

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2019

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested pensions' related information from his employer, the Ministry of Justice (the 'MOJ'). The request was refused on the grounds that it was 'vexatious' in line with section 14(1) of FOIA.
2. The Commissioner's decision is that the MOJ has incorrectly relied upon section 14(1) of FOIA in relation to the complainant's request.
3. The Commissioner therefore requires the MOJ to take the following step to ensure compliance with the legislation:
 - The MOJ must issue a fresh response to the request which does not rely on section 14(1), in accordance with the FOIA.
4. The MOJ must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The MOJ has explained that the Legal Services Commission ('LSC') was abolished in April 2013, with all staff transferring to the Legal Aid Agency or MOJ. The LSC pension subsequently closed and staff were given the option to transfer their benefits to the Civil Service Pension Scheme or leave them in the LSC scheme. Following this the complainant has submitted "*many FOI requests*" (also to Cabinet Office and Government Actuary's Department) investigating the transfer process.

6. The Commissioner understands that in, advance of the LSC's transfer to Executive Agency status within the MOJ, the LSC worked closely with the MOJ, the recognised Trade Unions, Government Actuary's Department ['GAD'] and the LSC pension trustees on the terms of the future pension scheme and the bulk transfer arrangements. They also agreed how these should be communicated to members. This included:

- December 2012 - All members of the LSC pension scheme were issued with an information pack titled *"Future Pension Arrangements for Legal Services Commission Employees"* which included a section on 'important factors to consider'. (One of these was *"If you choose to transfer your LSC pension into the Civil Service Premium scheme and continue working after receiving your pension, then Civil Service abatement rules will apply."*);
- January and February 2013 – Presentations to every LSC office.

7. The complainant has given his consent for the Commissioner to include some details in this notice about how the pension transfer affected him personally and to put the request in context. His pension was transferred while he was absent from work and done without his written consent, which he states was *"a requirement"*. The transfer would have resulted in him losing a significant amount of money had he not challenged this position and resolved it.
8. The Commissioner notes that the complainant is employed by the MOJ and is, in his words, a "layman" in terms of pensions, although he has had significant experience as a lawyer (but not in the pensions field). However, he has explained that he has been attempting to assist in excess of 400 former LSC employees in relation to the pension changes.
9. The Commissioner understands that the complainant has utilised the MOJ's grievance and whistleblowing procedures as methods of attempting to resolve the issues, and may use (or have by now actually used) the judicial review process.
10. The request under consideration in this notice follows a number of previous pension related requests submitted by the complainant to the MOJ. In its response to an earlier pension related request dated 21 December 2018, the MOJ advised the complainant of the following:

"Due to the volume and frequency of your requests you should also note that, in accordance with section 14(2) the FOIA, MOJ is not required to reply to any substantially similar or identical request within a reasonable time period since complying with your original request. We will also consider any future requests

using the ICO's guidance on vexatious requests under section 14(1) of the FOIA."

Request and response

11. On 4 February 2019, the complainant wrote to the MOJ and requested information in the following terms:

"I have taken legal advice, and would be grateful if you would provide any further recorded information in relation to the following aspects.

Attachment 1

The e mail dated 18/12/12. Can I have everything in this e mail chain please? Is it the case that the FAQ wasn't signed off or did it just fall off the radar? The concern that I am trying to address is that there appears to have been a very comprehensive Q & A on abatement drafted but it does not appear to have made it into the Q & A document. There is no obvious explanation as to why this should be the case. If the issue was felt important enough to justify a comprehensive Q & A is there any recorded information as to why it was not included in the published Q & A document?

Attachment 2

Annex 2. There is a comprehensive reply to a question about abatement in an e mail dated 25/4/13. Again, please can I have any other e mails in this chain, redacted as appropriate? Is there any recorded information as to why this comprehensive information was reserved to the individual enquirer? I have taken expert advice on how a Q & A document works. The position, I am reliably informed, is that such a document would be updated with answers of general application. Is there any recorded information as to why this comprehensive information in relation to abatement was not included in the published Q & A document? Pension Regulator – please can you note this FOIA request – made on legal advice – and add it to the file please?"

