

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 April 2024

**Public Authority:** NHS England  
**Address:** Quarry House  
Quarry Hill  
Leeds LS2 7UE

#### Decision (including any steps ordered)

---

1. The Commissioner's decision is that, on the balance of probabilities, NHS England (NHSE) doesn't hold the requested information about orthodontic activity and spend and has complied with section 1(1)(a) of FOIA.
2. It's not necessary for NHSE to take any steps.

#### Request and response

---

3. The complainant made the following information request to NHSE on 3 December 2022:

"In 2018, NHS England published the document "Assessment of Orthodontic treatment need and level of service provision for the resident population of Cheshire and Merseyside 2018"

<https://www.england.nhs.uk/north/wp-content/uploads/sites/5/2018/09/CM-Orthodontic-Needs-Assessment.pdf>

In this document on page 29 and 30, figures were provided for the regional secondary care orthodontic services showing the number of patients seen, tariff revenue and total cost broken down by each NHS

Trust in the Cheshire and Merseyside region for the financial years 2015/16 and 2016/17 (see attached image).

Can I make a request for similar figures (ie number of patients seen, tariff revenue and total cost) held by NHS England showing the orthodontic activity and orthodontic spend by provider for each of the Trusts listed (i.e. Aintree University Hospital NHS Foundation Trust, Alder Hey Children's NHS Foundation Trust, Countess of Chester Hospital NHS Foundation Trust, East Cheshire NHS Trust, Royal Liverpool and Broadgreen University Hospital NHS Trust, Southport and Ormskirk Hospital NHS Trust, St Helens and Knowsley Hospital NHS Trust, Warrington and Halton Hospitals NHS Foundation Trust, Wirral University Teaching Hospitals NHS Foundation Trust) along with any other Trust in the Cheshire and Mersey region (eg Aintree and the Royal Liverpool Trusts merged in 2021 to a new, different Trust) for the following financial years

- 1 - 2017/18
- 2 - 2018/19
- 3 - 2019/20
- 4 - 2020/21
- 5 - 2021/22
- 6 - 2022/23 to date"

4. In its response to the request on 6 January 2023 NHSE confirmed it doesn't hold the requested information. It explained that NHSE isn't the same as 'the NHS in England.' The NHS in England isn't a single organisation but is made up of a range of organisations such as hospitals, Integrated Care Boards (ICBs) formerly Clinical Commissioning Groups and Ambulance Trusts. NHSE is responsible for commissioning primary care services such as GP and dental surgeries, as well as some specialised secondary care services. Therefore, NHSE said, any recorded information it may be able to provide in response to a FOIA request will generally relate to the services NHSE commissions.
5. NHSE confirmed that it hasn't commissioned any further reports such as the one listed in the request and as such hasn't collated or doesn't hold any further information in relation to the subject. NHSE advised the complainant that Public Health England (PHE) had collated the data in the document named in the request. As such, information relevant to the request may be held by UK Health Security Agency (UKHSA) who replaced PHE in October 2021. The complainant could submit a request to UKHSA directly.
6. The complainant requested an internal review on the same day, 6 January 2023. They said they were asking for figures representing the amount of money spent by NHSE in commissioning a service. They said

they found it hard to believe that NHSE doesn't hold the details of the services it commissions and the amount of money spent in doing so.

7. NHSE didn't provide an internal review until 5 December 2023. At this point NHSE said that it no longer commissions this service and all relevant information transferred to the NHS Cheshire and Merseyside ICB on 1 April 2023. NHSE confirmed that it doesn't hold this data and advised the complainant to contact the ICB directly, providing a link to this body.

