

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 March 2024

**Public Authority:** Kent Community Health NHS Foundation Trust  
**Address:** The Oast, Unit D  
Hermitage Lane, Barming  
Maidston  
Kent ME16 9NT

#### Decision (including any steps ordered)

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1. The complainant has submitted a 10-part request to Kent Community Health NHS Foundation Trust ('the Trust') about autism-ADHD assessments. The Trust provided information relevant to seven parts, confirmed it doesn't information relevant to one part and relied on section 12 of FOIA to refuse two parts. Section 12 concerns the cost of complying with a request.
2. With regard to the four parts of the request in scope of this investigation, the Commissioner's decision is as follows:
  - On the balance of probabilities, the Trust holds no further information within scope of part 2 and part 6 of the request. However, the Trust didn't comply with section 1(1) and 10(1) of FOIA with regard to part 6 as it didn't confirm it doesn't hold relevant information within the statutory timeframe.
  - The Trust is entitled to rely on section 12 of FOIA to refuse part 1 of the request.
  - There was no duty to offer advice and assistance in respect of part 1 or part 5 of the request and as such there was no breach of section 16(1) of FOIA. However, there was a breach of section 16(1) in respect of part 6 of the request.

3. It's not necessary for the Trust to take any corrective steps.

### **Request and response**

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4. The complainant submitted the following information request to the Trust on 19 September 2023:

"1/ how many of Psicon's autism assessment reports have included a recommendation for a referral for an ADHD assessment? Likewise for Sinclair-Strong.

2/ how many former autism-assessment clients of the KCHFT pathway have subsequently been referred to the KCHFT pathway for an ADHD assessment?

3/ how many dual autism-ADHD referrals has the KCHFT pathway fulfilled?

4/ is the KCHFT, as Lead Provider of the autism-ADHD assessment pathway, contractually obliged to be NICE-compliant? Who is their contract with?

5/ is there anything in the selling material or charging arrangements between the KCHFT pathway and the referrers (or their financing body) that specifies or implies that the KCHFT autism-ADHD pathway is NICE-compliant? Please explain with as much detail as possible.

6/ Is the KCHFT autism-ADHD pathway subject to the authority of NHS England, and if so, in what way?

7/ How many Clinicians does Psicon assign to each autism assessment? What are their roles? If this varies on a case-by-case basis, please explain the policy, and provide total numbers of single-clinician assessments vs multi-clinician assessments. Likewise for Sinclair-Strong.

8/ What extra support/service does Sinclair-Strong provide that makes them solely suitable for handling high-risk autism-assessments?

9/ On what basis does Psicon decide whether to provide a face-to-face autism assessment or a virtual one? Likewise for Sinclair-Strong.

10/ How many face-to-face assessments vs virtual assessments have been provided by Psicon? Likewise for Sinclair-Strong."

5. On 9 October 2023, the Trust asked the complainant to clarify part 5 of the request, which the complainant did the same day, as follows:

"GPs and mental health professionals will choose to refer patients to the KCHFT autism-ADHD assessment pathway or another provider based on any documentary information such as brochures or website information, etc., describing the service on-offer that is available to them (so this might also include assessment reports, referral/admin documents, etc., which will inform future choices, etc.), therefore this

is 'selling material' as commonly understood by the term. Psicon, Sinclair-Strong and the KCHFT adult autism-ADHD department should hold this info (e.g. anything referring to NICE, or national guidelines/standards, or compliance, etc.).

As for charging arrangements, presumably somebody somewhere pays for assessments to be done and they don't just hand-out cash willy-nilly, so again, any documentary or electronic information which informs them as to the kind of service they are getting for their money applies here (I think in this case the financing body might be the KCHFT itself or possibly the K&M ICB). The KCHFT adult autism-ADHD department should hold this info and possibly also the KCHFT contracts and finance departments."

