Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2018

Public Authority: UK Research and Innovation/ Medical Research Council

Address: Polaris House
Swindon
SN2 1FL

Decision (including any steps ordered)

1. The complainant has requested information relating to the application for, and approval of funding for, a medical trial of treatments for chronic fatigue syndrome known as the PACE trial. The public authority provided some information and further information was disclosed during the course of the Commissioner's investigation. The outstanding issue addressed in this notice is complainant's right of access to the names of external reviewers who reviewed the research proposal. These names were withheld under section 40(2) – third party personal data, section 41 – information provided in confidence and section 36(2)(c) – prejudice to the conduct of public affairs.

2. The Commissioner's decision is that the MRC is entitled to rely on sections 40(2) and 36(2)(b)(ii) to withhold the requested names.

3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. The request was made to the Medical Research Council (MRC) which at that time was a separate Non-Departmental Government Body. Since the request was made however a new Non-Departmental Government Body was established in April 2018; UK Research and Innovation, and the MRC become part of this new body which has assumed legal responsibility for the handling of the request. This decision notice is

therefore served on UK Research and Innovation. However the notice will refer to the MRC as the public authority.

5. On 6 July 2017 the complainant requested information from the Medical Research Council of the following description:

> "This request concerns the MRC-funded 'Comparison of adaptive pacing therapy, cognitive behaviour therapy, graded exercise therapy, and specialist medical care for chronic fatigue syndrome (PACE): a randomised trial', GRC reference G0200434.
>
> Please would you provide the following:
>
> 1. A list of any peer-reviewers, including external reviewers and board members.
>
> 2. Copies of any and all statements on conflict of interest made to the MRC by external reviewers and board members involved in the application, including all peer reviewers.
>
> 3. A copy of the grant application, the final version and any earlier applications if applicable.
>
> 4. A list of the board or committee members who considered this application and decided to grant funding."

6. On 1 September 2018 the MRC responded. It refused to provide the information sought in question 1 citing the exemptions provided by sections 36(2)(b) and (c), section 40(2) and section 41.

7. In respect of question 2 the MRC provided some information about potential conflict of interests that its board or panel members may have had and advised the complainant that there was no information held about any conflicts of interests relating to external reviewers.

8. In respect of question 3 the MRC provided a redacted copy of the grant application. Some information had been withheld under section 40(2) and information relating to peer reviewers was withheld under section 36(2)(b) and (c), 40(2) and 41.

9. In respect of question 4 the MRC released some information and advised the complainant that other information was not held because the records containing that information had been lost.

10. The complainant requested an internal review of the MRC's response to questions 1 and 3 on 26 September 2017. The MRC carried out the internal review in two parts. The first part addressed the complainant's concerns about the MRC's response to question 3, a copy of the grant application. The MRC sent him the outcome of this part of its review on

7 February 2018. It provided some additional information but continued to withhold other information under section 40(2), this included what the MRC referred to as a "… a personal letter of support from Action for ME." Although the complainant's right of access to this letter initially formed part of the Commissioner's investigation, the letter was later disclosed.

11. The MRC sent the complainant the second part of its internal review on 5 April 2018. This part of the review concerned the identities of the external reviewers. It also reviewed the MRC's position regarding any conflicts of interests these reviewers may have had. In respect of information on any conflicts of interests, the MRC maintained its position that the information was not held. Regarding the names of the external reviewers, the MRC continued to withhold this information under the exemptions provided by sections 36(2)(b) and (c), 41 and 40(2).

Background

12. In, or around 2002 initial planning commenced for a large scale clinical trial which attempted to find the most effective treatments for chronic fatigue syndrome. The trial became known as the PACE trial. It was part funded by the MRC and the information which is subject of the request related to the application for that funding.

13. The causes, and therefore the treatment, of chronic fatigue syndrome is a contentious area of science. The PACE trial compared different methods of treating the condition. The Commissioner understands that there are those who believe it has a physical cause and therefore should be treated as such, while another school of thought approaches its treatment from a psychiatric perspective. The two treatments found by the trial to be most effective were psychiatric therapies. Some patients and patient groups maintain that by ignoring the physical cause of the condition, these two therapies can result in patients suffering adverse effects. The rigour of the methodology employed in the trial and its results were therefore challenged and the validity of those challenges have in turn been hotly debated. It is fair to say that the trial attracted some controversy.