12. The MOJ responded on 22 February 2019. It stated that it considered the request to be vexatious, citing section 14(1) of FOIA.
13. The complainant requested an internal review on 25 February 2019. The MOJ provided its internal review on 22 March 2019 and maintained that section 14(1) applied.

Scope of the case

14. The complainant contacted the Commissioner several times in March 2019 in relation to a number of potential FOIA complaints. On 9 April 2019, the Commissioner spoke to the complainant to identify his specific concerns.
15. Having identified two valid complaints, the Commissioner requested the relevant correspondence relating to the current request. (She has also dealt with his other FOIA complaint separately which has now been informally resolved).
16. The complainant specifically disputed the MOJ's decision to refuse this request as vexatious. The Commissioner understands that the MOJ aggregated the current request with another pension related request (made 25 January 2019, see Annex to this notice) in terms of responding; however, as the complainant has confirmed, he only wishes to complain about the request set out above. The Commissioner has therefore disregarded the other aggregated request.
17. The Commissioner has considered whether the request of 4 February 2019 was vexatious, and, therefore, whether the MOJ correctly relied on section 14(1) of FOIA.

Reasons for decision

Section 14 - vexatious request

18. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term 'vexatious' is not itself defined in the legislation, but in *Information Commissioner v Devon County Council & Dransfield*¹ the Upper Tribunal commented that:

"The purpose of section 14... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA."

19. The Upper Tribunal concluded that 'vexatious' could be defined as the:

¹ UKUT 440 (AAC), 28 January 2013

"...manifestly unjustified, inappropriate or improper use of a formal procedure."

20. The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
21. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
22. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests".
23. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
24. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests; these are set out in her published guidance². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.
25. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant,

² <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

this will involve the need to take into account wider factors such as the background and history of the request.

The complainant's position

26. As set out in the 'Background' section of this notice, the complainant has provided the Commissioner with specific details about how his pension transfer was handled, how the associated pension changes impacted upon him and the steps he has taken to address this with the MOJ. Had he not been able to get his position resolved, he advised that he would have lost a substantial amount of money (figure provided).
27. Although it is not within the Commissioner's remit to adjudicate on MOJ/Civil Service pension matters, she has taken into account the background and history provided by the complainant about the issues relating to the pension transfer both for him and over 400 other employees. She notes that a specific concern of the complainant relates to the application of Abatement rules to transferred LSC Pensions. The complainant has explained that this means that transferors cannot take a pension at age 60 and continue to work and be paid their full salary; the complainant said this is a *"massive difference between those who left their LSC Pension where it was and those who transferred"*. This means that a person who retires at 68 (the new norm for many) loses eight years of their LSC Pension income which is index linked from 1 April 2013.
28. The complainant stated that the 'Roadshow' slides used to explain the implications and effects of the pension transfer to employees did not mention Abatement. He is aware of three members of staff, all of whom happen to be senior, who are affected by this and said that all of them will state, if necessary, that Abatement was not mentioned at the (separate) events they attended. The 'FAQ' document did not mention Abatement either.
29. The complainant also provided the Commissioner with details about how he considers that the whole pension transfer process was mismanaged, saying that it was not discussed with everyone (for example employees on maternity leave or long term sick) and that the information provided has misled a significant number of individuals who transferred from the LSC scheme to the Civil Service pension. He said:

"400 + staff transferred their LSC Pension without the full facts and without giving informed consent."
30. In addition, the complainant provided the Commissioner with specific examples of the types of losses incurred by some of the employees as a result of the transfer, which he is aware of through trying to provide

assistance to those individuals. He also supplied details of the total value of the pensions transfer; these sums are not insignificant.

31. In support of his view that the process was poorly managed and communicated, the complainant provided the Commissioner with a copy of a comparison given to one individual to illustrate the impact of the pensions transfer. He highlighted the following:

"...take a look at the "Notes" on the back of the comparison. The benefits of moving the LSC Pension (as they saw them) are extolled – not a single mention of the devastating abatement rule not being applicable to the LSC Pension".

