



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS)**

EA/2015/0073

Decision Notice Ref FS50559771

STEPHEN MOORE

Appellant

v

THE INFORMATION COMMISSIONER

First Respondent

And

OXFORD BROOKES UNIVERSITY

Second Respondent

Hearing

Held on 12 November 2015 at Fox Court
Before Alison Lowton, David Wilkinson and Judge Claire Taylor.

Decision

The appeal is unanimously upheld in part for the reasons set out below, such that we find partially in favour of the Appellant. This decision is to be treated as a substituted Decision Notice.

Steps to be taken

Within 20 days of the date of this Decision, Brookes University are required to provide the Appellant with a detailed explanation of the alternatives to A-Levels that have been acceptable for entry in 2012 to 2014 onto the Course for those entering through the SCAS route. (*Course and SCAS are defined below*).

Reasons

The Request

1. On 18 September 2014, the Appellant requested from Oxford Brookes University (Oxford Brookes or University):

“Oxford Brookes University (OBU) run paramedic courses in conjunction with South Central Ambulance Service (SCAS) for their own employees who are qualified Emergency Medical Technicians (EMT's or Tech's). This is the one-year foundation degree course in para-medicine.

For the years 2012 and 2013 you required 5 GCSE's including English, Maths and a “hard” Science as an entry criteria.

This year you have increased the entry requirement to 5 GCSE's as before but you now require 3 A-levels as well. A level 3 diploma or Access course is also acceptable.

Can you tell me what the rationale/reasoning is of increasing the entry requirement? Were the staff who completed the 2012 and 2013 courses not deemed good enough? Who required the increase in entry requirement, OBU or SCAS?”

(The Request)

2. The Appellant later confirmed that his Request related to the one year SCAS course (the 'Course').
3. On 31 October 2014, Oxford Brookes replied that:

“...our records indicate that the entry requirements for the course you refer to have not changed and the requirements for 2014 are the same as those specified for 2012 and 2013.”
4. It also provided a document, which set out the entry requirements for the Course dated 22 July 2014. (The 'Document').
5. On 2 November 2014, the Appellant sent the University a link to the SCAS website. He considered that this indicated that A-levels had not been a requirement for the previous year and that it *'very clearly shows that only 5 GCSE's were required'*.
6. On 3 November 2014, Oxford Brookes maintained its position that it held no further information relevant to the Request.
7. After an internal review, the University again confirmed its original position that the entry requirements for the Course had remained the same in 2014 and that it held no further information within the scope of the Request. It noted that it had no control over the content of the SCAS website, but pointed out that:
 - a. The website referred to over 20 paramedic courses at different universities;

- b. The website stated that: *'The entry requirements for each of these courses are varied'*; and
 - c. "The subsequent inclusion of *"Must have 5 GCSE's (University requirement)"* on a list relating to how to apply would appear to be a *minimum requirement'* rather than the complete requirement for any specific course.
8. The Appellant progressed with his complaint such that the Information Commissioner ('the Commissioner') investigated the matter. He learned that the Appellant had said that (a) SCAS claimed that Oxford Brookes had set the academic standards for entry of what was a joint venture from both organisations; and (b) SCAS stated that the decision to increase the entry requirements for entry in 2014 to include 3 A-levels was made by Oxford Brookes and not SCAS. The Appellant had challenged this, as he was concerned that it constituted age discrimination.
9. The Commissioner found that:
 - a. The relevant page of the SCAS website stated that the entry requirements for each of the courses were varied and advised interested parties to contact the appropriate University for specific information. It did contain a list of requirements, which included *'Must have 5 GCSEs'*. The Commissioner referred to this as *'a minimum requirement for entry to a specific course/programme and not an absolute'*.
 - b. The Request was for information about a supposed increase in entry requirements for the Course. The Appellant had not produced any evidence to indicate that there had been an increase in entry requirements. On the balance of probabilities there had not been an increase.
 - c. Based on the University's position, the Commissioner was satisfied that on the balance of probabilities, the University did not hold further information falling within the scope of the request.
10. The Appellant has appealed this decision, claiming:
 - a. That based on the SCAS website, the fact that there had been an increase in entry requirements is beyond doubt; and
 - b. The University has stated that it did not hold records on the entry requirements from 2012 and 2013 and that this was not credible.

