

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2022

Public Authority: North West London Clinical Commissioning Group

Address: 15 Marylebone Road
London
NW1 5JD

Decision (including any steps ordered)

1. The complainant has requested copies of all circulars issued by any Clinical Commissioning Group in North West London Clinical Commissioning Group (CCG) to primary care and secondary care practitioners in relation to prescribing over the counter medicines and the "exceptions" to the prescription rules (2018). The CCG provided the information but the complainant then specifically highlighted an undated letter that they had seen that had been issued to secondary care practitioners which had not been included.
2. The Commissioner's decision is that the CCG has provided details of the searches it has carried out and that, on the balance of probability, he accepts that no further information is held other than that which has already been provided.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 9 July 2021 the complainant wrote to the CCG and requested information in the following terms:

'Request for Information in accordance with the provisions of the Freedom of Information Act 2000 whereby s. 16 requires public bodies to fulfil their duty to assist enquirers in their quests for information

Subject of Request

Copies of all Circulars issued by any CCG (that is part of the NW London Collaboration of Clinical Commissioning Group) to Primary Care (PC) and Secondary Care (SC) practitioners who provide services to patients under the NHS, in relation to Prescribing medicines that are available Over the Counter and the "Exceptions" to the prescription rules that came into effect in 2018 (see attached Informative).

NHS Definition of a "Long-term Condition"

"one that cannot currently be cured but can be controlled with the use of medication and/or other therapies" (Department of Health, 2010, p. 4).

As a campaigner I would be grateful if you could furnish me with copies of all the above please.

I make this request in the public interest as primary and secondary care practitioners are in practice routinely ignoring the legitimate "exceptions" (to the changed rules) whereby the law requires for NHS prescriptions to be issued. However, practitioners are following the edicts issued by the subject CCG through Circulars (which patients don't see), whereby PC and SC practitioners are required to direct patients to OTC treatments, a matter that is causing a great deal of distress to sufferers of Long-term Conditions, as the costs of OTC treatments are unaffordable to a huge section of the community. The suffering of people, who typically fall into categories that are protected by the PSED, where they are accordingly classed as 'vulnerable' is unlawfully being exacerbated by NHS practitioners and though intrinsically patients are aware that the day-to-day adopted practice (by their GP's and local hospital practitioners is wrong), these vulnerable people are afraid to challenge for fear of negative consequence through reprisal. In relation to patients who contest on the basis of the stated law, practitioners are resorting to

misrepresentation of the subject condition/s in the written reports following consultation, knowing fully well that very few patients have the capacity or ability to challenge the written record.

I should explain that I have seen the circulars that have been issued to SC practitioners and know from reports how GP's are effecting in practice, the 2018 changes, unlawfully.

Finally, as our democracy requires the civic institutions to comply with the law equally as it applies to individuals, for the purposes of transparency and accountability, kindly furnish me with copies of the circulars (without exception) that have been issued to primary and secondary care practitioners in this regard, since the rules changed in 2018 please.'

5. On 4 August 2021 the CCG provided information in its response to the complainant, no information was withheld.
6. On 14 September 2021 the complainant asked for all the requested information:

"The particular noteworthy communication has been issued to Secondary Care Practitioners e.g. the Eye Specialists treating patients referred for secondary care response and to the practitioners at North West London Trust's Allergy Clinic and this is not included in your reply. I accept that possibly such has escaped your records; however, it is the undated letter that interests me. I would therefore be most grateful if you could furnish me with a copy of that undated letter that the freelancing [name and job title redacted] for Ealing CCG/North West London CCG (Clinical Commissioning Group) has sent to local Secondary Care Practitioners, in which it is clearly stated that patients should not be issued with prescriptions for certain treatments and must be directed to purchase privately.

Whilst I do not mean to cause any alarm, I am aware that a different version has also been circulated whereby the particular sentence/s has / have been deleted, following objection. However, the full version, which requires Secondary Care Practitioners to obey the directive to not issue requisite prescriptions is extant and is being followed, as the CCG requires. [name and job title redacted] ... appears i.e. on the two sided letter which requires the subject clinicians to not issue prescriptions for the stated conditions and instead refer patients to purchase privately OTC.

My FOI did include a request for the directives issued to Secondary Care Practitioners and as this is a legal process I would be obliged if I can receive the undated letter that [name redacted] has issued, which I have read.”

7. This email was followed by a chaser on 1 November 2021 and another on 13 December 2021.
8. The CCG provided an internal review on 27 January 2022 which maintained its previous position that no further information was held than had already been provided to the complainant. The review suggested that, if the complainant was aware that other NHS organisations held the information, they make a request to them.

Scope of the case

9. The complainant contacted the Commissioner on 13 December 2021 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of this case is whether the CCG holds any information falling within scope that it hasn't already provided.

Reasons for decision

Section 1 – general right of access to information held by public Authorities

11. Section 1(1) of the 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.”

12. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by

the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided). The Commissioner is not expected to prove categorically whether the information is held.

13. The Commissioner asked the CCG a series of questions in an effort to establish whether the complainant was correct in their view that the CCG held the undated letter.

The complainant's view

14. The complainant's view is that they were "seeking critical information" in order to assess how the pandemic affected the country. Although one part of the request was satisfied, the complainant contended that the second part had been "disregarded", though the internal review had not been carried out at the point the complainant referred their complaint to the Commissioner.
15. The complainant wrote to the Commissioner on 4 April 2022 arguing how imperative it was that, what they describe as "unlawful directives...issued to local secondary care practitioners", be "presented to the forthcoming Public Inquiry" if lessons were to be learned.