"I've seen confirmation from the Chief Executive of the Legal Aid Agency that the GAD comparison was in fact produced in accordance with a "practise" which didn't include consideration of all the variables. This "practise" wasn't mentioned to staff. It made it appear that the Schemes were similar – when they were in fact completely different – the less favourable Premium Scheme paying out 6, 7 or even 8 years later than the LSC No. 4 Scheme in some cases. All this is explained in the Q & A which has been disclosed but which was not put in the document and so was not provided to staff. All I'm trying to establish is why that information was not made available. I believe there was negligence or worse in failing to make the Q & A available to staff and that a cover up is now self - evident. In my own case, had my LSC Pension remained transferred, it would have been worth at least [monetary amount redacted] less to me There are potential losses higher and lower than this throughout the potential cohort of 400 + staff – a figure revealed by the FOIA process I have followed and where I have received cooperation".

"A comprehensive answer was given in relation to abatement – to just one individual in Bristol. The question and the answer are reflective of the complexity around the issue and the requirement for complete clarity. This was lacking. In particular the response displays a lack of understanding of the relevance of the abatement rule to all sizes of LSC Pension Pots not just those approaching 60 ... All the same this disclosure astonishes me. A very comprehensive response on something which affected all 400 + transferees was provided to just one individual in Bristol. At least if this had been added to the Q & A you might have had a fighting chance."

32. The complainant said that the information provided to members was misleading in that it described the two schemes as "comparable" whilst failing to highlight the following key aspect:

"The information failed to point out that a major benefit of leaving your LSC Pension Pot where it was (because of the abatement rule in the Premium Scheme) was that you could take your pension at 60 and continue to work for your full salary after that time. This does not apply in the Premium Scheme, where the Premium Pension is abated after 60 (i.e. not paid) if you continue to work. This huge positive of the LSC Scheme is not mentioned at all in any of the material provided to staff at the time. Abatement was only dealt with (completely inadequately) to the extent that it applied to the Premium Scheme. There are two references to the abatement rule in the documentation but nothing about its non – applicability in the LSC Scheme. The references are - a direction to a website (but no explanation whatsoever as to why the rule might be fundamentally important) and a statement in the same document which says, that, as the moving process was compulsory, abatement did not apply."

33. In relation to the current request, the complainant told the Commissioner the following:

"As part of the Options Exercise a Q & A document was shared with staff. Two comprehensive Q and A's on the subject of abatement were prepared (established through FOI – not voluntary disclosure) and never made it to the published document. I have been trying to establish the reason why for the past six months but have been refused the information by the Information Function headed up by [name redacted]. This is a matter of concern in both the extant grievance and Whistle Blowing Procedures. In the absence of this information it is not possible to say one way or the other whether there has been deliberate deception in relation to the abatement issue or just plain old fashioned incompetence."

34. He argued that the request under consideration in this notice should not be vexatious because:

"I'm looking for anything which explains why the LAA failed to publish its prepared Q & A on abatement. Also why the detailed answer prepared on the issue from the Bristol Office was only made available to the questioning individual and not made part of the published Q & A document – as would be normal practice."

The MOJ's position

35. In its initial refusal notice, the MOJ told the complainant it considered the request to be vexatious on the following grounds:

"Frequent or overlapping requests – you have submitted frequent correspondence about the same issue or sent in new requests before the MOJ has had an opportunity to address the earlier enquiries.

Burden on the authority – the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the MOJ cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid your intentions."

36. The MOJ upheld this position at internal review but included the following additional context:

- "1. You have previously sent five separate requests with over 35 questions in total.*
- 2. Regarding your request for 'Government Actuaries Department's (GAD) advice to the LSC Pension Trustees', you have since advised that the required information has been received from GAD; hence the first part of your request is treated as cancelled.*
- 3. In previous responses, all the information you requested and we hold was provided to you. There is no further or outstanding information to provide you in terms of your FOI requests.*
- 4. A significant volume of previous 'business as usual' requests, which were substantially similar to previous FOI requests were also dealt with."*

37. The MOJ has also provided the Commissioner with its reasons as to why it has applied section 14(1) of FOIA. In doing so, it has considered the history and context leading up to this request being made and provided copies of the previous pension related requests and responses³ (referred to below as 'Annexes A-F and A-G'). It told the Commissioner that:

"Prior to determining that [the request] was vexatious, [the complainant] was informed that we had provided all the information he was entitled to under FOIA.

As indicated in the emails dated 28 November and 29 November 2018 (Annex G), [the complainant] was clearly informed of the

³ The requests are set out in an annex attached to this notice.

process to classify a request as vexatious. We made attempts to advise and assist [the complainant] to revise his approach when asking us to consider his request.

We argue that [the complainant] has taken an entrenched position in relation to this matter and has demonstrated little or no effort to constructively engage with us or consider the advice we provided in previous requests on this issue. Please also refer to the Annexes A-F which detail our response to [the complainant's] questions. The decision to classify [the complainant's] requests as vexatious was therefore made only as a last resort and when all attempts available to us to address his concerns were exhausted."

38. When considering whether or not to find the request vexatious, the MOJ said it had considered the following indicators:

Burden on the authority

"It is a burden on the MOJ to comply with [the complainant's] various queries because the effort required to meet the request is so grossly oppressive in terms of the strain on time and resources, that the MOJ cannot reasonably be expected to comply, no matter how legitimate the subject matter or the validity of [the complainant's] intentions. [The complainant] has submitted six different FOI requests (see Annexes A-F) with over 35 questions in total. We would be required to search through a large volume of email correspondence on this issue to answer this request as it stands now, which would involve a significant amount of time beyond what is reasonably expected to answer an FOI request (20 working days).

Therefore, we argue that it is disproportionate for MOJ to comply with this request given the numbers of questions and requests already answered as well as a burden to sift a large volume of email correspondence."

Frequent and overlapping requests

"[The complainant] has submitted similar previous correspondence all on the same issue (LSC Pension Arrangements) as indicated in Annexes A-G. He has also had an opportunity for this matter to be addressed by Internal Review. Therefore, we would argue that this request is frequent or overlapping in nature."

Why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value

"We reiterate that we have already substantially addressed queries on this topic. To continue to address this request on the same issue would further prolong this matter which has been ongoing since October 2018 and would serve no useful purpose. As a result, we argue that this request is deemed as having the potential to cause a disproportionate or unjustified level of disruption, irritation or distress to the MOJ.

A significant volume of previous 'business as usual' requests, which were substantially similar to previous FOI requests were also dealt with. Furthermore, [the complainant] has also been in direct contact with LAA employees who have provided responses to him on this issue. A large amount of time has already been spent on supporting him outside the FOI process. This FOI request therefore has no value when considering the information already provided to [the complainant]."

39. In declaring the current request vexatious, the MOJ said it had reviewed the Commissioner's guidance on vexatious requests (see footnote 2 above), with particular reference to paragraphs 25, and 104. Paragraph 25 includes a table of 'indicators' as to whether a request is vexatious and states:

"However, they should not simply try to fit the circumstances of a particular case to the examples in this guidance. The fact that a number of the indicators apply in a particular case will not necessarily mean that the authority may refuse the request as vexatious."

40. Paragraph 104 recommends the following in relation to 'Alternative approaches':

"103. A requester may be confused or aggrieved if an authority suddenly switches from complying with their requests to refusing them as vexatious without any prior warning. This, in turn, increases the likelihood that they will complain about the manner in which their request has been handled.

104. For this reason it is good practice to consider whether a more conciliatory approach would practically address the problem before choosing to refuse the request, as this may help to prevent any unnecessary disputes from arising. A conciliatory approach should focus on trying to get the requester to understand the need to moderate their approach and understand the consequences of their

request(s). An approach which clearly looks like a threat is unlikely to succeed."