Scope of the case

14. The complainant contacted the Commissioner on 30 April 2018 to complain about the way his request for information had been handled. He was satisfied with the MRC's response to parts 2 and 4 of his request, but wished to challenge the MRC's response to parts 1 and 3. Since that time however the MRC has disclosed additional information in

respect of part 3 of the request. Therefore the outstanding issue addressed by this notice is the complainant's right of access to names of the external reviewers. As explained previously, this information has been withheld under the exemptions provided by sections 36(2)(b) and (c), 41 and 40(2).

15. The complainant raised a number of points which he wished the Commissioner to consider. He argued that:

- in respect of the MRC's application of section 36, the reasonableness of the qualified person's opinion had to be judged in light of comments by the Tribunal in a previous case relating to the PACE trial in which the Tribunal found there was little evidence that those associated with the trial had been harassed by 'ME activists',
- a distinction should be drawn between decision by the Commissioner and the Tribunal in respect of the requests for other information on the PACE trial which the MRC had cited in support of its application of section 41,
- there were genuine concerns within part of the scientific community about the integrity of the peer review process and the potential for conflicts of interest to arise.
- revealing the names of peer reviewers would not in itself reveal their opinions, or whether they supported the proposals,
- account should be taken of large the amount of public funding the trial received,
- there was no explicit duty of confidence,
- there were concerns around the validity of published research in general and that therefore there was a need for greater transparency around the whole process.

16. The Commissioner considers the matter to be decided is whether the MRC can rely on any of the exemptions cited to withhold the names of the external reviewers. The Commissioner will start by considering the application of section 40(2).

Reasons for decision

Section 40(2) – third party personal data

17. So far as is relevant, section 40(2) of the FOIA states that the personal data of someone other than the applicant is exempt, if its disclosure to a

member of the public would contravene any of the data protection principles.

18. At the time the request was made and responded to, the Data Protection Act (DPA) 1998 was still in force and although it was later superseded by the Data Protection Act 2018, the Commissioner will consider whether disclosing the names of the external reviewers would contravene the principles of the 1998 Act.

19. Personal data is defined in the DPA 1998 as information which both identifies and relates to a living individual. Clearly disclosing the requested information would reveal the identity of those who reviewed the research proposals. Although the original funding proposal goes back to 2003 the Commissioner is not aware of there being any reason to believe any of the reviewers are no longer living. In light of this the Commissioner is satisfied that the requested information constitutes personal data of someone other than the complainant.

20. The MRC's argues that disclosing the information would breach of the first data protection principle of the DPA 1998. This states that personal data shall be processed fairly and lawfully and shall not be processed unless at least one of the conditions set out in Schedule 2 of that Act is satisfied. The processing of personal data includes its disclosure.

21. When considering whether the disclosure of personal data would breach the first principle, the Commissioner's approach is start by looking at whether the disclosure would be fair. 'Fairness' is a difficult concept to define. It involves consideration of:

    - The possible consequences of disclosure to the individual.

    - The reasonable expectations of the individual regarding how their personal data will be used.

    - The legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the particular individual.

    Often these factors are interrelated.

22. As already mentioned the PACE trial proved to be a very controversial piece of research. Its findings favoured treating the illness as a psychiatric condition and this has influenced public policy on the issue. Many individuals suffering from chronic fatigue syndrome believe such an approach is detrimental to their health and that acceptance of the trial's conclusions hinders research into the existence of physical causes to the condition. Criticism of how the actual trial was conducted has come not only from sufferers, but other members of the medical and

scientific community. It is clear that some individuals hold very strong views on the trial. As a consequence the issue attracts a number of blogs and on line discussions. The MRC considers that as a consequence the names and roles of the external reviewers would be intensely scrutinised, presumably with a view to identifying any possible grounds for criticising the integrity of the trial if the requested information was released. The MRC is concerned that to release the names of the external reviewers would raise the realistic prospect that they would be targeted for adverse criticism.

