

28 January 2016

Wellington House
133-155 Waterloo Road
London SE1 8UG

T: 020 3747 0000
E: enquiries@monitor.gov.uk
W: www.monitor.gov.uk

By email

Dear

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

I refer to your email of 6 December 2015 in which you requested information under the FOI Act. I apologise for the delay in replying.

Your request

You made the following request:

“I understand under the Mutually Agreed Resignation Scheme (MARS), that when the MARS amount exceeds a specific amount, then the NHS organisation who wishes to utilise the MARS arrangement has to get Monitor’s agreement/approval

1. *What was this specific amount for the financial year 2014/15?*
2. *Which NHS organisations requested such agreement/approval?*
3. *What were the amounts in each case?*
4. *What were the names and roles of those who were stated as being the proposed recipients of these amounts?*
5. *What documentation is provided to Monitor by the NHS organisations requesting such agreement/approval?*
6. *Is MARS meant to cover a situation where a member of staff is replaced within the same role? i.e. not redundancy?”*

Decision

Monitor holds information within the scope of your request, although we are not disclosing some of this information, for the reasons given below.

Please note that your understanding about the Mutually Agreed Resignation Scheme (MARS) is not correct. Approval is a matter for HM Treasury (HMT). If an NHS foundation trust proposes a scheme, this is either -

- 1) considered and subject to approval by HM Treasury (HMT), or
- 2) complies with certain conditions set by HMT which means HMT approval is not

required.

The implementation of the scheme is done locally by the trust. Although Monitor receives information on the schemes, the schemes are not subject to Monitor agreement or approval.

In response to your questions:

Q. What was this specific amount for the financial year 2014/15?

There is no amount above which Monitor agreement or approval is required, as Monitor does not agree or approve these schemes. HM Treasury approval of a MARS scheme is not required if, inter alia, the maximum individual payment is limited to £80k.

Q. Which NHS organisations requested such agreement/approval?

Q. What were the amounts in each case?

Please note we do not hold details of MARS entered into by NHS bodies other than NHS foundation trusts (FTs).

The fact that an FT adopted a MARS scheme, the number of individuals to which it applies and the total amount paid is disclosed in the "Employee Benefits – Exit Packages" note in FT's year end audited and published accounts. The 2014/2015 FT accounts are accessible at this webpage: <https://www.gov.uk/government/publications/nhs-foundation-trust-directory/nhs-foundation-trust-directory>.

The information as to which trusts adopted a MARS and the amounts involved for the year 2014/15 is therefore information which is reasonably accessible to you by other means, and is not disclosed in this letter under the exemption in section 21 of the FOI Act.

As to information in the proposals made to HMT by FTs and which is held by Monitor, but is not contained in the published accounts, that is confidential to the requesting trusts.

Section 41(1) of the FOI Act provides that information is exempt information if:

- a. 'it was obtained by the public authority from any other person (including another public authority) and
- b. the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

The test in section 41(1)(a) is met since the information was obtained by Monitor from third parties, FTs in this case. The test in section 41(1)(b) is met if it is demonstrated that disclosure would amount to an actionable breach of confidence. For a breach of confidence to be actionable:

- (i) the information must have the necessary quality of confidence about it;
- (ii) the information must have been imparted in circumstances giving rise to an obligation of confidence;
- (iii) the disclosure of the information must amount to an unauthorised use of the information to the detriment of the confider.

FTs have a reasonable expectation that the information contained in an application to HMT for approval of a MARS will be kept confidential by Monitor and not disclosed to third parties. Disclosure of the information you have requested would necessarily reveal confidential third party information concerning FTs. Further, the information is not trivial and is not currently readily available by other means.

Section 41 is an absolute exemption meaning that the public interest test does not apply. However, there is an inherent public interest test in determining whether the information has the necessary quality of confidence and should remain private. Notwithstanding a general public interest in fostering transparency in MARS being implemented by FTs, I do not consider that the strong public interest in maintaining the confidentiality of sensitive information is outweighed by the public interest in disclosure at this point in time, particularly in light of the fact that details of the schemes are reported in publicly available financial accounts.

Q. What were the names and roles of those who were stated as being the proposed recipients of these amounts?

When Monitor receives details of a scheme, we are not informed of any proposed individuals who are to benefit from the scheme. Such schemes are open to all employees, or sometimes to a class of employees, to volunteer for. Once the scheme is approved the trust management then implement it and Monitor is not informed of the details of employees who take advantage of the scheme.

Q. What documentation is provided to Monitor by the NHS organisations requesting such agreement/approval?

For FTs, see our publication at published on our webpages:

<https://www.gov.uk/government/publications/mutually-agreed-resignation-or-voluntary-severance-schemes>

Q. Is MARS meant to cover a situation where a member of staff is replaced within the same role? i.e. not redundancy?

A MARS is a voluntary scheme - an individual volunteers and, if the employer agrees, is given a payment and in return gives up their employment. What happens after that, whether the role continues to exist and another person is recruited or not, depends on the employer.

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 Monitor of the issue or the decision. A senior member of Monitor'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 conducted by Monitor, 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, Monitor, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to foi@monitor.gov.uk.

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 dark ink, appearing to read 'W. Bessell'.

William Bessell
Sector Reporting Manager