IN THE FIRST-TIER TRIBUNAL **Appeal No: EA/2013/0019**
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50463661
Dated: 9 January 2013

Appellant: **John Mitchell**

Respondent: **The Information Commissioner**

2nd Respondent: **Queen Mary, University of London**

Heard on the papers: Field House

Date of Hearing: **28 June 2013**

Before

Christopher Hughes

Judge

and

Anne Chafer and **Suzanne Cosgrave**

Tribunal Members

Date of Decision: **22 August 2013**

Subject matter:

Freedom of Information Act 2000

s.36 prejudice to the effective conduct of public affairs,

s.14 vexatious or repeated requests

The Charter of Fundamental Rights of the European Community 2000

Article 13 Freedom of the Arts and Sciences

Cases:

Fraser & Anor, R (on the application of) v National Institute for Health and Clinical Excellence & Ors [2009] EWHC 452 (Admin) (13 March 2009)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 9 January 2013 and dismisses the appeal.

Dated this 22nd day of August 2013

Judge Hughes
[Signed on original]

REASONS FOR DECISION

Introduction

1. Chronic Fatigue Syndrome/Myalgic Encephalomyelitis (CFS/ME) is a disorder which afflicts a significant proportion of the population and is not well understood. Over the last few years the PACE Trial has been conducted. This trial was funded by the Medical Research Council and other parties at a cost of approximately £5 million and involved 641 patients. The purpose of the trial was to examine the efficacy and safety of the main clinical interventions currently used in the UK for the treatment of this disorder. These interventions are adaptive pacing therapy, cognitive behaviour therapy, graded exercise therapy and specialist medical care.

2. Initial design work for the project started in 2002, it received ethics approval in 2004 after which patients were recruited and followed up from 2005 to 2010. Given the level of interest in the research somewhat unusually the trial protocol was published in 2007 (BMC Neurology, 2007,7:6). The abstract to that paper gives a clear description of the questions which the researchers were trying to explore:-

"Abstract

Background: Chronic fatigue syndrome is a debilitating condition with no known cause or cure. Improvement may occur with medical care and additional therapies of pacing, cognitive behavioural therapy and graded exercise therapy. The latter two therapies had been found to be efficacious in small trials, but patient organisations' surveys have reported adverse effects. Although pacing has been advocated by patient organisations, it lacks empirical support. Specialist medical care is commonly provided but its efficacy when given alone is not established. This trial compares the efficacy of the additional therapies when added to specialist medical care against specialist medical care alone.

Methods/Design: 600 patients, who meet operationalised diagnostic criteria for CFS, will be recruited from secondary care into a randomised trial of four treatments, stratified by current comorbid depressive episode and different CFS/ME criteria. The four treatments are standardised specialist medical care either given alone, or with adaptive pacing therapy or cognitive behaviour therapy or graded exercise therapy. Supplementary therapies will involve fourteen sessions over 23 weeks and a "booster session" at 36 weeks. Outcome will be assessed at 12, 24 and 52 weeks after randomisation. Two primary outcomes of self-rated fatigue and physical function will assess differential effects of each treatment on these measures. Secondary outcomes include adverse events and reactions, subjective measures of symptoms, mood, sleep and function and objective measures of physical activity, fitness, cost-effectiveness and cost-utility. The primary analysis will be based on intention to treat and will use logistic regression models to compare treatments. Secondary outcomes will be analysed by repeated measures analysis of variance with a linear mixed model. All analyses will allow for stratification factors. Mediators and moderators will be explored using multiple linear and logistic regression techniques with interactive terms, with the sample split into two to allow validation of the initial models. Economic analyses will incorporate sensitivity measures.

Discussion: the results of the trial will provide information about the benefits and adverse effects of these treatments, their cost-effectiveness and cost-utility, the process of clinical improvement and the predictors of efficacy."

3. A website was set up to inform the public of significant events and in addition a set of frequently asked questions about key issues in the research was published.

4. Approximately 100 clinicians and researchers have been involved in the trial and since the conclusion of the trial in 2010 there have been publications of its results. The full research publication strategy involves considerable statistical analysis of a large volume of clinical data by statisticians unaware of the specific therapies patients have received.