23. When handling the request the MRC sought the views of two of the external reviewers. Both objected to their names being released. One of them advised the MRC that they had previously received threatening messages because they had at one time been associated with research in this area and did not wish to run the risk that such abuse would start again. The MRC has also pointed out that a number of the individuals concerned were no longer involved in any research and were possibly retired. Therefore they would not have the support of an employer in the event that they were targeted.

24. The Commissioner has to be cautious when considering the possibility that reviewers would attract either criticism or some more malicious form of attention as a result of being publicly associated with the PACE trial. The Commissioner notes that in a previous case concerning information from the PACE trial the Tribunal in Queen Mary University London v the Information Commissioner and Matthees (EA/2015/0269) was very sceptical that individuals who participated in the trial as patients would attract any form of harassment from those opposed to the trial's findings. Furthermore it found that evidence of harassment of those running the trial was limited to little more than heckling of one professor during a seminar they were presenting.

25. Nevertheless the Commissioner cannot easily disregard the concerns of one of the reviewers based on their previous experience of receiving threatening messages because of their association with this area of research.

26. The Commissioner has carried out a brief search of the internet and there are many articles on the PACE trial easily found. Many of these are highly critical of the way in which the research was conducted and of named individuals associated with that research. However much of that criticism appears fairly measured and stops well short of being personalised attacks on those associated with the work. But the search was limited and it is not impossible that more vitriolic content does exist and which may be readily accessed by those more closely affected by these issues. The Commissioner also notes the comments of one individual who, as an expert in this field, had been a potential reviewer of the funding application. When handling the request the MRC had

initially identified this individual as having been one of the reviewers and so approached them for their views on their name being disclosed in response to this request. That individual searched the internet and commented that given the intensity of the emotion conveyed on some websites they were concerned that they could become the target of internet trolls if their name was disclosed. Although it turned out that this individual's name is not captured by the request, it does indicate that, although much of the debate on the trial is conducted in an appropriate manner, there is potentially some less savoury behaviour.

27. At the very least the Commissioner is satisfied that there is genuine concern amongst some reviewers that if their names were disclosed they could become the target of some form of abuse and would certainly be subjected to close scrutiny by those opposed to the trial. The Commissioner accepts that this would be stressful for those reviewers. The trial remains controversial and its conclusions continue to be challenged. Therefore the fact that the reviewers' involvement was over 15 years ago does not diminish those concerns.

28. With regard to the reasonable expectations of the reviewers, the Commissioner is satisfied that it was standard practice for the review of funding proposals to be conducted in confidence. The Commissioner has seen copies of the documents provided to those submitting research applications and the guidance provided to reviewers which were in place back in 2002/03 when the PACE proposal was reviewed. The MRC has also provided the Commissioner with more current guidance which shows the approach has not changed since then. The main reason for confidentiality is to protect the interests of the party submitting the research proposal as they would not wish their ideas for, or approach to, an area of research to become known by rival academics. However it is clear from the MRC guidance that reviewers were informed that their involvement would remain anonymous. Although reviewers' comments are provided to the body applying for funding, their names are not. This ensures that the reviewers feel free to provide their honest opinion of the proposed research. The guidance provided to the reviewers in 2002/03 included a reminder that, to ensure their own anonymity was preserved, they should avoid including any comments in their review which could inadvertently identify them. It is clear to the Commissioner therefore that despite the complainant's contention that there was no explicit duty of confidence, the guidance would have established a very clear understanding that the reviewers' participation in the process was confidential. This would have shaped the reviewers' expectations that their identities would remain confidential to the MRC and not be disclosed to the public.

29. The Commissioner also notes that although the FOIA had received Royal Assent in 2000, the right to make individual requests did not come into force until 2005, i.e. after the funding application was reviewed and that

therefore individuals had less of an expectation that the information they contributed to public authorities, or their involvement with public authorities, could be subject to requests.

30. In light of the above the Commissioner finds that the MRC is correct in saying that reviewers would have no expectation that their names would be disclosed to the public.

31. The complainant has drawn the Commissioner's attention to articles promoting more open processes for the review of scientific research and there is clearly a school of thought that a more transparent process should be adopted. It is noted that such articles focus on the review of research findings, rather than the review of research proposals as part of an application for funding. In any event, it appears from its more current guidance, that the MRC continues to operate a process whereby reviewers' comments remain anonymous to the party applying for the funding. Therefore the Commissioner is satisfied that the reviewers' expectations that their names would not be disclosed will not have changed over the intervening period. This position is supported by the fact that those reviewers who expressed an opinion clearly had no expectation that their names would be released.

32. Having looked at the first two factors under the consideration of 'fairness' set out in paragraph 21 above, there are strong grounds for finding that disclosing the names of the reviewers would be unfair and so breach the first data protection principle. However before reaching a decision it is necessary to look at the legitimate interests of the public having access to the information and the balance these against the impact on the reviewers of disclosing their names.

33. There is a very real legitimate interest in disclosing information that would allow the public, including those suffering from chronic fatigue syndrome and the wider scientific and medical community, to reach an informed opinion on the quality of the PACE trial research. This is heightened due to the influence that the research has had on public policy in this area. However it is apparent that the actual research has been scrutinised by the scientific community, this is in part due to information released in response to requests made to other public authorities. The Commissioner is not satisfied that the disclosure of the names of those who reviewed the original proposals would assist the debate of the trials findings. The Commissioner cannot ignore the fact that there are those who believe the findings of the trial have been discredited. Some of whom may wish to argue that if there were also flaws with the review of the proposals at the application stage, this would further undermine the trial's credibility, making a stronger case for the treatment of chronic fatigue syndrome to be re-examined. The Commissioner would stress that she does take a view of the credibility of the trial results, it is simply that she recognises that such a tactic may

be pursued by those opposed to the trial's findings. However the pursuit of such a tactic is not sufficient to override the rights of the reviewers to have their confidentiality respected and to not expose them to the potential consequences discussed above.

34. The Commissioner understands the MRC provided around £2.8m to the research project. Clearly there is a legitimate interest in understanding the basis for that funding decision. This is particularly so when the research has attracted such criticism, including that from members of the scientific and medical community. The trial has also been the subject of a parliamentary debate .

35. The MRC has explained its process for reviewing applications for funding. It is a two stage process. External reviewers form the first stage and provide an expert assessment of the proposal which is then considered by the MRC research board or panel (the complainant has already been provided with the names of these panel members). In some cases a 'guest' external reviewer is invited to sit with the board if it considers additional expertise is required to properly evaluate the application. In this particular case the MRC has informed the Commissioner that one guest reviewer was invited to attend the research board and the name of that guest external reviewer is also captured by the request. The MRC has stressed that the external reviewers, including any guest external reviewer, are not decision makers, they merely provide their expert opinions for consideration by the MRC research board members. Clearly though the external reviewers' opinions will inform the decision which the board members ultimately make.

36. It should be remembered that the disputed information is simply the names of reviewers and not the submissions they provided to the MRC. Therefore the requested information on its own would not provide an insight to the thinking that informed the funding decision.

37. The complainant argues that disclosing the names is still important for the purposes of transparency. This is due to the possibility that conflicts of interests may have arisen. Disclosing the names would allow the public to make an informed judgement on the impartiality of those whose opinions would have carried some weight with the decision makers. As the Commissioner understands it, one of the complainant's concerns is that the PACE trial was on such a large scale, involving a large number of experts and was carried out at a large number of institutions, that the pool of external reviewers that would have been available to the MRC who had no links with the research would have been limited.

38. The Commissioner notes that to make such an assessment of any potential conflicts of interest could involve subjecting the external reviewers to close scrutiny and so would be an intrusive process. This

would be distressing for the external reviewers, even if such scrutiny concluded there were no conflicts of interest.

