

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 December 2021

**Public Authority:** Birmingham and Solihull Mental Health Foundation Trust

**Address:** Trust Headquarters  
Unit 1 B1  
50 Summer Hill Road  
Birmingham  
B1 3RB

#### **Decision (including any steps ordered)**

---

1. The complainant has requested generic contracts of employment for foreign nationals employed as trainee clinical psychologists. Birmingham and Solihull Mental Health Foundation Trust ('the Trust') had advised that it did not hold the requested information but identified and released some relevant information during the course of the Commissioner's investigation.
2. The Commissioner's decision is as follows:
  - The Trust has now complied with section 1(1) of the FOIA and, on the balance of probabilities, holds no further information falling within scope of the complainant's request.
  - The Trust breached section 10(1) of the FOIA as it did not communicate to the complainant all the relevant information it holds within 20 working days of the request.
3. The Commissioner does not require the Trust to take any remedial steps.

## Request and response

---

4. On 14 March 2021 the complainant wrote to the Trust and requested information in the following terms:

“Full true copy (anonymised generic version) of the Contract of Employment and/or ‘Honorary’ Contract of Employment issued by BSMHFT to foreign nationals (non-UK non-EU) who are employed as trainee clinical psychologists by BSMHFT.

Please provide all versions (if more than one version) covering the years 2017-2021 inclusive.

Note source of information: Foreign nationals (NHS job seekers) are charged c.£25,000 per annum for three years to undertake employment and vocational employment training in clinical psychology within BSMHFT.”

5. The Trust responded on 8 April 2021, explaining its position regarding contracts and training. It advised that there are currently no arrangements in place for non-salaried foreign workers who are charged to work in the Trust as trainee clinical psychologists. The Trust said that, as it had explained to the complainant previously, it does not have a contract with Health Education England (HEE) for the provision of employment and pre-registration training in clinical psychology. Rather, HEE has a contractual relationship with University of Birmingham (UoB) to deliver clinical psychology training. It is therefore UoB that admits suitable candidates and delivers clinical psychology training, and the Trust advised the complainant to contact UoB.
6. The Trust also noted that it is not involved in any arrangements that are in place for individuals admitted to participate in the clinical psychology doctorate training, including individuals of foreign nationality that self-fund their placement as they are not eligible for an NHS commissioned place.
7. Finally, the Trust advised that, in terms of non-salaried / non-employed staff who undertake clinical work within the Trust (usually via a temporary placement for training purposes) an honorary contract will be issued to cover the placement work.
8. Following an internal review the Trust wrote to the complainant on 19 May 2021. It confirmed that it could not provide any further information or provide any further response to the complainant’s request.

## Scope of the case

---

9. The complainant contacted the Commissioner on 19 May 2021 to complain about the way his request for information had been handled.
10. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the Trust holds the information the complainant has requested; that is the generic contract or 'honorary contract' that the Trust issues to foreign nationals that it employs as trainee clinical psychologists. He has also considered the timeliness of the Trust's response.

## Reasons for decision

---

11. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
12. Under section 10(1), an authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
13. In its submission to the Commissioner the Trust provided the following explanation as to how clinical psychology training is provided, and why it therefore does not hold the information the complainant is seeking.
14. HEE commissions Higher Education Institutions to provide clinical psychology doctorate training places to an agreed number of individuals each year.
15. HEE therefore commissions / funds the UoB to recruit and admit suitable candidates and deliver the clinical psychology training against an agreed schedule and number of NHS commissioned training places.
16. Furthermore, HEE will only commission and fund those individuals who meet the eligibility requirements to be considered as "Home" status for fees purposes as per UK Council for International Student Affairs regulations for Higher Education. Therefore, UoB also has the responsibility to assess the fee status of each applicant including applicants with overseas fee status who are of foreign nationality and self-fund their training as they are not eligible for a NHS commissioned training place.

