

Freedom of Information – Internal Review Decision

Internal Reviewer: Gary Womersley, Company Secretary and Head of Assurance Services

Reference: IR06-19

Date: 17/09/2019

Original Request: Received from K King by email dated 22/08/2019, and allocated reference 156-19:

"Can you please Clarify -

The Education (Student Support) Regulations 2011 (amended) states that UK nationals can not be considered an EEA Migrant.

Does this also include UK nationals that have exercised their EU treaty rights elsewhere in another EEA country and returned to the UK and are working?"

Original Response: Issued by FOI Office via email dated 02/09/2019:

"The answer to your query is in essence "no": a UK national based on the definition of EEA migrant worker and EEA national as set out in the Education (Student Support) Regulations 2011 (as amended)(hereafter "the Regulations") would not qualify as an EEA migrant worker under and in terms of the Regulations.

However a UK national who has exercised their rights of residence in another EU Member State and who returns to the UK may qualify under paragraph 8 of Schedule 1 of the Regulations which applies to persons who are settled in the UK and have exercised a right of residence elsewhere. See: <http://www.legislation.gov.uk/ukSI/2011/1986/schedule/1/made>"

Clarification of response was received via email dated 02/09/2019:

"You stated "in essence no" .Can you please clarify what you mean by "in essence" ? As I was expecting a no or yes answer."

Further response issued by FOI Office by email dated 02/09/2019

"The answer would be "no"."

Request for Review: Received by email dated 03/09/2019:

"Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Student Loans Company Limited's handling of my FOI request 'Can UK citizens that exercised their EU treaty rights elsewhere be an EEA Migrant

worker?'

The response from an SLC solicitor on 2 September 2019 stated:

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.whatdotheyknow.com/request/can_uk_citizens_that_exercised_t

In the response, SLC stated "in essence no". However this gives room for legal argument that it was not a complete no, because stating "in essence" shows that the solicitor withheld information for my FOI.

In essence eludes to the fact that UK migrants that have exercised their treaty rights elsewhere, can be considered EEA migrants.

So can I please get a full and whole response, that is free from ambiguous language."

Review:

An assumption has been made by insinuating that the solicitor handling the request withheld information and the statement made that the phrase "in essence no" giving room for legal argument is subjective.

The fact that the response provides additional information as to an alternative route for eligibility for a UK national who has exercised their EU treaty rights elsewhere and returned to the UK suggests that they cannot be considered an EEA migrant worker under the relevant statutory provisions, however may be eligible under alternative provisions.

Although not raised during the course of responding to the original FOI request, I would also highlight that the original request was not a request for recorded information, rather a question asking for clarification of the relevant statutory provisions. The FOI Office responded under FOI as the subject of the email received made reference to it being an FOI request. The FOI Office also provided advice and assistance in terms of an alternative eligibility route when it was under no obligation to do so.

Decision:

I consider that the request for an internal review to be superfluous. Clarification of the reference to "*in essence no*" was sought by K King, and duly provided by the FOI Office. In your email of 02/09/2019 you advised that you were "*expecting a no or yes answer*". This was duly provided by the FOI Office in response to your email seeking clarification of the response.

You have requested "*a full and whole response, that is free from ambiguous language*", however stated earlier that you were "*expecting a no or yes answer*". Despite the fact that you have already received a yes or no answer prior to submitting your request for an internal review, for ease, then I will repeat the answer of "no". I trust this is free from ambiguous language.

Right of Appeal:

K King, if you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF



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Gary Womersley
Company Secretary and Head of Assurance Services