39. Clearly a body such as the MRC is alert to the need to ensure potential conflicts of interest do not arise and has a process in place to safe guard against this problem. It has provided the Commissioner with a copy of the guidance given to external reviewers which was in place at the time of the funding application for the PACE trial. The Commissioner understands that the MRC purposely avoids inviting those with obvious conflicts of interest, but recognises such conflicts may not always be self-evident. It therefore sets out in its guidelines for reviewers a comprehensive explanation of what constitutes a potential conflict of interest and reviewers are required to declare any conflicts of interest that may exist. Such declarations are made either in advance of a review being provided, so that the MRC can decide whether their opinion would eligible, or by a reviewer completing the 'Declarations of Interests' section on the review form which accompanies their review.

40. The MRC has informed the Commissioner that it does not hold any information relating to any conflicts of interests that may have been declared by the external reviewers. The MRC has already informed the complainant of this in its response to part 2 of his request. It is understood that the MRC only holds the anonymised versions of the reviewers' comments that are provided to the MRC research board and these do not include any declaration of interests. However the fact that MRC deemed these reviews eligible, would suggest that no declarations had been received, but it is not possible to rule this out completely.

41. Nevertheless there is an absence of anything that would indicate that there had been conflicts of interests. Therefore it would be difficult to justify the intrusion that would be felt by the external reviewers if their names were released and people chose to scrutinise their affiliations in an attempt to identify conflicts of interests.

42. The Commissioner notes the complainant's argument that there are genuine concerns within parts of the scientific community about the integrity of the peer review process and the potential for conflicts of interest to arise. These concerns appear to relate primarily to the peer review of research findings, rather than in funding decisions. Nevertheless it may well be that there are flaws within any peer review process. However it still remains the case that there is nothing to suggest that there were any conflicts of interests amongst the external reviewers who were involved in this particular funding application.

43. In light of this the Commissioner considers the legitimate interests of the public in having access to this information do not outweigh the rights and freedoms of the external reviewers. Taking account of the consequences for the reviewers and their expectations of confidentiality

the Commissioner therefore concludes that disclosing the names of the external reviewers would be unfair. The disclosure would therefore contravene the first data protection principle. The names are exempt from disclosure under section 40(2) of the FOI.

Section 36 – prejudice to the conduct of public affairs.

44. Having found that the names of the external reviewers are exempt under section 40(2) it is not strictly necessary to consider whether the same information is also exempt under section 36. However in this case the Commissioner considers it would also be helpful to look at the application of that exemption.

45. So far as is relevant, section 36(2) provides that information is exempt if, in the reasonable opinion of the qualified person, its disclosure

(b) would or would be likely to inhibit:

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purpose of deliberation, or

(c) would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.

46. By the conclusion of the internal review the MRC was relying on section 36(2)(b)(ii) – inhibition to the exchange of views for the purpose of deliberation and 36(2)(c) – otherwise prejudice the conduct of public affairs, to withhold the names of the external reviewers. The thrust of MRC's argument for the engagement of these two exemptions is essentially the same. In broad terms, it is that disclosing the names of the reviewers would deter others from participating in the peer review of funding applications in the future and that as a consequence it would prove more difficult for the MRC to properly evaluate applications in the future, so prejudicing one of its core functions of awarding grants for research. As both these arguments are based on the potential for the disclosure of the names to inhibit the free and frank exchange of views, i.e. the contribution of the external reviewers to the application process, the Commissioner has focussed on the MRC's application of section 36(2)(b)(ii).

47. Section 36 is unique in that its application depends on the qualified person being of the opinion that the inhibition or prejudice envisaged would, or would be likely to occur. In determining whether the exemption is engaged the Commissioner is required to consider the qualified person's opinion as well as the reasoning that informed the opinion. Therefore the Commissioner must:

- Ascertain who the qualified person is,
- Establish that they gave an opinion,
- Ascertain when the opinion was given, and
- Consider whether the opinion was reasonable.

