Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2020

Public Authority: Southern Health NHS Foundation Trust

Address: Trust Headquarters
Tatchbury Mount
Calmore
Southampton
SO40 2RZ

Decision (including any steps ordered)

1. The complainant has requested from Southern Health NHS Foundation Trust (the "Trust") information about aspects of its mental health treatment services. The Trust refused to provide the requested information, citing section 12(1) of the FOIA – that the cost of complying would exceed the appropriate limit for compliance.

2. The Commissioner's decision is that the Trust has correctly cited section 12(1) and provided advice and assistance to the complainant in line with its duty under section 16(1) of the FOIA.

3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 16 April 2020 the complainant made a request for information under the FOIA. The request is reproduced at the end of this letter due to its length.

5. The Trust responded on 17 April 2020 and refused to provide the requested information citing section 12 of the FOIA – the cost of compliance exceeds the appropriate limit.

6. The complainant requested an internal review on the same date.

7. The Trust provided an internal review on 4 June 2020 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 5 June 2020 to complain about the way her request for information had been handled.

9. The Commissioner considers the scope of this case to be the Trust's citing of section 12(1) and whether advice and assistance had been offered to the complainant.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

10. Section 12(1) of the FOIA states that:

> *"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

11. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that in practical terms there is a time limit of 18 hours in respect of the Trust. In estimating whether

complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur during the following processes:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

12. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.[1]

The complainant's view

13. The complainant considers that if the requested information is not being gathered there is a problem. She questions whether the Trust thinks these issues are important and whether it wishes to work collaboratively. The complainant believes that the requested information would be useful at this time and that the information should already have been collected, in which case the cost would be minimal. She also stated that other Trusts had provided the information last year.

The Trust's view

14. The Trust firstly highlighted the length of the request – 110 questions relating to five distinct business areas of the Trust. It gave as an example the 'ECT' (electroconvulsive therapy) section of the request where it explained that providing a response to just this one area would take significantly in excess of the appropriate limit of 18 hours allowed

[1] http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf (para 12)

by the fees regulations.

15. It further explained that the Trust had provided ECT to 136 patients in 2019. A course of ECT is composed of multiple treatment sessions and, between them, the 136 patients had 1735 treatments in that year. The information needed to answer a number of the 22 questions is not held in a centrally extractable format and would require a manual review of each patient's clinical record. The Trust states that this manual review would include questions 9, 10, 15, 18, 20 and 21, at least.

16. Focusing on question 15 as an example -

> *15. How many patients have suffered complications during and after ECT and what were those complications?*

The Trust states that in order to determine whether complications were suffered, the clinical entries after all 1735 sessions would need to be reviewed. Even with a very conservative estimate of five minutes being needed to review all the clinical entries between one session of ECT and the next, this would take 145 hours (144.58 hours).

17. Additionally, information about complaints (questions 16 and 17) are not held on the patient record. The names of the patients in question would need to be manually entered on the Trust's risk management system which is used for the electronic recording of complaints. Any matches against name would then require the complaint correspondence to be read to determine whether the complaint was related to the ECT treatment or other matters.

18. Given that the first 22 questions alone in the first section of the request would have vastly exceeded the appropriate limit, the Trust did not specifically calculate the time that would be taken to respond to the remaining 88 questions as it did not consider it necessary to do so. The Trust suggested that a quick assessment indicates that many of the questions would have taken just as long.

The Commissioner's view

19. It is the Commissioner's view that the Trust has done enough to justify its citing of section 12 and that the specific area sampled provides ample demonstration that information can be held in such a way that it is not always easily located, retrieved and extracted due to a public authority's systems and processes. Although the Trust has not provided a detailed breakdown it is clear that responding to this very wide-ranging request in its entirety would take it well beyond the appropriate limit of 18 hours/£450. The Trust was not obliged to go any further, once that had

been established. The Commissioner therefore does not require any further steps to be taken.

Section 16 – duty to provide advice and assistance

20. Section 16 of the FOIA states:

> *"(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 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."*

21. The Trust suggested in its initial response to the complainant that she conduct a word search of its disclosure log as some of the requested information might be available there. It was also suggested that she narrow down her request. The complainant did not respond to the suggestion that she do so.

22. Therefore, it is the Commissioner's view that sufficient advice and assistance was offered to the complainant, given the extensive nature of the request.

Right of appeal

23. 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@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.