The Law

11. Under section 1(1) of the Freedom of Information Act 2000 ('FOIA'):

"Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him."

12. Where the public authority has determined that it does not hold any information within the scope of a request (other than what it may have already disclosed), and the Appellant claims that it does, the Tribunal will review the evidence and make a finding on the fact based on what is called the balance of probabilities, i.e. which position is more likely than not.

Duty to Advise and Assist

13. Section 16 FIOA provides:

‘(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 [‘the Code’¹] is to be taken to comply with the duty imposed by subsection (1) in relation to that case.’

14. The Code provides at paragraphs 8-11:

“Clarifying the request:

...Authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.

Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant...Public authorities should be prepared to explain to the applicant why they are asking for more information. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.

Appropriate assistance in this instance might include:

- i. providing an outline of the different kinds of information which might meet the terms of the request;*
- ii. providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;*
- iii. providing a general response to the request setting out options for further information which could be provided on request.*

This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

In seeking to clarify what is sought, public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants.”

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

15. In other words, a public authority has a duty to advise and assist a requester, including so as to enable him or her to describe more clearly the information requested.

The Task of the Tribunal

16. Our task is to consider whether the decision made by the Commissioner is in accordance with the law or whether any discretion he exercised should have been exercised differently. The Tribunal is independent of the Commissioner, and considers afresh the Appellant's complaint. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner. In this case, our remit is limited to considering whether Oxford Brookes has complied with the requirements of the FOIA in dealing with the Appellant's request. It is not within our remit to consider issues of fairness or consistency in relation to how they operate their admissions process.

The Issue for the Tribunal

17. The Issues for this Tribunal are:

- a. Did Oxford Brookes hold information falling within the scope of the request?
- b. Did Oxford Brookes satisfy the duty to advise and assist?

18. We have received a Decision Notice, the Appellant's grounds of appeal, and responses, and the ICO's responses as well as a bundle of documents. We have reviewed all these submissions and those documents that the submissions referred us to, even if not specifically referred to below.

19. The material included a schedule setting out the entry requirements for the Course across recent years as depicted in prospectuses, flyers and other documents. This material had not been before the Commissioner during his investigation. It described specific entry requirements which for our purposes were as follows:

- a. For 2012
 1. Prospectus 2012: Minimum 5 GCSEs. (We note that there was no mention of A-Level requirements although it stated typical offers to be A-Level grades CCC or equivalent.)
 2. However: A document dated May 2012 listed entry requirements as two A2-Level CC; and
 3. a document that did not show its date or have a date marked for us but we are informed was a brochure for the Course in 2012 showed requirements of A-levels CCC and 5 GCSEs and for SCAS states 'please contact us for advice on the best route to take to achieve the minimum requirements for your application.'
- b. For 2013
 - Prospectus 2013: A-level (BSc) grades BCC or (FdSc) grades CCC and Minimum 5 GCSEs.

c. For 2014

- Prospectus 2014: A-level grades BCC or equivalent IB 32 points and Minimum 5 GCSEs
- The Document of 22 July 2014²: A-level grades BCC (to include biology), or the equivalent BTEC Extended Diploma Level 3 (equivalent to three A levels) in Health and Social Care.

20. We are informed from the Commissioner's submission that flyers for the Paramedic Emergency Care course for 2012 and 2013 indicated requirements '*three passes at A level grade CCC or above, or BTEC Extended Diploma... or Certificate or Access to Higher Education Award*'. However, it was not clear to us if these flyers were in the bundle and if so where - we could not find them and they were not indexed.

21. Further, the bundle did not contain complete forms of documents described in the schedule or a copy of the pages described in paragraphs 5 and 9(a) above and we found that the links provided by him and in the Decision Notice either did not work or no longer worked.

Issue 1: Was the Information Held?

22. Oxford Brookes' first response and supporting documentation of 23 June 2013 ran to 35 pages (Open Bundle pages 28 to 63) and comprised the results of a full review of all the information the University held in relation to the entry requirements for the Fd (Sc) Paramedic Emergency Care Programme. This was conducted by Dr Elizabeth Ann Ewens, the Head of the University's Department of Applied Health and Professional Development, Faculty of Health and Life Sciences. From this comprehensive and careful review the University drew the following key conclusions.