48. The designated qualified person for the MRC is its Chief Executive Officer who at the relevant time was Professor Sir John Savill. The MRC has provided the Commissioner with a copies of the submissions made to the qualified person for consideration when applying section 36, these also records his decisions. It is evident that the qualified person first gave his opinion that section 36(2)(b)(ii) was engaged on 31 August 2017, just prior to the MRC's initial refusal of the request on 1 September 2017. The qualified person's opinion was sought again at the internal review stage and on 22 March 2018 he confirmed he still considered the exemption applied.

49. The Commissioner is satisfied that the first three requirements of the test set out above are met. It is now necessary to consider whether that opinion was a reasonable one.

50. When considering 'reasonableness' the Commissioner relies on the Oxford English Dictionary's definition of reasonableness, that is, the opinion must be "in accordance with reason; not irrational or absurd". There can be more than one reasonable opinion on a matter and it is not necessary for the Commissioner to agree with the qualified person's opinion. The qualified person's opinion can only be considered unreasonable if it is one that no reasonable person could hold.

51. The exemption can be engaged on the basis that the inhibition either 'would' or 'would be likely' to occur. It is clear from records provided by the MRC that the qualified person considered the inhibition envisaged 'would be likely' to occur.

52. From the MRC's submission it is understood that on each occasion his opinion was sought, the qualified person was provided with a case assessment and public interest test paper approved by an MRC Group Director. At the initial stage this was MRC's Chief Science Officer and at the internal review stage it was the Director of Corporate Affairs. The assessments described the relevant information, explained the relevant exemptions and outlined issues relevant to the public interest test. Although engaging the exemption is separate to the application of the public interest test, the Commissioner recognises the public interest arguments expanded on the consequences that MRC believed would result from disclosing the names of the reviewers and therefore have some relevance to the qualified person's decision.

53. The MRC has summarised the qualified person's conclusion as being that there was a value in maintaining the established duty of confidence which was considered to be fundamental principle of the peer review process. Furthermore, to release the information against the wishes of those directly involved may result in a loss of confidence in the MRC and affect reviewers' willingness to participate openly and frankly in the review process in the future. As chronic fatigue syndrome is a current research priority area, this has the potential to disproportionately impact on the peer review process in this area.

54. When looking the application of the section 40(2) the Commissioner has already explained the possible consequences for external reviewers if their names were disclosed and that such a disclosure would be against their expectations. It is also clear from the responses the MRC received to its, albeit limited, consultation with the reviewers that they were genuinely concerned about the prospect of their names being disclosed. One did comment that unless they were confident that they could rely on the MRC's assurances of confidentiality, they would not be prepared to participate in future reviews.

55. Given the controversy surrounding the PACE trial and the views expressed by the external reviewers, the Commissioner finds that the qualified person's opinion is a reasonable one. The exemption provided by section 36(2)(b)(ii) is engaged.

Public interest test

56. Section 36(2) is subject to the public interest test as set out in section 2 of the FOIA. This provides that even though an exemption is engaged the information must still be released unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

57. In favour of disclosure the MRC acknowledges there is a public interest in transparency of the funding decisions that it makes. Disclosing information may help to reassure the public that appropriate advice was taken to inform the decision to fund the PACE trial and in respect of funding decisions more generally. The MRC also recognises that the age of information (around 15 years old) would normally be expected to render the information less sensitive.

58. The complainant does not accept that there is sufficient evidence of the potential for peer reviewers to be harassed. He points to the Tribunal's comments in Queen Mary University London v the Information Commissioner and Matthees (EA/2015/0269). This case has already been referred to in paragraph 24. Despite there being some scepticism over the extent of any harassment that peer reviewers may attract, the

Commissioner is still satisfied that some reviewers have genuine concerns that they could become targets of abuse.

59. The complainant also argued that disclosing the names would not in itself identify whether they supported the application or not. The Commissioner accepts this point and notes that this is a two edged sword as it could also be argument that the value in disclosing the names is limited. The Commissioner also considers it conceivable that as the MRC ultimately funded the proposal, some sections of the public may assume that all, or the at least a large majority of reviewers, supported the application. Therefore the Commissioner is not satisfied that, even though the complainant is correct in saying the names on their own would not reveal the opinions they expressed, this would not necessarily protect the reviewers from being targeted for abuse.