25. 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 ……

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Information request – 16 April 2020

"Please provide ECT information under the FOI act to the following questions : -
1. Please supply patient's information ECT leaflet.
2. Please supply patient ECT consent form.
3. Please supply any ECT reports/investigations
4. How many ECT in 2019?
5. What proportion of patients were men/women?
6. How old were they? 7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving ECT for the first time?
10. How many patients consented to ECT?
11. How many ECT complaints were investigated outside the NHS and CCG?
12. How many patients died during or soon after ECT and what was the cause (whether or not ECT was considered the cause)?
13. How many patients died a few months after ECT and what was the cause (whether or not ECT was considered the cause)?
14. How many patients died by suicide within a few months of receiving ECT (whether or not ECT was considered the cause)?
15. How many patients have suffered complications during and after ECT and what were those complications?
16. Have there been any formal complaints from patients/relatives about ECT?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after ECT?
21. If so what was the conclusion?
22. How does the Trust plan to prevent ECT in the future?

Please provide SERIOUS INCIDENT information under the FOI act to the following questions: -
1. Please supply SERIOUS INCIDENT REPORTS patient's information leaflet.
2. Please supply patient SERIOUS INCIDENT REPORTS consent form.
3. Please supply any serious incident reports/investigations
4. How many SERIOUS INCIDENT REPORTS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving SERIOUS INCIDENT REPORTS for the first time?
10. How many patients consented to SERIOUS INCIDENT REPORTS?
11. How many SERIUOS INCIDENT REPORTS were investigated outside the NHS and CCG?

12. How many patients died during or soon after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
13. How many patients died a few months after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
14. How many patients died by suicide within a few months of receiving SERIOUS INCIDENT REPORTS (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
15. How many patients have suffered complications during and after SERIOUS INCIDENT REPORTS and what were those complications?
16. Have there been any formal complaints from patients/relatives about SERIOUS INCIDENT REPORTS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function? 19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after SERIOUS INCIDENT REPORTS?
21. If so what was the conclusion?
22. How does the Trust plan to prevent SERIOUS INCIDENTS in the future?

Please provide restraints information under the FOI act to the following questions: -
1. Please supply RESTRAINTS patient's information leaflet.
2. Please supply patient RESTRAINTS consent form.
3. Please supply any Restraints/investigations
4. How many RESTRAINTS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving RESTRAINTS for the first time?
10. How many patients consented to RESTRAINTS?
11. How many RESTRAINTS were investigated outside the NHS and CCG ?
12. How many patients died during or soon after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?
13. How many patients died a few months after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?
14. How many patients died by suicide within a few months of receiving RESTRAINTS (whether or not RESTRAINTS was considered the cause)? 15. How many patients have suffered complications during and after RESTRAINTS and what were those complications?
16. Have there been any formal complaints from patients/relatives about RESTRAINTS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after RESTRAINTS?

21. If so what was the conclusion?
22. How does the Trust plan to reduce restraints in the future?

Please provide SECLUSION information under the FOI act to the following questions: -
1. Please supply patient's information SECLUSION leaflet.
2. Please supply patient SECLUSION consent form.
3. Please supply any SECLUSION reports/investigations
4. How many SECLUSION in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving SECLUSION for the first time?
10. How many patients consented to SECLUSION? 11. How many SECLUSIONS were investigated outside the NHS and CCG ?
12. How many patients died during or soon after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
13. How many patients died a few months after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
14. How many patients died by suicide within a few months of receiving SECLUSION (whether or not SECLUSION was considered the cause)?
15. How many patients have suffered complications during and after SECLUSION and what were those complications?
16. Have there been any formal complaints from patients/relatives about SECLUSION?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after SECLUSION?
21. If so what was the conclusion?
22. How does the Trust plan to prevent SECLUSION in the future?

Please provide MEDICATION ERRORS information under the FOI act to the following questions: -
1. Please supply patient's information MEDICATION ERRORS leaflet.
2. Please supply patient MEDICATION ERRORS consent form.
3. Please supply any MEDICATION ERRORS reports/investigations
4. How many MEDICATION ERRORS in 2019?
5. What proportion of patients were men/women? 6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving MEDICATION ERRORS for the first time?
10. How many patients consented to MEDICATION ERRORS?
11. How many MEDICATION ERRORS S were investigated outside the NHS and CCG?

12. How many patients died during or soon after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?
13. How many patients died a few months after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?
14. How many patients died by suicide within a few months of receiving MEDICATION ERRORS (whether or not MEDICATION ERRORS was considered the cause)?
15. How many patients have suffered complications during and after MEDICATION ERRORS and what were those complications?
16. Have there been any formal complaints from patients/relatives about MEDICATION ERRORS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after MEDICATION ERRORS?
21. If so what was the conclusion?
22. How does the Trust plan to prevent MEDICATION ERRORS in the future"