



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Information Commissioner's decision dated 5 September 2016
Decision notice: FS50626916**

Appeal Reference: EA/2016/0238

**Heard at Royal Courts of Justice, Belfast
On 21 February 2017**

Before

JUDGE CHRIS HUGHES

Between

KEVIN ELLISON

Appellant

and

INFORMATION COMMISSIONER

Respondent

Decision Date: 8 March 2017

Promulgation Date: 10 March 2017

DECISION AND REASONS

1. The Appellant in these proceedings is nearing retirement age and is anxious to get information about any risks to his pension entitlements arising from his former employment with a school run by the Christian Brothers where he was employed until 1995. His employment ended acrimoniously (there was litigation in the High Court in 2001 and issues arising from his relationship with the Christian Brothers were considered by two Congregations (Cardinals) in the Vatican in 2009. The Appellant as a result of this does not trust his former employer.

2. He received annual notifications of his deferred benefits in the scheme each year until 2009. In his oral submissions he and his witness informed me that in 2009 there was a significant re-organisation of the school, it was brought within a new governance structure encompassing several schools, it moved site and changed its name to the Abbey Christian Brothers Grammar School (the "School"). He has now received a range of information about his entitlements.
3. During 2015 he pursued a complaint against Friends Life Ltd (who administer the scheme) about their administration and their failure to meet his expectation as to the information they provided in connection with the Abbey Grammar School Newry Pension and Life Assurance Scheme. He wrote to them on 25 August 2015 (bundle pages 200-201) setting out his concerns.
4. After some correspondence with the School he wrote to the school on 10 March 2016:-

*"Newry Abbey Grammar School Pension and Life Assurance Scheme
Executive Pension Scheme*

...I am requesting that you provide me with the Names of Trustees from 1.1.2009 to 1.1.2016. I require this matter urgently for clarification of matters and should you not be able to give me details I would therefore request them under the Freedom of Information Act 2000 as of today..."

5. On 17 March he wrote again indicating that he had consulted the Pension Advisory Service (he reproduced material from that body's website) and stating:-

"The information that I require concerns the transfer of legal identity of the Trustees involved in the transfer of the named Trustee in and around the period of 23rd August 2015 (namely Mr [A]) to the 11th September to (Ms [B]). I understand that this transfer of the named trustee, must be completed by a transfer deed form to meet legal requirements and I require a copy of these documents, now, as it is central to my complaint."

6. On 21 March Ms B (the School Bursar) replied:-

"Re: Copy of information regarding friends Life Pension Scheme

Please find enclosed a copy of all information which was forwarded to [your adviser] on the 02.03.2016. Also find attached additional information held on file from that date.

Please note that the schools has requested a copy of the original trustee deeds from..Friends Life and we are still awaiting it, when we obtain this we shall forward it to you. Mr A was an individual trustee from commencement of the policy until the 4th September 2015 when I became the designated signatory."

7. The Appellant was dissatisfied, however the School confirmed these details in internal review (decision notice paragraphs 8-10). He complained to the ICO about the way his complaint was handled arguing that there was no evidence that Mr A was functioning as a trustee in July 2015 and that it had not provided him with all the information it held. The ICO investigated to determine whether the School had provided all the requested information which it held. (paragraph 15).
8. The School informed the ICO of the steps it had taken with Friends Life and the Appellant to resolve any problems he might have and to confirm to Friends Life the identity of the current School bursar (paragraph 19). The School confirmed that the Trustee deeds were not held by the School or by Friends Life on its behalf, that searches had been carried out for that deed in the School archives which had been unsuccessful and *"it considers it has never held a copy of the deeds or a list of current trustees between 2009 and 2016."*
9. The ICO noted the Appellant's concerns and that he had complained to the Pensions Ombudsman. The ICO explained that the information had been provided, he was not concerned with any time gap with respect to trustees and that further correspondence identified by the Appellant only confirms the information he already had. He was satisfied on the balance of probabilities that the School did not hold a copy of the trustee Deeds or any further information concerning the identification of the Scheme's trustees during the relevant time period.
10. The appellant submitted voluminous documents by way of appeal. The Registrar gave directions which the Appellant challenged and to clarify the proceedings the Chamber President, by a ruling of 24 October 2016, clearly defined the scope of the proceedings and explained to the Appellant the proceedings were to consider whether the ICO's decision notice was in accordance with the law and that the Appellant's his voluminous note of appeal and supporting documents would only be treated as relevant to the extent that it:-