60. Another argument presented by the complainant is that the reviewers see their role as part of their professional responsibilities and therefore they would not easily be deterred from participating in the peer process which is an essential element of research. The Commissioner considers there is some merit in the complainant's argument. The Commissioner notes however that reviewers accept their responsibilities for carrying out peer reviews of funding applications based on the practice of their views remaining anonymous. The Commissioner does though recognise that some academic and medical experts may still be prepared to participate in peer reviews, even if there was no assurance of anonymity.

61. The complainant considers it is very important that the names of the reviewers are released to allow scrutiny of their role in the funding decision and ensure there were no potential conflicts of interest. He considers this is a particularly weighty public interest argument given how controversial the research proved to be and the fact that the MRC awarded around £2.8m of funds towards the cost of the research. The Commissioner recognises the level of public funding is significant and that there is strong public interest in there being transparency over the spending of such a large amount of money. However, as already discussed in some detail in paragraphs 37 to 42, there is nothing to suggest that there were any conflicts of interests. Even so, disclosing the information would allow the public to reassure itself that this was the case.

62. In respect of the role which external reviewers play in the funding decision their opinions clearly have an influence on the decision, otherwise there would be no need for their input. This adds to the public interest in disclosure. However the MRC has stressed that the external reviewers are not responsible for making the actual decision, that is a matter for the MRC board or panel, this in turn limits the public interest in disclosing the names.

63. Weighed against these public interest arguments in favour of disclosure is the harm disclosure would cause to the peer review process. By finding the qualified person's opinion is a reasonable one, the Commissioner has accepted that there is some possibilibilty that disclosing the names of the external reviewers could deter experts from participating in the peer review of research proposals and/or inhibit the candour of such reviews. The public interest test requires consideration of the severity, frequency and extent of that inhibition.

64. The Commissioner accepts that for the reasons discussed above, disclosing the names of the external reviewers would lead to close and intrusive scrutiny of their role within the process. The prospect of this happening in such a controversial area of science would be likely to deter others from participating in the peer review of funding applications in future. This impact would be particularly severe in respect of research into chronic fatigue syndrome. Disclosing the names would also signal to reviewers of research in other areas that they too could no longer depend on the MRC's assurances of anonymity. The Commissioner notes that when considering the application of section 36(2)(b)(ii), the qualified person commented that confidentiality was fundamental to the peer review process.

65. It may be argued that the reaction of external reviewers is being overstated by the MRC, but regard still has to be had for the responses to its consultation with reviewers. Therefore the Commissioner accepts that disclosing the names would make experts more reluctant to act as peer reviewers despite the importance of the review process. Some experts my refuse to participate, others may be less candid when expressing their opinions. This effect would be particularly severe in respect of the review of proposals for research into the causes or treatment of chronic fatigue syndrome. The MRC has stated that this is currently a research priority, but that it is also one which it is difficult to promote or attract research in. The MRC has not suggested any reasons for this, but the Commissioner considers that in such circumstances there is an even greater public interest in not creating further barriers to research into a condition which has a profound effect on a large number of people and which is not well understood.

66. Although the inhibition would be most severe in respect of chronic fatigue syndrome, disclosing the names would also impact of the willingness of external reviewers to participate in the assessment of funding applications more generally. Given that making decisions on funding applications is the core function of the MRC, the impact would be frequent and wide ranging.

67. There is a weighty public interest in disclosing the names due to the controversy surrounding the PACE trial, the amount of public money spent on the research and the value of allowing the public to reach their

own opinions on whether there were any conflicts of interest in funding decision. However having considered the severity, extent and frequency of the inhibition to the peer review process, which remains an essential part of evaluating funding applications, the Commissioner considers that the public interest in favour of maintaining the exemption outweighs the public interest in favour in disclosure. Therefore the MRC is entitled to rely on section 36(2)(b)(ii) to withhold the information.

Right of appeal

68. 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@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

69. 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.

70. 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 .....

Rob Mechan
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