## Reasons for decision

---

8. This reasoning covers whether, on the balance of probabilities, NHSE holds the information the complainant has requested. The Commissioner will also consider NHSE's handling of the internal review under 'Other matters.'
9. Under section 1(1)(a) of FOIA a public authority must confirm whether it holds information an applicant has requested.
10. In their complaint to the Commissioner, the complainant said that they consider that NHSE should still hold the data on historic funding amounts that it paid prior to the responsibility for the service being transferred. They're concerned that this won't be available from the ICB (as NHSE had suggested).
11. The Commissioner put this point to NHSE. In its submission to him, NHSE confirmed that on 1 April 2023 ICBs took on delegated responsibility for commissioning pharmacy, general ophthalmic, and dental services from NHSE (further information about this is available on its website).
12. NHSE also confirmed this specific service (ie the orthodontic service) and all relevant information transferred to NHS Cheshire and Merseyside ICB on 1 April 2023. Transfer of services includes the transfer of all staff. All staff who used to be employed within NHSE in relation to this service were also transferred over to the relevant ICB (again, further information is available on its website). Therefore, NHSE has been unable to reapproach the individual staff members who used to manage this service and it's reliant on any corporate records it has been able to locate.
13. NHSE has noted that when it received the request, NHSE colleagues hadn't transferred over to the ICB. It originally approached the Primary Care team within NHSE's Northwest Regional Team which is most likely to hold the information being requested given the subject of this

request. Colleagues within this team advised that Public Health [England] colleagues (and not by NHSE) had collated the data contained in the "Assessment of Orthodontic treatment need and level of service provision for the resident population of Cheshire and Merseyside 2018" report.

14. Pages 29 and 30 of the report the complainant referred to provides a table of Secondary Uses Service data for acute trusts providing the majority of Orthodontic Care for Cheshire and Merseyside residents. The information is broken down by the number of patients seen (activity data) by various providers. NHSE says it didn't originally collate this information.
15. The complainant has specifically asked for "similar figures (ie number of patients seen, tariff revenue and total cost)" from 2017/18 to date (ie 3 December 2022). As NHSE didn't collate the activity data it concluded that no further information had been collated and provided to NHSE. As such, in its response to the complainant it advised that they may wish to approach the UKHSA, which replaced Public Health England.

### **The Commissioner's conclusion**

16. First, NHSE hadn't collated the information in the original report which the complainant referred to in their request – Public Health England, now replaced by UKHSA, had collated that information. Second the orthodontic service – all relevant information and staff - transferred to NHS Cheshire and Merseyside ICB on 1 April 2023.
17. The Commissioner considers that the NHSE has satisfactorily addressed the complainant's outstanding concern. For the reasons NHSE has explained, and the factors above, he accepts, on the balance of probabilities, that NHSE doesn't hold the information the complainant has requested and has complied with section 1(1)(a) of FOIA.
18. The complainant first requested the information in December 2022. If they haven't already done so, the Commissioner recommends that the complainant contact either UKHSA or NHS Cheshire and Merseyside ICB, or both, for the information they're seeking.

### **Other matters**

---

19. Providing an internal review isn't a requirement under FOIA but is a matter of good practice. The Commissioner recommends that a public authority provide an internal review within 20 working days of a request for one and in the most complex cases only, within a maximum of 40 working days.

20. In its submission to the Commissioner, NHSE has confirmed that it didn't deliberately delay providing a review until the orthodontic service had transferred. NHSE noted that it's recently received a Practice Recommendation<sup>1</sup> from the Commissioner in respect of a large number of historical requests and requests for an internal review. As part of the Practice Recommendation, NHSE says, it has been addressing these historical requests and this particular case was one of the cases that formed part of this backlog.
21. NHSE had offered an internal review in its response of 6 January 2023, the complainant requested a review the same day, but NHSE didn't provide one for almost 12 months. The complainant considers that if NHSE had provided a review within the recommended timescale, it may have still held information relevant to the request as the information wasn't transferred to the ICB until 1 April 2023. By the time it did provide a review, any relevant information would have been transferred and NHSE would no longer hold it. However, NHSE's position is that it doesn't hold the requested information; it didn't hold it at the time of the request or up to the end of March 2023. This is because it hadn't collated the information in the report referred to in the request.
22. NHSE may not have deliberately delayed providing an internal review, but the outcome has still been unsatisfactory for the complainant and led them to be sceptical about NHSE's handling of their request. The Commissioner will continue to monitor the timing of NHSE's response to internal review requests.

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4025753/fpr0987667.pdf>

## **Right of appeal**

---

23. 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)

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**