6. The Trust responded to the request on 12 October 2023 – its reference FOI 227. It relied on section 12 of FOIA to refuse parts 1 and 7 of the request (it also provided some narrative information relevant to part 7). The Trust confirmed it doesn't hold the information requested in part 2 and addressed parts 3, 4, 5, 6, 8, 9 and 10.
7. The complainant requested an internal review on 3 December 2023. Regarding part 9 of the request, they disputed what Psicon Ltd had advised the Trust and which the Trust had relayed to the complainant in its response.
8. The Trust provided an internal review on 5 December 2023. It noted that it had received further related queries from the complaint in correspondence dated 4, 5 and 6 October 2023. The Trust confirmed its application of section 12 of FOIA to parts 1 and 7 of the request. It confirmed that it doesn't hold the information requested in part 2 and that it had fully addressed the remaining parts of the request.
9. In correspondence to the Trust on 11 December 2023 the complainant disputed the Trust's response to part 5 of the request; they said the Trust had a duty to direct them to relevant information that's published on certain websites. That it hadn't, suggested to them that the Trust could have overlooked other information they'd requested. The complainant also submitted additional queries and requests.
10. In a response to the complainant on 12 December 2023 the Trust directed them to the Commissioner, advising that its internal review process had been exhausted.
11. Regarding any new request(s) for information the complainant submitted to the Trust on 11 December 2023 - for information not covered by the request of 19 September 2023 - the complainant has the

option of submitting a fresh complaint to the Commissioner through his website.

12. In their original complaint to the Commissioner on 19 January 2024 about their request of 19 September 2023, the complainant focussed on the Trust's response to part 5 of the request but indicated that they considered the Trust held further information relevant to the request generally.
13. In two further items of correspondence that they sent to the Commissioner dated 21 February 2024, the complainant detailed at length what they consider to be 'Outstanding Items' and 'General Concerns' associated with the complaints they've submitted to the Commissioner about the Trust's handling of their requests, of which there are a number.
14. In the 'Outstanding Items' document, the complainant disputed the Trust's response to parts 1, 2, 5 and 6.

### **Reasons for decision**

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15. The reasoning focusses on whether the Trust has met its obligations under section 1(1) and 10(1) of FOIA in respect of parts 2 and 6 of the request, is entitled to rely on section 12 in respect of part 1 and whether it had a duty to offer advice and assistance under section 16 with regard to parts 1, 5 and 6.
16. For the Trust's benefit, under 'Other matters' the Commissioner has also discussed section 12 and the matter of aggregating requests.

### **Section 1 – general right of access to information held by public authorities**

17. Under section 1(1) of FOIA a public authority must (a) confirm to an applicant whether or not it holds the information they've requested and (b) communicate the information to the applicant if it's held and isn't exempt information.
18. Section 10(1) of FOIA obliges a public authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
19. FOIA concerns only recorded information a public authority holds at the time of a request. It doesn't oblige a public authority to give explanations or opinions or to create or seek out from elsewhere information it doesn't hold itself in order to comply with a request.

20. In the Commissioner's view a number of the parts of the request in this case read as requests for explanation or clarification; not as requests for recorded information, such as parts 4, 5, 6, 8 and 9. However, to the degree that the Trust held in recorded form any of the information it provided, the Commissioner has asked the Trust to consider whether it holds any further recorded information relevant to parts 2 and 6 of the request.
21. Part 2 of the request is for the number of former autism-assessment clients of the Trust's pathway who've subsequently been referred to the Trust's pathway for an ADHD assessment. The Trust had advised the complainant that it doesn't hold this information. In their complaint to the Commissioner, the complainant says,