- a. There had been no change to the entry criteria for the Programme from its initial validation in 2008 to date. The entry requirements for the Programme have always included A-levels.
- b. The close scrutiny of documents detailing the entry requirements showed a number of inaccuracies and inconsistencies made as a result of human error and changes in style of presentation for the University prospectus entries from year to year.
- c. The University's initial response to the Appellant's request was correct because the Appellant was asking for the University's "...rationale/reasoning ... of increasing the entry requirement" from only 5 GCSEs in 2012 and 2013 to 5 GCSEs plus 3 A-levels in 2014. As A-levels had always been an entry requirement for the Programme, no such change had been requested by either the University or the South Central Ambulance Service and, therefore, the University had held no such information.
- d. It is unfortunate that the University's published materials are inconsistent both in the number of A-levels stated and in the precise grades required.

² Disclosed to the Appellant as described above.

However, the terms of the Appellant's initial request stemmed from a mistaken belief that A-levels were not an entry requirement prior to 2014.

23. This response also provided detailed explanations of the numerous inconsistencies and errors that appeared in the University's literature on the programme. These explanations serve to confirm the complexity of the entry requirements and the confusing and changing manner in which they were presented over the period in question.
24. Following the Appellant's challenge to the accuracy of the University's first response, Oxford Brookes' second submission of 17th July 2015 included the following points.
 - a. The University works in conjunction with the relevant professional bodies on all aspects of Programme design and delivery. These are the College of Paramedics; the regulator for paramedics by whom the Course is accredited; Health Education Thames Valley (HETV) - which pays the tuition fees for the SCAS students; and the SCAS - which provides the placement opportunities for students on the Programme).
 - b. Whilst there is variation in the interview selection process, depending on whether the applicant is applying to the Programme via the UCAS or SCAS entry route, the minimum entry criteria requirement is the same at 3 A-Levels at grade CCC or their equivalents.
 - c. There has been no change to the entry criteria for the Course since 2008 and that the University has always been transparent about the alternative entry routes to the Programme.
 - d. The Appellant's claim in his letter of 30 June 2015 that the entry standard for the Course is being relaxed on a case by case basis is baseless. The University is being open and honest about the entry procedures – but they are very complex to avoid being unduly restrictive. Consequently they are difficult to articulate succinctly.
25. The University then explained that certain accreditation was accepted as an equivalent to A-levels, and that having two different entry procedures created complexities. As these are central to the points at issue in this appeal, we set them out below in some detail.
 - a. The Appellant is correct in that the University, like all other universities, encourages wider participation in higher education by accepting alternative (to A-Levels) entry routes to University programmes. This accreditation of prior learning is known as Approved Prior Learning (APL) or Accredited Prior Experiential Learning (APEL) route.
 - b. *"The Appellant's Request was for the University's "...rationale/reasoning ... of increasing the entry requirement" from 5 GCSEs in 2012 and 2013 to 5 GCSEs plus 3 A-levels in 2014. Therefore, the First Response was focusing on information held by the University relating to the entry requirements by A-Level for the Programme. The standard entry route to higher education is indeed via GCSEs and A-Levels and, as the Appellant's Freedom of Information Request referred to A-Levels, the First Response focused on this standard entry route."*