The Commissioner's decision

41. The Commissioner has reviewed the correspondence available to her. She notes that the MOJ has highlighted details relating to abatement included in the information pack entitled *"Future Pension Arrangements for Legal Services Commission Employees"* issued to all members of the LSC scheme. It also told the complainant that the matter had been raised in the Roadshows and provided him with the relevant slide.

42. The relevant section from that pack is provided below:

"3. When you wish to receive your LSC pension

If you decide to preserve your pension with the LSC scheme you can request to receive this at any time after age 55 but your pension will be reduced because of early payment. If you continue to work at the MOJ or LAA your pension would not be subject to the Civil Service abatement rules.

If you choose to transfer your LSC pension into the Civil Service Premium scheme and continue working after receiving your pension, then Civil Service abatement rules will apply."

43. The MOJ told the complainant that the implications to members' pensions of taking partial retirement and abatement applying to their Civil Service Pension, including their LSC pension if it was transferred, were highlighted at the roadshows. The Commissioner has seen the specific slide, which does not include any references to 'abatement' *per se*, although she appreciates that slides may be used as prompts with more information provided by the presenter(s).

44. In addition, the Commissioner notes the following, extracted from one of the complainant's previous requests:

Extract from request:

"Details as to why the document headed "Future Pension Arrangements for Legal Services Commission Employees" contains the following statement – if this is not the case: "As this is a compulsory transfer of employment your pension will not be subject to the usual abatement rules" – emphasis in the document."

MOJ's Response:

The full text of the statement has a paragraph preceding the above statement setting out that the exemption from abatement only applies to LSC employees who were in receipt of a Civil Service pension on re-joining the Civil Service. That paragraph is reproduced here:

"Abatement

If you are receiving a Civil Service pension or an Annual Compensation Payment (ACP) then under normal circumstances this would be reviewed when you re-joined the Civil Service. If your current salary and pension when added together are greater than the salary you were receiving before you retired, then your pension would be reduced to that level.

As this is a compulsory transfer of employment your pension will not be subject to the usual abatement rules."

The statement was included to provide clarity to those people receiving a Civil Service pension or an Annual Compensation Payment (ACP).

Under the section 'Important factors to consider', the following sentence was included: "If you choose to transfer your LSC pension into the Civil Service Premium scheme and continue working after receiving your pension, then Civil Service abatement rules will apply." This highlighted that abatement would apply to post April 2013 retirements and should therefore be one of the areas considered by individual members when deciding whether to transfer."

45. However, it is not clear to the Commissioner whether 'Abatement' *per se* has been fully explained to those affected by the transfer. This is not a matter for her to consider as it is not within her remit, however, it is apparent to her that whatever information was provided to the LSC members cannot have been totally clear given that so many have been adversely affected by their resulting decision to transfer. However, she is also mindful that pensions are notoriously complex for many people to understand. She notes that the members were informed that the MOJ could not provide financial advice and that any decision was up to them.
46. As set out earlier in this notice, in determining whether a request is vexatious, the Commissioner will consider evidence about the impact on the public authority and balance this against the purpose and value of the request. The ultimate question being whether a reasonable person would think that the purpose and value are enough to justify the impact on the public authority of complying with the request.