"... Psicon's IAPTUS computer system uses the patient's NHS number as a unique identifier (IAPTUS screenshots 1&2) which I believe would allow them to do a simple search to see if they have multiple records for the same person (one for ASD, one for ADHD) which they could order by date to give an answer (i.e. this is info that can be easily derived from existing building blocks of data). Sinclair-Strong and the KCHFT triaging department may have something similar (the latter refers to the 'Rio' system in the appendix to FOI 099), so I believe they could have provided a partial response at least and this is being concealed and withheld."
22. In its submission to the Commissioner, the Trust has told the Commissioner that the Trust's autism assessment pathway will include all patients who have been referred into the service for assessment regardless of outcome. Referrals received into the Trust pathway for ADHD assessment don't require information about referrals to any other completed/former healthcare pathways, including autism assessments - whether carried out by the Trust or another organisation.
23. The referral form into the Trust's ADHD assessment pathway does include a tick box where there has been a previous confirmed diagnosis of either autism or ADHD for that patient, but this doesn't extend to referrals or assessments. Information about previous assessments may be held within a patient's broader healthcare record via their GP or other healthcare professionals, but this would be done so on an individual basis and doesn't form part of the Trust's record. The Trust has noted that a portion of referrals may reference previous assessments, where this is considered relevant to this provision of care. However, again, this isn't a requirement for the pathway and isn't recorded as standard.
24. Regarding the complainant's point at paragraph 21, the Trust has confirmed that it doesn't hold this information in any sort of structured format.

25. Psicon Ltd, Sinclair-Strong (and Psychiatry UK) only have access to their own instances of IAPT (Improving Access to Psychological Therapies), which aren't integrated. While a search on Psicon Ltd's system would return all search results for a patient name or NHS number for example, Psicon Ltd only provide assessments in relation to autism. Therefore, this wouldn't provide responses to those patients who've subsequently been referred to the ADHD pathway via Psychiatry UK. Similarly, as the Trust has explained previously, the ADHD form only asks where a diagnosis has been obtained and doesn't specifically request referral information. Therefore, Psychiatry UK would also not be in a position to provide this information.
26. The Trust predominantly uses RIO as its electronic clinical system which, again, is not interoperable with the provider IAPT systems and therefore this information can't be obtained by a "simple search."
27. The only route available to the Trust to obtain this information would be to potentially request a manual download of every referral into Psicon Ltd and Sinclair-Strong individually, along with discharge date to ensure this excludes dual referrals and data isn't duplicated. A separate report would then need to be created for Psychiatry UK and a manual cross-check of every record would need to be completed to create a record that details the number of assessments. However, this would still not be conclusive.
28. The Trust's final position is that this data doesn't currently exist within its accessible systems and would require the production of new information, which isn't a requirement under FOIA. In any case, creating such information would far exceed the 18-hour time/cost limit.
29. The Commissioner accepts the Trust's explanation. For the reasons it's given he's satisfied that it doesn't hold the information the complainant has requested in part 2 of their request. And as the Trust has noted, FOIA doesn't require a public authority to create new information in order to comply with a request.
30. In part 6 of the request, the complainant asks whether the Trust's autism-ADHD pathway is subject to the authority of NHS England, and if so, in what way? In its response to the request, the Trust explained that as an NHS Trust it's subject to the authority of NHS England.
31. The complainant says that the Trust hasn't answered the question "in what way?" and that it must hold documentation that explains how NHS England has authority over it and its subcontractors.
32. In its submission to the Commissioner the Trust has now confirmed that it doesn't itself hold information that would address the "in what way?"

element of part 6. However, it says NHS England (and other bodies) hold and publish relevant information<sup>1</sup>.

33. The Commissioner accepts that the Trust doesn't hold recorded information within scope of part 6 of the request. However, the Trust didn't comply with section 1(1) and 10(1) of FOIA as it didn't confirm it doesn't hold this information within the statutory timescale.