The CCG's view

16. Firstly, the CCG provided some background to the Commissioner:

"On 1 April 2021 the former 8 NW London CCGs (NHS Brent CCG, NHS Central London CCG, NHS Ealing CCG, NHS Hammersmith & Fulham CCG, NHS Harrow CCG, NHS Hillingdon CCG, NHS Hounslow CCG, and NHS West London CCG) merged together to form the North West London CCG. The request was for information when the 8 CCGs were in operation and working together collaboratively. Each CCG was a standalone statutory NHS organisation.

The medicine management function was one co-ordinated at a NW London level with each CCG operating its own team. For example, the Integrated Drug Formulary was one that was agreed across the 8 CCGs. The approach to over the counter prescribing was one project led centrally on behalf of all 8 former NW London CCGs. What we would refer to as a collaborative project (as seen in the letters referring to NHS England's OTC guidance signed off by the 8 Chairs of the CCGs). Correspondence sent was sent on behalf of the NW London Collaboration of CCGs. There was some specific Ealing CCG correspondence dealing with local opticians...

Searches conducted related to correspondence associated with NHS England's published guidance on over the counter prescribing ([NHS England » Guidance on conditions for which over the counter items should not routinely be prescribed in primary care](#)).

The CCG still published the information and leaflet. This information is available on the current website - [Over the counter medicines :: North West London Clinical Commissioning Groups \(nwlondonccg.nhs.uk\)](#).

It was also published on the former CCGs' websites – for example, the former Hounslow CCG's information - [Changes to prescribing of over the counter medicines \(webarchive.org.uk\)](#) “

17. The Commissioner asked the CCG specific questions about how it had established whether it did or did not hold the requested information. He asked what searches it had made, why these searches would have been likely to retrieve any relevant information, the search terms used, whether they were electronic, manual or both, whether there were any statutory requirements or business purposes for holding this information.
18. The CCG explained that it firstly had to identify the likely location of the information. Firstly, the information would be held electronically, it was held. The central Medicine Management Team confirmed that it did not hold the information and had not received it since it was established in April 2021 (when the merger took place). The Communications Team led on the communications of the guidance in 2018 and 2019. That team's electronic information was searched. The search terms used were "over the counter prescribing", "OTC", "OTC medicines", "choosing wisely" (a term used by the CCGs before adopting NHS England's terminology), "purchase without a prescription". Specific searches using the two doctors' names were carried out electronically and manually as further information was provided on the specific undated letter. The Communication Team's folder was searched in line with the terms set out earlier in this paragraph. A manual search was conducted through the project's electronic folders. Some information was located and subsequently disclosed.
19. The CCG had conversations with the Senior Responsible Officer, with [name redacted] and with medicine management colleagues in the Ealing Borough team (the predecessor to the Ealing CCG which would have inherited information after the merger). Further searches were carried out and search terms used were "Allergy Clinic" and "Ealing Hospital". Record folders were searched with all the terms and combination of those terms.

20. The Commissioner had asked the CCG why the searches it had made would have located the specific letter referred to by the complainant. The CCG said that the search terms were specific to the subject matter as the letter would have included these terms. A specified doctor had been the relevant individual in Ealing CCG and any correspondence sent out under the branding of Ealing CCG would have been done so by the medicine management team at the former CCG. The CCG stressed that searches were conducted in all the logical places that the information would have been saved. The Commissioner had also asked the CCG to outline any staff consultations made. It explained that staff within medicine management in the new centralised team and the local borough team were consulted as was the Senior Responsible Officer who led the project in 2018-19.
21. The CCG stated that the letter correspondence would have been saved to the relevant electronic project folder. The searches went further than just the project folders and the whole communication team's records were searched using the search terms described. As the request had informed the CCG that the signatures of the two doctors were on the requested letter, information was sought as to what was held by these specified doctors.
22. The CCG is unable to say whether it had ever held information relevant to the scope of the complainant's request that had been deleted or destroyed. It acknowledged that it had been mentioned that there was correspondence sent out in 2018 and 2019 but that the records had only returned the generic correspondence from 2019 and Ealing specific correspondence. The CCG has no record of the destruction of this document.
23. In response to the Commissioner's question about the CCG's formal records management policy the CCG quoted from what the policy at the time stated:

"9 Retention and disposal schedules

9.1 It is a fundamental requirement that all of the CCG's records are retained for a minimum period of time for legal, operational, research and safety reasons. The length of time for retaining records will depend on the type of record and its importance to the CCG's business functions. The detail can be found in *Annex D1 of Records Management: NHS Code of Practice Part Two* (2nd edition, January 2009)."
24. Finally, the CCG said that there is no business purpose to hold the requested information and no statutory requirements to do so.

The Commissioner's view

25. The complainant clearly believes that this information should be held and they have provided reasons why they believe that this information is held. However, the Commissioner considers that the searches carried out and the search terms used by the CCG are appropriate and detailed enough and they have not returned the requested information.
26. The Commissioner makes his decision based on the balance of probability and a civil standard of proof. It is beyond the Commissioner's remit to make decisions about what information a public authority should hold. The CCG may have held the requested information but it no longer does for unknown reasons. On the balance of probability, the Commissioner accepts that the CCG holds no further information than has already been provided to the complainant.

Right of appeal

27. 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: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Janine Gregory
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