5. One significant paper setting the results of the analysis of the trial was published in March 2011 in the Lancet. This indicated that cognitive behavioural therapy and graded exercise therapy can be effective. Pacing, which has considerable support among charities working in the field of ME was found to be ineffective. The publication of this paper led to some controversy. The Medical Research Council and the Lancet both received purported rebuttals by a retired academic pharmacist making a wide range of allegations including allegations against the authors' integrity and honesty. He called the study "unethical and unscientific". Both organisations considered the submissions and rejected them. The head of corporate governance and policy at the MRC considered it, responded "and two weeks later got another list of questions". The Lancet concluded that the volume of critical letters it received indicated an active campaign to discredit the research. (Bundle p146; BMJ 2011; 342). On 17 May 2011 the online Lancet published an editorial on the subject:-

"Once every few years, we publish a paper that elicits an outpouring of consternation and condemnation from individuals or groups outside our usual reach. The latest topic to have caused such a reaction is chronic fatigue syndrome (CFS) and more specifically-Peter White and colleagues' randomised PACE trial published on March 5, this year.

In the Pace trial White and colleagues set out to answer a question that has long trouble the CFS community: are the treatments recommended by clinical guidelines-ie cognitive behaviour therapy and graded exercise therapy-really the best option for patients with CFS? The trial's findings showed that, compared to specialist medical care alone, both treatments were associated with significant improvements in self-rated fatigue and physical function (the primary outcomes) after 52 weeks.

The response to the trial's publication was swift and damning. "When is the Lancet going to retract this fraudulent study?" demanded a Facebook group. A 43 page complaint (now available via Wikipedia) branded the trial "unethical and unscientific". There were 44 formal letter submissions, eight of which we publish today, together with the response from White and colleagues.

Many of the letters critique the definitions of secondary outcomes, question protocol changes, and expressed concern over generalisability. But one cannot help but

wonder whether the sheer anger and coordination of the response to this trial has been born not only from the frustration many feel about a disabling condition, but also from an active campaign to discredit the research. White and colleagues have been accused of having "formed their opinion about the intended outcome" before the trial began. This view is unjustified and unfair. The researchers should be praised for their willingness to test competing ideas and interventions in a randomised trial. The evidence might even suggest that it is the critics of the Pace trial who have form their opinions first, Ignoring the findings of this rigorously conducted work."-

The request for information

6. On 31 July 2012, the Appellant in these proceedings "Mr Mitchell" wrote to the Second Respondent Queen Mary, University of London "Queen Mary" requesting information:-

"I would like to make a FOI request for the meeting minutes of the PACE trial's Trial Steering Committee and Trial Management Groups. I am aware that an identical request was recently made and denied and apologise in advance for making another request for the same information"

7. Queen Mary responded on 5 September 2012 referring to its response to the previous request and denying the request for information. Since it had already carried out an internal review on the previous request Queen Mary declined to carry out a further review.

The complaint to the Commissioner

8. Mr Mitchell complained to First Respondent the Information Commissioner ("the Commissioner") on 6 September 2012 providing arguments why the material should be disclosed and drawing attention to a range of publications on the trial.

9. Queen Mary has relied on s.36(2) FOIA which provides:-

"information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information-

(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 purposes of deliberation, or

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

10. In this case the qualified person was the Principal of Queen Mary. In coming to his conclusion he considered a submission which argued that releasing the minutes:-

- could have major implications for how trials are conducted on a national level in the future
- will alter the way trials are run,
- will affect the quality of the minutes of meetings such as this in dealing with controversial areas of medicine,
- previous releases of information under FOIA had already damaged and delayed the trial.

11. The Commissioner in considering this concluded that it was reasonable for a qualified person to decide that disclosure of the minutes would inhibit free and frank provision of advice and free exchange of views. He therefore decided that the opinion was reasonably arrived at and he concluded that the exemption in section 36 was engaged.

12. Since this exemption is a qualified exemption the Commissioner then went on to consider the public interest arguments in favour and against disclosure.

13. In support of disclosure Mr Mitchell submitted detailed information concerning clinical issues related to the trial as was well as his view of the significance of the minutes of West Midlands Research Ethics Committee consideration of an issue in the Pace trial. He also drew attention to a related clinical trial with more severely affected patients which had been funded by the MRC and reported somewhat earlier than PACE. He was concerned about various changes to the protocol made during the course of the trial and introduced concerns about the use of "spin" in reporting of randomised control results with reference to a 2012 paper by Yavchitz et al. on this topic, he argued that the MRC press release had displayed many of the problems highlighted by Yavchitz et al in relation to the significance and value of the results. He argued that a study of this scale should be subject to what he viewed as appropriate and entirely necessary scrutiny especially since the outcomes would affect a vulnerable patient group.

14. Queen Mary argued that the requested minutes reflected the free exchange of ideas of the various principal investigators and other members of the team on a large number of issues concerning the structure, proper conduct and evaluation of the trials. Confidentiality of such discussion and debate can be vital to the development of scholarship, knowledge and scientific truth. The members of the research community collaborating in their work should be afforded privacy in order to pursue knowledge and develop lines of argument without fear of reprisals and findings or ideas that are controversial and without premature disclosure of those ideas. It was reasonable to conclude that disclosure would inhibit the quality and freedom of future exchanges among academic researchers in the field and make it more difficult to recruit participants to studies. The minutes reveal a degree of sensitivity among the researchers given the highly politically and polemic nature of the public debate. Accordingly researchers would expect their meetings to be confidential. The research and its findings had been fully and promptly published in the Lancet with access to the findings fully available to the public. These findings have been subject to an extraordinary level of public scrutiny and in response to public commentary the Lancet had subjected the study to a further review process. In this case there was an ongoing process of research and it was therefore important to continue to protect the free and frank exchange of views in such studies in order to continue to protect

academic freedom. Correspondence from a patient representative group submitted by Queen Mary indicated that publication of minutes would have a negative impact on its willingness to participate in the future in such work.

15. In particular Queen Mary drew attention to a judicial review heard in the High Court in 2009 in which a challenge was brought against the National Institute for Health and Clinical Excellence in connection with the development of guidelines for the treatment of CFS/ME. *Fraser & Anor, R (on the application of) v National Institute for Health and Clinical Excellence & Ors [2009] EWHC 452 (Admin) (13 March 2009)* In an afterword to that ruling Mr Justice Simon noted:-

"I have already expressed my concern at the nature of the allegations that were made against members of the GDG [guideline development group]. There are two points that arise from the Claimants' approach to this litigation.

First, unfounded as they were, the allegations were damaging to those against whom they were made; and were such as may cause health professionals to hesitate before they involve themselves in this area of medicine. A perception that this is an area of medicine where contrary views are not to be voiced, and where scientific enquiry is to be limited, is damaging to science and harmful to patients.

Secondly, these types of allegation may also have the effect of putting people off from serving on GDGs. Professor Baker expressed this concern at §26 of his 2nd witness statement.

... I would also like to note that the fact that such allegations have been made in legal proceedings, and the fact that the individuals involved have had to submit their own version of events to the court in witness statements in order to defend themselves means that it is likely that they will think twice before being GDG members again. There is a real danger that health professionals will become reluctant to serve in GDGs again."

16. Queen Mary argued that publication of the requested information reflecting the discussions and advice as to the conduct of the trial would prejudice the provision of full and frank advice in the light of the hostility and public reprisals that advisers would likely to be subject to from a small, but notable part of the CFS/ME activist patient community.

17. The Commissioner acknowledged the public interest in transparency and accountability in the decision-making processes of public authorities. He considered that there is a strong public interest in allowing the public to be better informed about the way clinical trials are conducted. However he considered that the severity, extent and likely frequency of inhibition to the provision of advice and the free and frank exchange of views for the purpose of deliberation was such that Queen Mary was entitled to protect the safe space for discussion about the implementation and setting up of clinical trials and that significant prejudice would be likely to occur if the withheld information would be disclosed. He therefore concluded that s36(b) (i) and (ii) could be properly applied to the material and Queen Mary were entitled to refuse to disclose the information.

The appeal to the tribunal

18. In his appeal to the tribunal Mr Mitchell argued that disclosure would increase confidence in the appropriateness of decisions made and the quality of future decisions by such groups he also considered that his initial appeal had not been given proper consideration by the Information Commissioner who had simply linked it to a decision he has made with respect to a previous request. He was markedly suspicious in his approach and cited the leader of an American CFS group stating:-

"while the authors state that the funding agencies had no role in the study design will conduct, it is difficult to ignore the UK Government's strong stake in a good outcome. The study was funded by the country's Medical Research Council, Department of

Health and Department for Work and Pensions. It was conducted to the benefit of making or revising health policy of the treatment of CFS by the National Health Service. It came at a cost of some £5 million (British) or $8 million (US). In essence, it was too big to fail to reinforce existing UK policy that favours the provision of psychological approaches over medical ones"

19. He attached to his appeal a statement in support of his position from two UK ME charities, an attack on the study by CFIDS America and a statement by another American CFS/ME group.