*"(a) relates to the issue of whether they Abbey Christian Brothers Grammar School holds the requested information; or
(b) relates to the issue of whether the school was in breach of its duty under section 16 of FOIA to provide advice and assistance, as required by that section"*

The Chamber President also gave guidance as to witness statements going to whether the School held further information and *"in this regard he should explain in the statement, what aspects of the school's past actions he says have a direct bearing on this issues."*

11. The ICO responded to the appeal addressing the issues identified by the Chamber president as germane. She considered whether on the balance of probabilities the School held further information about the names of Trustees and she was not persuaded that it did. She drew attention to a communication from Friends Life to the Appellant of 17 May 2016 that the School itself was the

Trustee, the Bursar was not a Trustee and any authorised school official could sign on behalf of the School, there was no requirement for a formal deed authorising the change. The ICO had interpreted the request as relating to authorised signatories to act on behalf of the School. There were no grounds for doubting what the School had told her. The ICO considered that the school, in contacting Friends Life in March 2016 and subsequently the Pensions Regulator and HMRC (letter bundle page 243, 12 October 2016) had done all that could be reasonably expected of it.

12. The Appellant produced a witness statement from former colleague at the school (Mr Egan, bundle pages 543-545) dealing with correspondence the Appellant copied to members of the governing body in 1994 which was not initially disclosed in the High Court litigation which was resolved in 2001. Some of this correspondence appears to have related to a TUPE transfer of the support staff in the school to Gardner Merchant.
13. The Appellant's statement (pages 546-572) gave details of conflict between the Appellant and the school between 1978 and 1995 (when he was employed) and subsequently. In it incorporated the texts of various documents, he pointed to failures by the School in administering the pension scheme, including failing to notify the retirement of Mr A in January 2006. He claimed that (page 550) there were copies of the trust deeds held on behalf of the School by the Inland Revenue (HMRC) and the Pensions Registrar (page 550). He criticised the ICO for not corresponding with the School in this issue (page 551).
14. In oral proceedings the Appellant explained his view that the school was not applying the various regulations relating to its pension scheme properly. After he had left the School in 1995 he had received his annual statement of entitlement until 2009 but not since that date until recently. The School had moved in 2010. He felt that the School Bursar (Ms B) was an expert and should have provided him with help under s16. The School should have gone to the Pensions Regulator and HMRC for the deeds. The Bursars had a duty to have a copy of the Scheme Rules. He drew attention to a copy of the document retention and disposal policy for the School (bundle pages 470 -489). He was convinced that the School continued to hold a grudge against him and was withholding documents from him in furtherance of this.

Consideration

15. The Appellant is anxious about his pension and distrustful of his former employer. However his distrust of the School is not evidence of concealment by the school. The evidence of Mr Egan and the difficulties the School had in disclosing all correspondence from the Appellant (written in and about 1994) when it came to litigation in about 2000 does not demonstrate any misconduct or intentional suppression of the correspondence then and had no relevance to a request for information 15 years later (with a school reorganisation, a school move and personnel changes in the intervening period). He has received the information held by the School in response to his requests for information as they interpreted it. That response has been found by the ICO to be, on the

balance of probabilities, all the information held by the school. Although the Appellant asserts that copies of the Trustee Deeds are held by two public bodies which he has identified and they hold them behalf of the School, I cannot accept that proposition. If indeed HMRC (or indeed the other public body) holds the deeds, it does so for the purpose of administering the tax system, for its own purpose, not on behalf of the School (a similar argument would apply if indeed the Pensions Regulator holds the Trustee Deeds). The documents would not be held by the School and therefore the School is not required under FOIA to disclose them, furthermore it has approached those bodies on the subject.

16. The Appellant is driven by a sense that he is being victimised some 22 years since he left employment. There is no evidence for this. His own evidence points very clearly to shortcomings in the contact between the School and Friends Life, notably that the formally notified authorised signatory was not changed for nearly ten years. During part of that period he continued to receive statements of his pension benefits, until after 2009 when the school moved and was reorganised. The failure to send benefits statements after those events is explicable by those events and a failure of the School to realise that correspondence addressed to a long departed member of staff might be significant and hold former staff member's benefits statements. The school provided information it held as to authorised signatories. It has, having looked for the Trustee Deeds, sought them from all bodies likely to hold them.
17. I am satisfied that the appellant has failed to demonstrate an error in law in the ICO's decision notice and his appeal is dismissed.

Signed

Chris Hughes
Judge of the First-tier Tribunal
Date: 8 March 2017