- c. “2.9 Widening participation is an objective across the Higher Education Sector and is also supported by Health Education Thames Valley (“HETV”) and the College of Paramedics. SCAS employees, who tend to be more mature than UCAS applicants, are categorised as a group not typically seen in Higher Education; allowing access to underrepresented groups is seen as important to both NHS commissioning and University admission strategies. Applicants considered within widening participation groups are typically admitted with varied entry qualifications as they do not follow the classic 16-18 year old education route into Higher Education.
- d. 2.10 Whilst the admission criteria requirement typically offered to applicants for entry to the Programme is three A-Levels (grade CCC) and entry with A-Levels (i.e. a level 3 qualification) is the standard route for Higher Education, it is not the only entry route)...
- e. 2.11 **Other Level 3 qualifications can be assessed by the University as equivalent to A-Levels grades CCC** and the University’s process for this is described in paragraph 5 (Programme Entry)... These procedures are utilised extensively in the Higher Education sector, with some Institutions using a tariff system to allow calculation of equivalence between alternative Level 3 qualifications and A-Level grades.
- f. 3.1 UCAS applications are initially screened by the University’s Admissions Team. This team is expert in assessing the educational level equivalence of an applicant’s entry qualifications; the team functions as a University-wide resource in this role. This is relevant to applicants who do not possess three A-Levels but can identify alternative Level 3 qualifications (such as an extended BTEC) which are equivalent to or exceed the Programme’s A-Level admission requirement.
- g. 3.2 Following this initial round of screening, those UCAS applicants who do not meet the Programme’s entry criteria are rejected. The personal statements of the remaining UCAS applicants are then reviewed to select the candidates who will be invited for interview.
- h. 3.3 The SCAS employees apply electronically via NHS Jobs for a Student Paramedic post, undergoing an initial screening by SCAS. SCAS implements the screening process to shortlist candidates for these posts **by removing those applicants who clearly do not meet the Level 3 qualification entry requirements.** This initial screening process includes personal key performance indicators intended to identify a candidate’s potential to succeed on the Programme”.
- i. “3.4 All applicants who have been shortlisted by the SCAS selection process then have their applications reviewed by a panel comprising a representative from the SCAS Higher Education Team, an academic from the University and a member of the University’s Admissions Team. The aim of this process is to review an applicant’s qualifications against the Programme’s admission criteria; many of these applicants do not possess three A-Levels but do hold alternative Level 3 (or higher level) qualifications, which are equal to or exceed the Programme’s admission criteria. Just like the UCAS applications, these applications need careful assessment to ensure that the qualifications equate to the Programme’s entry requirements.”

(Emphasis added).

26. We consider that a further source of confusion may have been that the SCAS students received dispensation from study for first year modules because of their experience. Oxford Brookes explained that:

- a. *“5.1 UCAS candidates enter into year one of the Programme and study a series of modules delivered at Academic Levels 4 and 5. Any students who possess previous education beyond Level 3 can, if the education is judged by the University to be relevant and current, apply for that previous education to be assessed against the Programme’s Module Learning Outcomes...”*
- b. *5.5 All SCAS candidates enter year two of the Programme with APEL. This process recognises their experiential learning gained both through clinical experience in an Ambulance Service Operational Role and the SCAS training and development opportunities provided by the paramedic educational pathway. For the avoidance of doubt, each candidate’s APEL (as agreed by the panel referred to in paragraph 3.4 above) is reviewed and then formally approved by a Paramedic Subject Examination Committee in a similar process to that of APCL set out at paragraph 5.4 above.*
- c. *5.6 The APEL process is used to provide recognition for non-certificated learning which is deemed equivalent to the module Learning Outcomes for a number of Level 4 (Year One modules). This dispensation for most of the first-year of study allows the SCAS students to enter Year Two (Level 5) of the Programme.”*

27. The Appellant’s submissions included:

- a. An assertion that neither SCAS or the University had been completely open or honest about entry procedure onto the Course in prior years.
- b. A statement that, contrary to the claim in the review by Dr Ewens, the prospectus entries for 2012 and 2013 did not show clearly and unequivocally that three A-levels were mandatory entry requirements in those years. He stated that he was aware of people on the Course that had not achieved that requirement and that SCAS or the University had allowed people onto the course via some other method of prior learning. His concern was that if the entry standards for the Course were being relaxed on a case-by-case basis this led him to believe that everyone was not being assessed on a level playing field.
- c. An assertion that there had been an increase in the academic requirement to attain a place on the Course since 2014. He thought that it may be that prior to this date the requirements available had not been enforced and that being a qualified ambulance technician (with five GCSEs) had been sufficient prior learning.
- d. An assertion that unless Dr Ewens could confirm that no student had been accepted onto the Course since 2013 who had not achieved three A-levels, then the tribunal ought to accept the fact that three A-levels was not a requirement but merely an aspiration and that people were allowed on to the Course at the discretion of the interviewer.