20. In his reply to Queen Mary Mr Mitchell made a number of points identifying changes in the conduct of the research and making detailed criticisms of such points:-

"….For such fundamental discrepancies to exist calls into question the adequacy of the methodological planning of the trial…

Even if the numerous methodological discrepancies and/or inadequacies of the PACE trial was simply due to chance and not done with any intent to engineer the outcomes…

21. It is clear from his response that he has a fundamental disagreement with the study and the thinking which underlay it. It is clear that Mr Mitchell holds the view that there is an underlying infection or muscle disease causing CFS/ME and he argues that the trial is based on a false premise that there is "no underlying serious disease" which in his view is "in direct contradiction to the extensive biomedical research literature on the subject".(Bundle page 89).

22. In its response Queen Mary drew attention to the extremely high level of transparency in the trial. It also drew attention to the evidence of the need to protect future research and publication in this area and in particular protecting junior researchers from individual identification outside the group by publication of

"decisions made during the deliberative process of the research trial in a highly contested area of research where disagreement with findings is often acrimonious, indeed likely libellous in some instances " (p96) It noted that there was a qualitative difference between being identified as a member of a research team "whose findings are jointly held and published after vigorous and anonymous peer-review and the identification individually as an attendee of a specific meeting". It was Queen Mary's concern as an academic institution responsible for ensuring the academic freedom of its researchers to engage in exchange of views inherent in such freedom. This was further coloured by the acrimonious nature of this area wherein individual researchers have been personally disparaged or threatened due to their scientific views with which certain members of the patient community may not agree. In this regard, the names of attendees and patient representative groups and those of junior researchers should especially be protected from disclosure. Moreover, as various opinions expressed in the minutes could be attributable to individuals if disclosed to the world at large, given the adversarial nature of this area of research, this could lead to repercussions for individuals. This would weigh in favour of the balance of the public interest being against disclosure. Queen Mary described some of the consequences which could, on the basis of past evidence, be anticipated:-

"These have included for instance members of the public attempting to engage parties further in debate or limiting the breadth of expertise which would be available to future academic endeavours if researchers were unwilling to participate in the light of the adverse and often acrimonious commentary which is likely to occur here, all of which have been recognised to further prejudice to the effective conduct of public affairs."

23. The formal evidence submitted on behalf of Queen Mary was encapsulated in two witness statements by Professor Peter White, one of the lead investigators of the PACE trial. In the first witness statement he gave some background to the trial and a clear explanation of the reasons for certain changes to the conduct of the trial from the original protocol. Such changes are common to most clinical trials and arose from the guidance that the researchers had a duty to consider and it was appropriate for them to

adopt in order to improve the patient experience, safety, to better measure results or take into account new research published after the protocol was first formulated. They did not engineer the results or undermine the integrity of the findings rather they were part of the normal process of science. He commented:-

"The appellant also suggests that there is something extraordinary in that there were differences between the outcomes predicted in the protocol and what we ultimately found after the data was analysed. This is clearly to be expected. Indeed, this could be said to be the whole point of using the scientific method. One posits an outcome and then seeks to prove it or disprove it. If we knew the answers setting out, there would be no need for the trial in the first place. The fact that the results differ from the predictions suggest the rigour of the methods and true research.

….

None of the appellant's implied collusion of government, funders or researchers took place or was possible. At all times the methods used ensured a very high level of scrutiny for integrity and scientific rigour. We have submitted the outcome data to a Cochrane Collaborating group, based in Norway, who have provided independent analysis of this Trial's data, and who have now undertaken this analysis with a further publication in preparation. In addition to the previously substantiated reasons for not disclosing the minutes in question, the failure of the appellant here to establish anything which serves to erode that finding, it is my further observation that is the Principal Investigator of the new GETSET Trial in this area, our committees have a considerable concern and guarding of what is said in light of the threat of the minutes being disclosed. This has not only inhibited the frank exchange of views but could serve ultimately to undermine the science."