47. With regard to the complainant's position, having considered the detailed submissions he has put forward to her, the Commissioner acknowledges that it appears that in the past there have been some errors made by the MOJ in respect of the complainant's pension arrangements. The complainant has sought to challenge these arrangements which have now been addressed. Given the direct impact such matters have had on the complainant, the Commissioner can understand his perseverance in pursuing this matter and seeking the further information which he considers it necessary to acquire, particularly in view of the fact that over 400 other individuals may have been adversely affected by the transfer process.
48. On this point, the Commissioner notes that there is a clear divergence of views between the MOJ and complainant with regard to what purpose this further information could actually serve. The MOJ's view being that providing the information would serve no value "*when considering the information already provided*", and the complainant's own view being that he intends to (or may now have done) issue judicial review proceedings against the MOJ. Setting these divergent views aside for a moment, the Commissioner nevertheless acknowledges that the complainant clearly has a genuine purpose in receiving the information he has requested.
49. The Commissioner is minded to agree with the complainant that the purpose and value of the information being provided would appear to serve not only the individual interests of the complainant but, potentially, those of the 400+ individuals he is attempting to assist. She considers that pension transfers and their effects would have a wider public interest, particularly given that public monies are utilised towards pension contributions for public sector employees.
50. The Commissioner is not convinced that all of the indicators the MOJ has cited are applicable in this case. With regards to the number and frequency of requests, which the MOJ has relied upon in its arguments, the Commissioner notes that prior to this request, the MOJ received five FOIA requests from the complainant, all on the LSC pension issue. The Commissioner recognises that the MOJ is a public authority with limited resources but she does not consider this to be a particularly extensive number of related requests.
51. She notes that the MOJ has also processed other non-FOIA or "business as usual" correspondence from the complainant on the same subject. However, the MOJ has not provided her with any evidence or supporting information to demonstrate how extensive or otherwise this correspondence has been, nor whether any of it repeats what has been requested under the FOIA.

52. The Commissioner accepts that some of the requests may have overlapped, but also notes that much of the follow-up correspondence relates to information disclosed by the MOJ in response to earlier requests. She does not consider it unreasonable for the complainant to have further questions relating to information he has not previously been party to.
53. The MOJ has argued that to respond to the request in this case it would need to search through a large volume of email correspondence which would involve a significant amount of time.
54. The Commissioner notes that the MOJ did not provide specific details or evidence of the burden of dealing with this request, such as an estimation of the number of emails involved or a more specific estimation of time. However, having considered the wording of the request, she notes that the complainant has only requested any other emails in email chains relating to specific dates of 18 December 2012 and 25 April 2013. This does not appear to her to be oppressively burdensome or time consuming.
55. Turning to the value and purpose of the request, it is clear that the complainant wants to ensure that decisions involving the transfer of pensions have been made following proper communication and understanding. The Commissioner agrees that there is some wider public interest in relation to the decisions made by the MOJ around pension transfers which include public money. She also considers that the complainant has legitimate motivations for making his request as he has communicated in his submissions.
56. The Commissioner is not aware that issues arising from the LSC pensions transfer have been subject to any independent review or scrutiny; in that sense the matter has not previously been concluded and then 'reopened' by the complainant, although she accepts that the MOJ has responded to his previous requests and has provided further information to the complainant.
57. The Commissioner acknowledges that section 14 is designed to protect a public authority's resources from burdensome or vexatious requests. However, it is important to keep in mind that all information requests will impose some burden and public authorities must accept this in order to meet their underlying commitment to transparency and openness.
58. The Commissioner considers this is a finely balanced case but, taking account of all the circumstances, together with the subject matter and the potential adverse impact on so many individuals, she does not consider that the burden on the MOJ in complying with the request would be disproportionate.

Conclusion

59. The Commissioner is not persuaded that the current request can be categorised as vexatious and her conclusion is, therefore, that section 14(1) did not apply in this case. At paragraph 3 above the MOJ is now required to issue a fresh response to the request that does not rely on section 14(1) of FOIA.

Right of appeal

60. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

61. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
62. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

63. The MOJ has provided the Commissioner with copies of the pension related requests submitted by the complainant, to which it had responded. The Commissioner notes that the MOJ also carried out internal reviews for the requests of 24 September 2018, 25 January 2019 and for the current request of 4 February 2019.
64. The Commissioner has reproduced the requests provided by the MOJ below:

Request of 24 September 2018 – MOJ reference 181024011

"Prior to, but also following on from the Pensions Awareness Day recently, I've been asked to help the two teams I work with, in understanding their Annual Benefit Statements. An issue has arisen in relation to colleagues who transferred their LSC Pension into the Civil Service Scheme. Basically it appears that Civil Service Abatement Rules may apply to this cohort which will leave some substantially out of pocket. For example, someone with an LSC Pension/Premium Pension worth £5000 as at 31st March 2015 loses £5000 per annum between the ages of 60 and 68 if they continue to work and their state pension age is 68 - £40, 000 at today's prices. For persons with higher LSC Pension/Premium Pension entitlements the figure might be much higher. Can you please confirm:

- Whether the abatement rules do apply to this cohort.*
- Assuming they do, what steps you took to bring, what appears to be a bit of a major issue to the attention of those affected **before** you took transfer of their LSC Pensions.*
- Where, in the ABS documents, issued since 2013 the Abatement Rules are referred to.*

That is all I would like from you at present. Can you let me know when you will be able to provide this information please?"

Request of 24 October 2018 – MOJ reference 181024036

- " A) All communications between the persons responsible for the production of the documents referred to in my FOI request timed at 12.22 yesterday made in connection with those documents where the issue of Abatement is referred to as it affects LSC staff on possible LSC Pension transfer in 2013.*
- B) All communications by the Government Actuaries in relation to the comparison of the LSC Pension with the Civil Service Pension. Details as to why the comparison produced does not refer to the*

effect of Abatement on those LSC Staff who were considering transfer of their LSC Pension to the Civil Service Scheme. Details as to why the effects of Abatement were not fully flagged in the documents provided to LSC Staff. Why the effects of Abatement are not mentioned in the slides used for the purposes of the "Roadshows" when it is clear that these "Roadshows" would be taken as advice no matter how they were presented at the time i.e. why was an incomplete picture presented?"

Request of 28 November 2018 – MOJ reference 181128009

"1) Thank you for clarifying the position.

2) I have the following additional questions/requests arising from the response:

a) Please provide details of all communications between the parties you refer to in relation to abatement in the Civil Service Pension Scheme relating to the importance of abatement in the context of the 2013 Transfer Exercise

B i) First bullet. Please explain why Civil Service abatement rules were not explained in detail in the information pack. Please admit or otherwise whether this was because no one understood them or realised their significance.

B ii) What reasons are recorded for providing no information whatsoever as to what abatement was or its effect?

C i) Second bullet. Please explain why the slides used in conjunction with the presentations contain no reference to abatement. Please explain why abatement was not dealt with in detail or at all at any of the presentations.

C. ii) Please detail the arrangements made for people who were absent from work for whatever reason and could not attend the presentations – e.g. maternity leave, long term sick etc. Please let me have copies of all communications demonstrating that the needs of these employees were met.

d. i) Third bullet. Please let me have a copy of the information sent and point me in the direction of information given in relation to abatement in it.

d. ii) I cannot find this. I did not receive it in a capacity in which I was able to process it – severe [redacted] at the time.

e) Fourth bullet. Please explain how employees were supposed to understand that Premium scheme rules included abatement when you had a) only referred to it in the briefest of terms in one document and failed to explain it either in outline or at all. Please explain your use of the term "Premium scheme rules" in this context? Is abatement in the

Rules – if so where – if not where is it? If the latter – how does your assertion assist you. Why were the Rules not provided and key points like abatement pointed out – if indeed they are.

f) Fifth bullet. Please provide details (I was [information redacted]) as to where abatement is mentioned in the various articles etc. that you refer to. Please detail how absentees from work were catered for – see above – and let me have details of all communications relating to arrangements for this cohort.

Please confirm whether you accept or not the proposition that the ABS is misleading in the absence of information in relation to abatement – because it says that you can take the Premium Pension at 60 – a grossly misleading and inaccurate statement.

3) Please confirm whether you accept or not the proposition that the ABS is misleading in the absence of information in relation to abatement – because it says that you can take the Premium Pension at 60 – a grossly misleading and inaccurate statement.

4) Where is abatement explained in detail with examples in any of the documents you have referred to I can't find anything.

5 a) Thank you. Your statement is inaccurate. I have spoken to dozens of staff none of whom are even aware of abatement let alone understand it. Please explain why you assert that "The format of the presentations followed the sequence and content etc". This seem very odd for two reasons – 1) no one I have spoken to recalls this as being the case and 2) there were slides produced specifically for the purpose of the "Roadshows" where abatement isn't mentioned.

