

17 November 2016

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**By email**

[REDACTED]

Dear [REDACTED]

**Request under the Freedom of Information Act 2000 (the “FOI Act”)**

I refer to your email of 1 November 2016 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority (NHS TDA) are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and NHS TDA.

**Your request**

You wrote:

*“This is a request under the Freedom of Information Act 2000.*

*It is about Hospital Trust compliance with the agency pay rules as set out by yourselves - NHS Improvement. Your document ‘Agency Rules, March 2016’ contains all definitions of phrases used in this FOI (see Annex 1).*

*The FOI seeks information for the period July 1<sup>st</sup> 2016 to September 30<sup>th</sup> 2016. For clarity, Questions 1 – 4 apply to the agency price caps set by NHS Improvement.*

1. *How many shifts reported to you have over-ridden the price caps on total hourly charge paid to an agency for i) core hours ii) unsocial hours, as set out in Annex 2 of the above document for
  - a) *Consultants*
  - b) *ST3 Registrars*
  - c) *FY2 doctors*
  - d) *Staff grade doctors**
  
2. *How many Trusts in total over-rode the price caps on total hourly charge paid to an agency for i) core hours ii) unsocial hours for the time period.*
  
3. *Which 5 Trusts over-rode the price caps on total hourly charge paid to an agency most frequently for i) core hours ii) unsocial hours for the time period?*

4. *What was the maximum hourly rate paid during core hours, and which Trust paid it, for:*
  - a) *Consultants*
  - b) *ST3 Registrars*
  - c) *FY2 doctors*
  - d) *Staff grade doctors*
  
5. *What was the maximum hourly rate paid during unsocial hours, and which Trust paid it, for:*
  - a) *Consultants*
  - b) *ST3 Registrars*
  - c) *FY2 doctors*
  - d) *Staff grade doctors*
  
6. *What is the total amount (£) all Trusts spent between July 1<sup>st</sup> and Sept 30<sup>th</sup> on paying staff above the rate cap?*
7. *How many doctors were paid through a limited/personal service company during that period?*
8. *How many of these complied with the HMRC's IR35 legislation?*
9. *How much in total was this group (doctors paid through a limited/personal service company) paid during that period?*
10. *How much were the top 5 highest earning individuals paid (whether through an agency OR a limited/personal service company), and by which Trust – for the three months July 1<sup>st</sup> to September 30<sup>th</sup> 2016?"*

## **Decision**

Using your numbering, please see below our responses to each part of your FOI Act request.

|   |  |
|---|--|
| 1 | <p>NHS Improvement does not hold this information.</p> <p>When NHS Improvement collects its data, we ask for total breaches per staff group i.e. Nursing, Midwifery and Health Visiting; Medical and Dental; Admin and Estates; Scientific, Therapeutic &amp; Technical (AHPS); Healthcare Science; Healthcare Assistant &amp; Other Support; Other. We do not collect data in the sub-categories you requested or in any other sub-categories. We do not collect the data in terms of core or unsocial hours.</p> |
| 2 | <p>NHS Improvement does not hold this information.</p> <p>NHS Improvement only holds the information in relation to total price cap breaches. We do not collect the data in terms of core or unsocial hours.</p>   |

|    |   |
|----|---|
| 3  | NHS Improvement does not hold this information.<br><br>We do not collect the data in terms of core or unsocial hours or frequency of breach.  |
| 4  | NHS Improvement does not hold this information.   |
| 5  | NHS Improvement does not hold this information.   |
| 6  | NHS Improvement does not hold this information.   |
| 7  | NHS Improvement does not hold this information.   |
| 8  | NHS Improvement does not hold this information.<br><br>We have a record only where trusts cannot be assured that staff working through personal service companies are complying with IR35.      |
| 9  | NHS Improvement does not hold this information.   |
| 10 | NHS Improvement does not hold this information.<br><br>We have only recently asked for data on highest earning staff and therefore we do not hold the information for the period you requested. |

In accordance with our duty under section 16 of the FOI Act to provide advice and assistance, we can point you to our website, where you will find trust account data for both NHS trusts and NHS foundation trusts. This information contains total agency costs for each provider. Please see the links below.

FT data:

<https://www.gov.uk/government/publications/nhs-foundation-trust-accounts-consolidation-ftc-files-201516>

NHS Trust Data:

<https://www.gov.uk/government/publications/nhs-trusts-accounts-data-for-2015-to-2016>

Please also note that trusts are subject to the FOI Act and as such it is open to you to seek information directly from them. They will need to consider whether information can properly be provided by them in response to any such requests within the terms of the FOI Act.

### **Review rights**

If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you can try to resolve this informally with the person who dealt with your request. If you remain dissatisfied, you may seek an

internal review within NHS Improvement of the issue or the decision. A senior member of NHS Improvement's staff, who has not previously been involved with your request, will undertake that review.

If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

A request for an internal review should be submitted in writing to FOI Request Reviews, NHS Improvement, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to [nhsi.foi@nhs.net](mailto:nhsi.foi@nhs.net).

### **Publication**

Please note that this letter will shortly be published on our website. This is because information disclosed in accordance with the FOI Act is disclosed to the public at large. We will, of course, remove your personal information (e.g. your name and contact details) from the version of the letter published on our website to protect your personal information from general disclosure.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Raymont'.

**Dominic Raymont**

Senior Finance Manager – Agency Intelligence Team