## **Section 12 – cost exceeds the appropriate limit**

34. Under section 12(1) of FOIA a public authority may refuse to comply with a request if it would exceed the appropriate limit to do so. The appropriate cost limit for the Trust is £450 or 18 hours in terms of time.
35. The Trust has applied section 12(1) to part 1 of the request, which is for the number of Psicon Ltd and Sinclair-Strong Consultant autism assessment reports that have included a recommendation for a referral for an ADHD assessment. In its response to the request the Trust explained that this information isn't held on a data base and could only be collated by reading each individual assessment outcome report. The Trust advised that based on the volume of assessments Psicon Ltd had completed in the last 12 months, reviewing all the reports would take over 18 hours.
36. The complainant says Psicon Ltd's IAPTUS database does record this information so it could run a (IAPTUS screenshots 3&4) "simple query such as `patient expectation = \*ASD\* & management plan = \*ADHD\*` to get the results from existing building blocks of data."
37. In its submission to the Commissioner, the Trust has confirmed that where the reports in question relate to the Trust's NHS pathway patients, the providers hold this information on behalf of the Trust and so the Trust can be said to hold this information under FOIA.
38. However, the Trust has gone on to explain that in order to respond to part 1 every assessment report would need to be reviewed individually. For the time period up to 28 September 2023 Psicon Ltd completed 992 assessments and Sinclair-Strong completed 101 assessments. The Trust says that as a very conservative average, each assessment would take 10 minutes to review. This would equate to more than 182 hours to review every assessment for the time period specified.

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<sup>1</sup> <https://www.england.nhs.uk/publication/nhs-oversight-framework-22-23/>



39. The Commissioner considers that 10 minutes to review each assessment is credible. Given the volume of assessments in scope, he therefore accepts that it would take more than 18 hours to comply with this part of the request and that section 12(1) is engaged. Even if it took five minutes to review each assessment, this would still exceed FOIA's cost limit.

### **Section 16 – advice and assistance**

40. Section 16 of FOIA places a duty on a public authority to offer an applicant advice and assistance "so far as it would be reasonable to expect the authority to do so." The Section 45 FOIA Code of Practice<sup>2</sup> advises that the circumstances when the duty to offer advice and assistance is likely to come into play are: 1) clarifying an applicant's request, 2) reducing the cost of a request, and 3) transferring a request to another public authority.
41. Regarding part 1 of the request, when a public authority has applied section 12 to a request it should consider if there's any way the request could be refined to bring complying with it within the cost limit. The Commissioner is satisfied that it wouldn't be possible to refine part 1 of the request to bring complying with it within the cost limit. This is because of the way the information is held and the volume of reports caught by the request. The Trust could review 100 assessments in 18 hours – this is a tenth of the assessments carried out and the Commissioner therefore doesn't consider the information gathered from a request refined to that degree would be meaningful. As such, he finds that there was no breach of section 16(1) in respect of part 1.
42. Regarding part 5 of the request, the complainant considers that the Trust had a duty to direct them to relevant information that's published on other websites. As above, section 16 might come into play if a request can be transferred. If a public authority knows that another authority holds information that an applicant has requested, it should advise the applicant accordingly and provide the applicant with the second authority's contact details.
43. The Trust provided the complainant with detail that addressed part 5. The Trust can't be expected to know about all relevant information that could be published on other bodies' websites. The Commissioner

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)



therefore doesn't consider that the circumstances of this part of the request meet those that the Code of Practice advises should prompt the duty to offer advice and assistance. He finds that there was therefore no breach of section 16(1) in respect of part 5.

44. Regarding part 6 of the request, the complainant considers that the Trust could have directed them to relevant information that may already be published, which they consider is its duty under section 16. The Commissioner has therefore again considered whether the Trust could have transferred the request to another authority.
45. For part 6, the Commissioner has accepted that the Trust doesn't hold the requested information itself. However, it was aware that NHS England holds relevant information that's published on NHS England's website. The Trust could have either provided the complainant with NHS England's contact details or directed them to NHS England's published information. The complainant has now been directed to the published information through this decision notice, but the Commissioner considers there was a breach of section 16 in respect of part 6 of the request.

## **Other matters**

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46. The Commissioner reminds the Trust that under section 12(4) of FOIA together with regulation 5 of the Fees Regulations<sup>3</sup>, where two or more requests for information are made to a public authority by one person for the same or similar information within a period of 60 working days, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
47. In this case, the complainant effectively submitted 10 separate requests to the Trust on the same day. The Trust considered that it would exceed the cost limit to comply with two of them – part 1 and 7. As such, under section 12(4) of FOIA and the Fees Regulations, the Trust wasn't obliged to comply with any of the 10 requests but could have refused them all under section 12.

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<sup>3</sup> <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

## **Right of appeal**

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48. 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)

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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