

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2022

Public Authority: Oxford University Hospitals NHS Foundation Trust

Address: John Radcliffe Hospital
Headley Way
Headington
Oxford
OX3 9DU

Decision (including any steps ordered)

1. The complainant requested information about the 12 Programmed Activities upper limit in Consultant Job Planning. By the date of this notice Oxford University Hospitals NHS Foundation Trust (“the Trust”) had not issued a substantive response to this request.
2. The Commissioner’s decision is that the Trust has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation.
 - The Trust must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The Trust must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 6 January 2022, the complainant wrote to the Trust and requested information in the following terms:

"Following discussions with the BMA, I am concerned that the current implementation of the 12 PA upper limit in Consultant Job Planning has the potential to lead to discrimination on the basis of protected characteristics.

Paragraph 31 of the OUH Job Planning Policy v1.0 - September 2019 states "Including APAs, the total PA allocation in any job plan should not normally exceed 12 PAs. If a job plan exceeds 12 PAs, approval must be sought from the Divisional Director or Director of Clinical Services."

1.) Please provide all emails, guidance or other circulars sent to clinical managers since September 2019 about the implementation of the 12 PA upper limit.

2.) What changes to implementation have been made since September 2019?

3.) I note that the Equality Impact assessment appendix A to the OUH Job Planning Policy v1.0 - September 2019 is largely unfilled and makes no comment or assessment regarding the 12 PA upper limit. What assessments of equality did OUH use when considering the implementation of the 12 PA upper limit since September 2019?

4.) a) In order to provide a denominator for the following queries, please provide the total number of job plans submitted across OUH Trust each financial year since 2018.

b) Please provide a breakdown of these numbers by the age of the consultant and for each age group, by the gender of the consultant.

5.) a) Please provide the number of consultant job plans in each financial year since 2018 that have been rejected because they totalled more than 12 PAs. Rejection can be at initial job plan review stage or in job plan mediation.

b) Please provide a breakdown of these numbers by the age of the consultant and for each age group, by the gender of the consultant.

6.) a) Please provide the number of consultant job plans in each financial year since 2018 that have been accepted despite totalling more than 12 PAs. Acceptance can be at initial job plan review stage or in job plan mediation.

b) Please provide a breakdown of these numbers by the age of the consultant and for each age group, by the gender of the consultant.

c) Please provide a breakdown of how many of these have been resolved by including one of more of the following solutions a) reducing SPA time to less than 1 SPA b) creating a job plan of shorter than 12 months' duration c) moving DCC work to work designated as WLI or Additional to Contract d) unpaid work e) encouraging application for CEA award in which workload would be recognised

7.) a) Please provide the number of consultant job plans in each financial year since 2018 that have been accepted totalling between 11-12 PAs. Acceptance can be at initial job plan review stage or in job plan mediation.

b) Please provide a breakdown of these numbers by the age of the consultant and for each age group, by the gender of the consultant.

8. a) Please provide the number of consultant job plans in each financial year since 2018 that have been accepted totalling between 10-11 PAs. Acceptance can be at initial job plan review stage or in job plan mediation

b) Please provide a breakdown of these numbers by the age of the consultant and for each age group, by the gender of the consultant.

9. a) Please provide the number of consultant job plans in each financial year since 2018 that have been accepted totalling less than 10 PAs. Acceptance can be at initial job plan review stage or in job plan mediation

b) Please provide a breakdown of these numbers by the age of the consultant and for each age group, by the gender of the consultant.

10. How many cases have been referred to ACAS/ the Employment Tribunal by consultants since 2018 relating to under remuneration for work carried out?"

6. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 30 April 2022 to complain about the Trust's failure to respond to their request.

8. The Commissioner has considered whether the Trust has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. Section 1(1) of FOIA states that:

“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.”

10. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

11. On 10 May 2022 the Commissioner wrote to the Trust, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.

12. Despite this intervention the Trust has failed to respond to the complainant.

13. From the evidence provided to the Commissioner in this case, it is clear that the Trust did not deal with the request for information in accordance with FOIA. The Commissioner finds that the Trust has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

14. 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

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

15. 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.
16. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF