

Date: 28 October 2021
Our reference: N/21/3382

Dear Requestor

RE: Freedom of Information Request

With reference to your request for information I can confirm in accordance with Section 1 (1) of the Freedom of Information Act 2000 that we partially hold the information that you have requested. A response to each part of your request is below.

In the request you asked:

- 1) Please can you share your local pricing schedule in relation to fertility treatment; I'm particularly interested in your local price with your provider for conventional IVF but if you have the full schedule you could share this would be appreciated?

Noting we have been under national Covid-19 contracting arrangements if you would be willing to share this for 2019/20, confirming whether this includes CQUIN or not that would be great?

I can confirm that we do hold the information relating to local pricing in relation to fertility treatment. However, NHS Nottingham and Nottinghamshire CCG has considered this request and has decided to withhold this requested information pursuant to the exemption in Section 43(2) of the Freedom of Information Act 2000 (FOIA).

Section 43(2) relates to information that is exempt from disclosure that "would or would be likely to prejudice the commercial interests of any person (including the public authority holding it)".

The information requested relates to details of commercial arrangements the CCG has in place with independent providers.

On this basis, NHS Nottingham and Nottinghamshire CCG consider that, at this time, the commercial interests of the CCG, third parties and overall the NHS would or would likely be prejudiced.

Public Interest Test

Section 43(2) is a qualified exemption and, therefore, the CCG is required to apply the public interest test.

NHS Nottingham and Nottinghamshire CCG recognise that the disclosure of the information sought in relation to local pricing in relation to fertility treatment, would promote accountability and transparency in the use of public funds by the CCG and by the NHS in general and also with decision making by the CCG and their transactions with third parties.

Conversely to the factors demonstrated above in favour of disclosure, NHS Nottingham and Nottinghamshire CCG and third party suppliers could be disadvantaged should the information be

made available. Suppliers compete with one another in a competitive environment and to provide data to this level of detail would lead to loss of confidence by suppliers and customers and could cause significant harm to the CCG and suppliers.

The disclosure could also adversely impact on any on-going or future procurement processes for the reasons outlined above. Any disclosure by the CCG could, in future, discourage the provision of commercially sensitive information necessary to respond properly to the CCG's Invitation To Tender, and would be likely to affect and undermine the CCG's bargaining position in any future procurement process or negotiations. Ultimately, civil action could be taken against the CCG should information be disclosed that adversely affects the commercial interests of current and/or future suppliers.

As a result, it is our opinion that this sufficiently demonstrates the prejudice which could be caused through disclosure.

Balance Test

It is important to bear in mind that any disclosure under the FOI Act is a disclosure to the public at large and not just to the applicant. It is recognised that there is a general public interest in the CCG being open and transparent. However, it is not believed that this public interest is served in disclosure for damage that would be caused as outlined above.

Therefore, the CCG consider that releasing this information would not be in the public interest, as the public interest does not outweigh the prejudice as set out above.

- 2) Do you have a copy of your fertility policy you could please share? If this is available online please send a link.

Please see attached the following policies.

- IVF-ICSI Policy and eligibility criteria (April 2014)
- Assisted Conception Prior to IVF – Feb 2011

- 3) Please can you advise your approach to applying the Overseas Visitors Charging Guidance for fertility treatment? (I've included further detail below with this question expanded with the highlighted).

NHS Nottingham and Nottinghamshire CCG do not hold this information. All referrals for fertility treatment within Nottinghamshire are initially directed to the Fertility Unit at our local secondary care provider, Nottingham University Hospitals NHS Trust. They apply the Overseas Visitors Charging Guidance to relevant patients including those seeking fertility treatment, so we would politely direct you to them with your enquiry. Information on how to submit a Freedom of Information request to Nottingham University Hospitals NHS Trust can be found on their website via the following link - <https://www.nuh.nhs.uk/freedom-of-information/>

- 4) If you are willing to provide a name and contact email for someone in your contact or finance team that may be interested, it may take me a few months to compile all the information from all the CCGs, but I'm happy to share my findings with your CCG if this supports you address future commissioning issues around fertility.