24. In a subsequent statement he confirmed that no minutes of these committees had been released under FOIA by the Pace trial managers or Queen Mary. He listed the considerable commitment he had to make on a continual basis to defend and justify his work:-

"For example, I am often sent e-mails asking my opinion or to defend positions. (Exhibit A). I have been the subject of a recent petition to government asking that I not be allowed to participate in advising government in this subject (exhibit B). I have had to provide responses to Parliamentary Questions from members of both Houses of Parliament to allow them to understand the nature and findings of the PACE trial. In particular, I had to recently brief several members of the House of Lords so that they might speak in a critical debate about the Pace trial held on 6th February this year (exhibit C)

All of this in addition to the continuing flow of information requests and the analysis that must be undertaken to evaluate whether or not the information can be released has taken a great deal of time since the release of the Pace Trial main findings and continues with each publication. While I recognise fully that this is my legal obligation, this is in addition to the above engagement on the research has a serious impact on my time to finalise publications that remain, oversee the current trial of a self-help treatment for patients with CFS that has now started, oversee my other research into the causes of CFS, and all of my other academic duties which include teaching, research into helping patients who have survived cancer, and my clinical responsibilities, which includes running a clinic for CFS patients, and overseeing psychiatric assessment and care of patients attending St Bartholomew's Hospital for other health problems, such as cancer."

25. An examination of the emails attached to his second witness statement reveal the vituperative and abusive way in which some activists behave towards researchers:-

"Has it always been just to cuckold others, to show perceived superiority, and to keep a small contingent gainfully employed?

Because not a whit of it has been based on any PROVEN SCIENCE! .."

Question for the Tribunal

26. The question for the tribunal is whether, in the light of all the available evidence, the Commissioner is correct in concluding that the exemption contained in section 36 is engaged and that on the balance of public interest in the material requested should not be disclosed.

Consideration

27. What is immediately apparent in considering this request for information is the extent to which the request is part of a campaign which has now extended to the use of FOIA as a means of advancing an argument which in essence has roots in clinical medicine and in a black and white view of the mind/ body problem. There is a view among some members of the CFS/ME community that the distressing disorder which they suffer from has a simple and straightforward physical cause which if properly researched will lead to a cure. They view any diversion from that as wasteful and indeed duplicitous.

28. The purpose of the PACE trial was not to find the causes of the disorder. As Lord Layard said in the House of Lords debate of 6 February 2013:-

"First, the issue of what causes the condition is often quite different from how we can best treat it. This is such a basic point but it is not fully understood by many of the people suffering from this condition. Coronary heart disease may be caused by cholesterol but we treat it with a stent. In the same way, chronic fatigue may be caused by a virus yet the best treatment available at the moment may include psychological therapy. This form of treatment implies nothing about what we believe to be the cause.

…..

Secondly, we have quite a lot of evidence about which treatments work. More will surely be discovered in future and some of them will surely be biological. In the meantime, we have a large amount of evidence that both CBT and graded exercise therapy enable many more people to recover than if the only treatment they have is standard medical care. My main point here is that this is so, whatever the definition of recovery. It is wrong to suggest that this all depends upon that definition;, you can put the cut-off for recovery in many different places and you will always find people who get CBT and graded exercise therapy do better than people who have only standard medical care…..

….

I come back to this question of the change in the protocol to stress that this was made before any analysis was done of the results. It was not that they looked at the results and said "let's change the recovery criteria".

29. There has been a storm of comments about this study. There had been deeply wounding personal criticisms of individuals concerned and over the years individuals in this field of research and treatment have withdrawn from research in the face of hostile irrational criticism and threats. There is a completely understandable concern within the research community about this criticism and on the evidence before the tribunal it is pellucidly clear that the progress and conduct of research in this area would be hampered by the publication of minutes of meetings such as sought by this request because individuals would be less willing to engage in research, participate in steering committees, provide guidance, debate issues about the conduct of research as fully and frankly as they otherwise would; as fully and frankly as would most benefit the research and the patients it is intended to help. Having determined that the exemptions in s36 (2) is engaged,, the tribunal's view is that the appellant's arguments in favour of disclosure of the minutes when so much has been made available publicly in relation to this research and been subjected to such high levels of independent scrutiny do not outweigh the considerable weight to be given to the public interest in maintaining the safe space for academic research. The tribunal is satisfied that there is no error in law in the Commissioner's decision and upholds the decision for the reasons stated in that decision notice.