5 b) Please provide details of all communications surrounding the decision to switch the "Roadshows" from use of the bespoke slides to the information pack. If that was the case please explain precisely what the status of the slides was at the "Roadshows". Were copies provided to attendees?

6) For the avoidance of doubt there is no assertion (at the moment) that there was a duty to provide financial advice. There was, however, a duty to provide full information. This was not provided because, inter alia, no information was provided in relation to abatement. The quotes you have provided are irrelevant to the question I asked. I did not ask whether you checked whether people had had a good time I asked whether you checked that people had all the information they needed to make an informed decision. Please answer the question. Please explain how you think staff had enough information to make an informed decision in the circumstances outlined in the rest of this note. Please explain how staff were supposed to obtain independent financial

advice in circumstances where they could not present an adviser with the full position. Was it the intention to set financial advisers some sort of test by hiding away and hardly mentioning significant factors?

7) Two, on the face of it, contradictory statements miles apart in the document with nothing elsewhere in the sea of irrelevance provided to staff. Please explain why Civil Service Abatement Rules were not explained. Please explain why worked examples were not provided. Please explain why abatement was treated in such a cursory way a manner in the 2013 process given that its application will cost many staff thousands of pounds.

8 a) I asked for this information broken down by LAA Office.

8 b) Please provide the information I asked for. I may have further points because I am going to distribute this to a group of affected staff who may wish to chip in. I have to say I think they are going to be astonished by the assertion that abatement was dealt with at the Roadshows and that there was a switch to the information pack. As I say I've spoken to many staff. They all recall the presentations following the slide format – and, as you would expect – not a peep in respect of abatement. I'm aware of the need to exhaust internal procedures. I have, however sighted the Information Commissioner already – because I have other information concerns relating to the 2013 Transfer Process. Please let me know your time estimate for a response. All the information should be at your finger - tips...?"

ATTACHED EMAIL (NEW REQUEST): (Responded to by the MOJ with above request)

"Sorry Team I have some further requests for information as follows:

- 1) As part of the information given out by the experts for the purposes of the exercise there was a FAQ document. Please provide details as to why abatement is not mentioned in the FAQ document. Why there were no worked examples in the FAQ document dealing with abatement? Please answer specifically – is it the case that there was nothing in the FAQ document because you felt that the mention it got in the information pack and then the statement in the Glossary that it didn't apply were sufficient to put everyone on notice?*
- 2) Please let me have copies of any records of questions raised and answered at the "Roadshows". How many of these concerned abatements?*
- 3) If you were not permitted to give financial advice why was this rule broken at the Roadshows? I have spoken to individuals who were given*

financial advice in the form of "dark hints" – such as you've been in the LSC Scheme a long time so you might consider leaving the money where it is. This was grossly misleading – what is a long time please? Do you accept that such statements would have been misleading to those who didn't have a clue what a long time meant? When I get the figures for different Offices I will demonstrate that it meant different things in different Offices. E.g. Leeds it meant one thing – in Manchester something completely different.

4) Are you able to admit that the "Roadshows" were a dog's breakfast – neither fish nor fowl".

Request of 25 January 2019 - MOJ reference 190125007

"Hello Disclosure Team, I have decided to take the bull by the horns in view of the urgency. Please provide the following pursuant to the Freedom of Information Act: From the Legal Aid Agency – the professional advice received by the Legal Services Commission Pension Trustees and referred to by [name redacted] in the fourth paragraph of Annex A... to the "Future Pension Arrangements for Legal Services Commission Employees" document of 2013. For the avoidance of doubt: 1) Voluntary disclosure of this document has been sought but it has not been provided timeously. 2) This document does not attract privilege – it is actuarial advice – not legal advice. 3) It is inconceivable that it is not still available – in all the circumstances and particularly the number of individuals who will have seen it. I look forward to hearing from you within the statutory time frame."

65. From the MOJ's submissions, the Commissioner understands that the above request (190125007) was aggregated by the MOJ with the request under consideration here and both were declared vexatious. However, as set out in the 'Scope' section of this notice, the complainant has not complained about the above request.