Our Findings

28. We accept that the entry requirements for the Course have always been A-levels or Level 3 equivalents and not simply 5 GCSEs, such that no change in criteria was made between 2013 and 2014. We do not accept the claim that the prospectus for 2012 'showed clearly and unequivocally that three A-levels were mandatory entry requirements' for that year. However, we accept that on the balance of probabilities, no actual change in entry criteria had been made between 2012 and 2013 but rather that the University had made errors in their published material.
29. This is based on accepting the text from the two submissions written by Dr Ewens of the University's Faculty of Health & Life Sciences, including the explanation that the published material contained errors, but consistently indicated requirements for greater than 5 GCSEs. (In particular, we accept the arguments summarised in paragraphs 22(a) and (b); 23, 24 and 25(h) above).
30. Since we accept that the entry requirements were not increased, the Appellant's request was based on an inaccuracy and the University could not hold the information requested (e.g. on the rationale for increasing the entry requirement).
31. The Appellant asserted that if Dr Ewens could not confirm that no student had been accepted onto the program since 2013 who had not achieved three A-levels, then the tribunal ought to accept the fact that three A-levels was not a requirement but merely an aspiration and that people were allowed on to the program at the discretion of the interviewer. It is beyond the remit of this Tribunal to ascertain whether the requirements have been consistently enforced or whether anyone had been allowed on to the Course without the requisite Level 3 qualifications. Our task is limited to determining what information the University holds that might satisfy the request. To do that we have first considered whether in fact there had been a decision to taken to alter the entry requirements in the relevant years. If, as we have concluded, no such decision had been made, then on the balance of probabilities, the University could not hold material satisfying the Appellant's request to show who and why any such decision had been taken.

Issue 2: Duty to Advise and Assist

Our Finding

32. We did not receive submissions in relation to whether the University had satisfied s.16 FOIA on the duty to advise and assist. (*See paragraphs 13 to 15 above.*) For the reasons set out below, we consider that the duty to advise and assist was particularly important in this case such that based on the facts before us, s.16 FOIA should have considered.
33. Whilst the request contained errors, confusion or assumptions, it seems to us that the entry criteria were objectively complex and confusing. The Appellant's assumption may have been based on errors and inconsistencies in the published material described above, or the inherent complexity of the two types of entry processes as well as alternatives to A-Levels accepted. It was not until after the Commissioner's investigation, and a close reading of the University's second (helpful) submission that the position became clearer.

34. The University states that it has always been transparent about the alternative entry routes to the Programme, and open and honest about the entry procedures, but that they were very complex to avoid being unduly restrictive and consequently difficult to articulate succinctly. However, from examining the material in the bundle it is not apparent that the University entry criteria have been particularly clear or transparent.
35. The University states that its response to the Appellant had focused on the standard entry route because the Appellant's request referred to A-Levels. (See *paragraph 25(b) above*). However, it is clear from the terms of the request that the Appellant was interested in the entry route for SCAS rather than the 'standard entry route' and implicitly what alternatives to A-levels were accepted rather than the A-Level requirements.
36. In view of this, we think that the inaccuracy in the Appellant's request is understandable and perhaps inevitable such that the University's response that the information was not held because the assumptions were false was insufficient and unsatisfactory. We find that Oxford Brookes did not sufficiently engage with the Appellant to ascertain what the Appellant was referring to, understand what he was interested in and provide the information that would have assisted his understanding.
37. It is clear that Appellant wanted to understand the apparent inconsistencies in the entry requirements in recent years and that the University held information that would assist him in understanding what those entry requirements actually were. We consider that much of the information that the Appellant would have been interested in has now been provided within the two submissions from the University. However, it is still not clear to us what alternatives to A-Levels have been acceptable for admission on to the Course for 2012 to 2014.
38. To conclude, we find that the appeal is upheld in part inasmuch as whilst Oxford Brookes did not hold the information requested, they failed to comply with their duty to advise and assist. We require them to provide the Appellant within working 20 days with a clear and detailed explanation of the alternatives to A-Levels that have been acceptable for entry in 2012 to 2014 onto the Course for those entering through the SCAS route.
39. Our decision is unanimous.

Judge Taylor

19 November 2015