30. However the tribunal considers that it would be helpful to make further observations as to three issues which arise out of this case.

31. The tribunal considers that the underpinning given to academic freedom within both the UK Statute Law and Human Rights Conventions should be fully recognised and given appropriate weight in considering applications for information such as this. The Charter of Fundamental Rights of the European Community lists as a fundamental freedom at Article 13:-

"Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected."

32. In the Education Reform Act 1988 there is specific statutory recognition of the need to protect academic freedom:-

"To ensure that academic staff have freedom within the law to question and test received opinion, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have their institutions"

33. Both these formulations help articulate the profound importance of academic freedom; in particular in the area of scientific research and the need for universities to protect it scrupulously and for due weight to be given to academic freedom in considering where questions of public interest lie. Queen Mary and other institutions have a clear responsibility to uphold academic freedom, it is their raison d'être. The Commissioner, as an emanation of the state, has a duty to give effect to Article 13 in his decisions and guidance. In considering the public interest in FOIA context is all important. .

34. Universities, unlike virtually all other bodies subject to FOIA, have the primary purpose of the dissemination and generation of knowledge through teaching and research. Their other activities are subsidiary to and intended to serve that primary purpose, and the significance of that purpose is protected by Article 13. The disclosure of information is therefore not an incidental aspect of their activities which they are required to do under FOIA, it is their primary objective – the activity which imbues the University with its moral significance. In a real sense the structures of a

University are designed to support this dissemination of information in the most effective means possible, in particular the dissemination of research through the processes of publication in scientific journals. A parallel process of dissemination through FOIA is unlikely to be as effective or robust as the process of lectures, seminars, conferences and publications which are the lifeblood of the University. They are likely to be a diversion from the effective evaluation, publication and scrutiny of research through the academic processes. All too often such requests are likely to be motivated by a desire not to have information but a desire to divert and improperly undermine the research and publication process – in football terminology – playing the man and not the ball. This is especially true where information is being sought as part of a campaign – it is not sought in an open-minded search for the truth – rather to impose the views and values of the requester on the researcher. This is a subversion of Academic Freedom under the guise of FOIA and the Commissioner, under his Article 13 duty must be robust in protecting the freedom of academics from time-wasting diversions through the use of FOIA.

35. The second issue relates to the strategy which universities faced with the likelihood of a high degree of hostile attention in connection with research (or indeed a high degree of public interest) could adopt in order to protect the highly valuable time and energy of their researchers while at the same time giving a high degree of transparency and accountability to what is done. Public authorities have a duty under section 19 of FOIA to adopt, maintain and from time to time review a publication scheme. In this case there has been a very high degree of transparency both in the initial publication of the research protocol and indeed in the exhaustive work of the researchers and the Lancet in publication of the material. However it might well be worth considering at the start of a major project such as this setting out a publication strategy identifying what materials will be produced in the course of the project, which materials will be published and when (this will enable s22 to be considered if FOIA requests are received for such material), and which are unlikely to be published under FOIA as exemptions may be engaged. While individual publication strategies will be specific to the project, this is an area that would clearly benefit from guidance to Universities by the Commissioner in discharge of his article 13 duties.

36. The third issue relates to the nature of requests in cases such as this. The primary function of academic researchers is to publish and publication requires the rigorous scrutiny of the evidence by the researchers and by the academic community. This is currently significantly underpinned by peer review and then publication of competing or contradictory hypotheses and evidence. Within that paradigm there is a robust system of scrutiny built into the process and it is the duty of those carrying out research and those supporting their efforts to focus on making that system effective. The tribunal has no doubt that properly viewed in its context, this request should have been seen as vexatious- it was not a true request for information-rather its function was largely polemical and as such in the light of recent Upper Tribunal judgements might have been more efficiently and effectively handled if treated as vexatious.

Conclusion and remedy

37. The Tribunal is satisfied that there is no error in law in the Commissioner's decision and dismisses the appeal.

38. Our decision is unanimous

Judge Hughes
[Signed on original]

22 August 2013