000 we require digital copies of the General Medical Services (GMS) Contracts for Windsor Road Surgery / Garstang Medical Practice / Kepple Lane Pharmacy from 2014 to 2018. That is the contract between Windsor Road Surgery / Garstang Medical Practice / Kepple Lane Pharmacy and NHS England for delivering Primary care services to the local community. We require this information as we believe that serious breaches of the contracts has occurred by NHS Employees leading to the trauma described above, and we do not want further suffering to occur to innocent Patients"

66. Dr Spiers was sent a digital copy of the contract for the Practice that was the contract in force at the date of his request. The Practice had worked with NHS England to find out if there was any other version of the contract that could be sent to Dr Spiers. As a result of those enquires by the Practice Dr Spiers was told that any changes during the time period of his request would have been amalgamated into the contract he was provided. He was directed to online sources of the contract. He was told there was no negotiation of that contract on a local or individual level. There was no requirement for what are sometimes know as "wet" signature(s), that is handwritten signatures on a printed copy on paper.

67. It is not a matter for this Tribunal to determine whether the contract provided would be sufficient to enable regulatory action to be taken against the signatories if appropriate. Our function is solely to determine whether the information provided

was that requested and subject of the substituted decision. The request under FOIA dated 18 October 2018 did not include a request for the names of the signatories and referred to the Practice as opposed to the individuals who comprise the Practice at any given time. Thus we find that provision of those names was not necessary to fulfil the FOIA request he made.

68. The contract was the standard general medical services contract and Dr Spiers is correct in his submission that sections are struck out, but this does not demonstrate that specific variation was made only for this Practice; these are variants of the standard contract to allow for the provisions of different aspects of the service and the reason for the striking out of those passages are explained in footnotes that form a part of the document he has been sent. In so far as those struck out passages demonstrate specific variation for this practice he has the contract as varied for the Practice and thus there is no more to be provided.

69. We have found that the contract provided to Dr Spiers on 10 November 2020 by the Practice was in substance the same that had applied in the years 2014-15, 2015-16 and 2016-17.

70. We conclude that the Practice's email of 10/11/20, was sufficient to comply with the substituted decision of the Tribunal in EA/2019/0317. The later information provided by the Practice and NHS England clarified that there was no further information to be provided to Dr Spiers. We accept that he has been sent all the information within scope of his request made under FOIA on 18 October 2018. As explained earlier in this decision Dr Spiers is not able to extend the dates of that request to bring subsequent information within its scope. There was no breach of the order and no failure to comply with the substituted decision.

71. Given the decision above there is no need for us to consider whether the Applicant, had a right to complain to the Information Commissioner pursuant to section 50(1) of the Freedom of Information Act 2000 ("FOIA") in relation to an assertion that the Practice's response to the Substituted Decision Notice was not in accordance with Part I of FOIA.

72. We have concluded that the Practice is not guilty of an act or omission in relation to proceedings before the Tribunal which, if those proceedings were proceedings before a court having power to commit for contempt, would constitute a contempt of court.

73. In the light of our decision above there is no need for us to go on to consider the second question about whether we should exercise our discretion to certify a contempt to the Upper Tribunal. Thus we do not deal with Dr Spiers' submissions as

summarised in paragraph 58(c) to (e) above which are relevant only to that aspect of the application before us.

74. In this case there was no penal notice included in the substituted decision notice. Given our decision that there was no act or omission capable of amounting to a contempt of court it is not necessary for us to consider in this case how that would, if at all, affect our discretion to certify a proven contemptuous act or omission.

75. The application is refused.

Signed: Judge Griffin Date: 26 January 2024