17. The Trust does not have a contract with HEE for the provision of employment and pre-registration training in clinical psychology. HEE provides the Trust with the clinical psychology doctorate trainee income via a wider Learning and Development Agreement, which is to administer the salary of those individuals who have been admitted to the UoB training programme and are eligible to receive a NHS commissioned training place.
18. Non-salaried foreign workers are able to apply to receive clinical psychology training on a self-funding basis. These application processes and arrangements for admittance to the training programme are fully managed by UoB. The Trust has no involvement in this process or arrangements and neither receives any funding for these individuals, nor provides any employment for self-funded trainees.
19. As UoB admits suitable candidates and delivers the clinical psychology training it would be UoB, and not the Trust who makes arrangements for foreign nationals (who are self-funded due to not being eligible for an NHS commissioned place) to join their doctoral training programme for trainee clinical psychologists.
20. In terms of non-salaried / non-employed staff who undertake clinical work within the Trust (usually via a time-limited temporary placement to meet specific training competencies), an 'honorary contract' will be issued to cover the placement work. However, at the time of the complainant's "initial FOI request", the Trust did not have any individuals undertaking clinical work on this basis.
21. The Trust went on to tell the Commissioner that, since 1 October 2020, the complainant has sent the Trust a total of nine Freedom of Information requests. All of the requests are based on the same topic regarding the provision of the clinical psychology doctorate training.
22. Throughout all of its responses to the complainant's requests, the Trust says it has tried its utmost to clearly explain that it does not have a contractual role in the provision of the clinical psychology doctorate training, as described above.
23. The Trust confirmed that its role is to administer the salary for trainee clinical psychologists who are eligible to be in receipt of NHS Commissioned training places. This is delegated to the Trust from HEE via the Learning and Development Agreement. These training places are not conferred on foreign nationals (non-UK non-EU) who may self-fund their training as arranged through the UoB. Therefore, the Trust does not hold the requested information and has never held the requested information.

24. The Trust says it has advised the complainant on numerous occasions that he should contact the UoB, as it is this organisation which is commissioned by HEE to provide and facilitate the clinical psychology doctorate training programme and would therefore be likely to hold the information he is seeking.
25. Finally, the Trust confirmed in its submission that, when it received the request, it liaised with its Chief Clinical Psychologist, Associated Director of Research and Consultant Clinical Psychologist and Head of Legal. These leads reviewed the request and determined that the Trust does not hold the information, for the reasons described above.
26. In correspondence to the Commissioner, the complainant made a number of statements about the Trust's contracting arrangements and duties with regard to foreign nationals and their employment. He also made a number of allegations about the Trust; that the Trust has made false statements and concealed information. Having reviewed those allegations, the Commissioner did not identify any evidence to support them.
27. With regard to contracting arrangements, the Commissioner considers that the Trust is better placed than the complainant to know and understand the arrangements in place for the training of clinical psychologists, and the related responsibilities of various bodies.
28. With regard to the 'honorary contracts' the Trust has referred to, such 'contracts' are held by individuals who are not directly employed by an organisation. They therefore cannot be categorised as employment contracts as such. However, the complainant had referred to a generic 'honorary contract' in his request and the Commissioner asked the Trust to consider whether it held such information and, if it did, whether it would release it to the complainant. As a result, the Trust identified it does hold a generic 'Honorary Agreement' template and, on 13 December 2021, released this to the complainant.
29. The Commissioner accepts that the Trust does not issue employment contracts to foreign nationals who are trainee clinical psychologists, or to any other trainee clinical psychologists, and so does not hold such a contract. It is HEE that has a contractual relationship with UoB to deliver clinical psychology training. And the Trust has now released to the complainant a copy of its 'Honorary Agreement' template. The Commissioner is now satisfied that, on the balance of probabilities, the Trust holds no further information that is relevant to the request and has complied with section 1(1) of the FOIA.
30. The Trust breached section 10(1) of the FOIA, however, as it did not comply with section 1(1) within 20 working days of the request.

## **Right of appeal**

---

31. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**