The Acute Contracting Team can be contacted via the following email address - nnccg.nottssouthcontracts@nhs.net

Overseas Visitors – Additional Detail

As you may be aware the [Guidance of Implementing the Overseas Visitor Charging](#) (Department of Health; updated February 2021) was updated in 2017 to make it clear that:

- surcharge patients should pay for their share of the costs for assisted conception services;
- surcharges are to be 150% of the prices charged to the NHS (CCGs); and
- Patients who *are* eligible for NHS funded treatment must not be charged their share of fertility treatment (paragraph 5.25 p39).

Initial research indicates that there are differing positions regionally and nationally across CCGs about how the surcharge is applied. Despite attempts to get a national steer from the Department of Health, no additional guidance has been made available as to how to determine the percentage of the costs attributable to each individual partner, thus which is recoverable from the Overseas visitor. Initial research indicates that there are approximately 4 different options which may have been implemented:

Option 1) Some CCGs have deemed that one party being an overseas visitor deems the couple ineligible.

Option 2) Some CCGs have not yet implemented the Overseas Visitors Guidance and are allowing the couple to have treatment funded by the NHS whilst either clarity is gained nationally, or other local areas decide, allowing them a baseline to implement.

Option 3) There is an option to split the charge 50/50 on the basis that the outcome of the treatment is to enable a couple to conceive. The argument for this is that treatment should be outcome focussed, however, the argument against this is that an NHS patient could inadvertently end up paying for treatment done to themselves (i.e. if an NHS female patient needs 60% of treatment and an Overseas male 40%, the couple will be charged 50% and hence 10% of NHS entitled treatment has been charged).

Option 4) A split for the costs of treatment is broken down, assigned to either a male or female partner and this proxy is used to determine who pays for which percentage of the treatment:

- E.g. one Trust have chosen 60% female/40% male split with another 65 % female / 40% male
- St. Bartholomew's Hospitals NHS Trust (Barts) in London have compared costs for male/female elements of the actual treatment since 2018 and concluded that a 65% female/35% male split.

To support this piece of work I was wondering if you would be able to share your approach to the Overseas Visitors Guidance for Fertility Treatment. i.e. did you implement any of the options or one we have not considered above, and if so how did you determine the split (i.e. with your providers, with engagement from patients, national guidance, regionally etc.)?

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Hospitals NHS Trust can be found on their website via the following link - <https://www.nuh.nhs.uk/freedom-of-information/>

If you are unhappy with the way in which your request has been handled, NHS Nottingham and Nottinghamshire Clinical Commissioning Group have an internal review procedure through which you can raise any concerns you might have. Further details of this procedure can be obtained by contacting Lucy Branson, Associate Director of Governance via lucy.branson@nhs.net or by writing to NHS Nottingham and Nottinghamshire CCG, Sir John Robinson House, Sir John Robinson Way, Arnold, Nottingham, NG5 6DA.

If you remain dissatisfied with the outcome of the internal review, you can apply to the Information Commissioner's Office, who will consider whether the organisation has complied with its obligations under the Act, and can require the organisation to remedy any problems. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by NHS Nottingham and Nottinghamshire Clinical Commissioning Group. You can find out more about how to do this, and about the Act in general, on the Information Commissioner's Office website at: <https://ico.org.uk/for-the-public/>

Complaints to the Information Commissioner's Office should be sent to: FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Telephone 0303 123 1113 or report a concern: <https://ico.org.uk/concerns/>

Yours sincerely

Freedom of Information Officer on behalf of *NHS Nottingham and Nottinghamshire Clinical Commissioning Group*.

notts.foi@nhs.net

All information we have provided is subject to the provisions of the Re-use of Public Sector Information Regulations 2015. Accordingly, if the information has been made available for re-use under the [Open Government Licence](#) (OGL) a request to re-use is not required, but the license conditions must be met. You must not re-use any previously unreleased information without having the consent of NHS Nottingham and Nottinghamshire Clinical Commissioning Group. Should you wish to re-use previously unreleased information then you must make your request in writing (email will suffice) to the FOI Lead via notts.foi@nhs.net. All requests for re-use will be responded to within 20 working days of receipt.