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Mr. Colin White

By email: request-580948-b4e2564d@whatdotheyknow.com

Date 23rd July 2019
Your Ref FOI-2019-000218
Our Ref RM/FOI/2019-000218

Enquiries to Roddy Mitchell
Email roddy.mitchell@nhs.net

Dear Mr White,

Freedom of Information Request for a Review: Request reference FOI-2019-000218

I refer to your email dated 25th June 2019 in which you requested a formal internal review, under the terms of the Freedom of Information (Scotland) Act 2002 (FOISA), of the NHS National Services Scotland (NSS) response to your information request. Your original request was dated 5th of June 2019 and you received a response dated 21st of June 2019. In your request for review you asked the following questions:

'I am writing to request an internal review of NHS National Services Scotland's handling of my FOI request 'Central Legal Office Expenses for litigation defence of Health Boards'.

Thank you for the information supplied; it is much appreciated. However, please can you revise your reply to clarify a few points, please.

Point 4. You talk about advocates being used in the Court of Session. Are you saying it has only been in cases where a solicitor is not qualified to appear, such as the Court of Session, where private Advocates have been used or have they been used in Simple Procedure cases too?

Point 5. I asked for figures per year. As it appears you use financial years (April - March) as your counting system, please can you supply your figures by this way of counting only. It removes double counting with calendar years (Jan-Dec).

So, the number of cases per financial year 1 April to 31 March where private firm advocates were used by NHS CLO in cases where the claim value sought (not eventually awarded) was £5000 or less:

1 April 2016 to 31 March 2017: how many cases?
1 April 2017 to 31 March 2018: how many cases?
1 April 2018 to 31 March 2019: how many cases?"

I can confirm that the internal review was carried out on the 22nd of July 2019 by a panel who were not involved in the provision of the original response to you.



Chair Professor Elizabeth Ireland
Chief Executive Colin Sinclair

The panel considered your request for internal review in line with your original questions and also your subsequent questions that related to the response that you received from The Central Legal Office, i.e.

4. You talk about advocates being used in the Court of Session. Are you saying it has only been in cases where a solicitor is not qualified to appear, such as the Court of Session, where private Advocates have been used or have they been used in Simple Procedure cases too?
5. I asked for figures per year. As it appears you use financial years (April - March) as your counting system, please can you supply your figures by this way of counting only. It removes double counting with calendar years (Jan-Dec).

So, the number of cases per financial year 1 April to 31 March where private firm advocates were used by NHS CLO in cases where the claim value sought (not eventually awarded) was £5000 or less:

1 April 2016 to 31 March 2017: how many cases?

1 April 2017 to 31 March 2018: how many cases?

1 April 2018 to 31 March 2019: how many cases?

The panel reviewed the answer provided by The Central Legal Office to Question 4 of your request and decided that it did not fully or sufficiently explain their position in relation to the usage of external legal representation and felt that this required further explanation. Therefore please find below our revised answer to Question 4:

Within The Central Legal Office there is no formal criteria for deciding when external advocates/QCs (Counsel) are used, with decisions based upon experience and track record. Solicitors are qualified to appear in the Sheriff Court and solicitor advocates are qualified to appear in both the Court of Session and the Sheriff Court. The Central Legal Office has 2 solicitor advocates. Both have a full case load and do not have the capacity to appear in every case. Therefore, Counsel are instructed in the Court of Session where rights of audience are restricted and also in the Sheriff Court in cases which justify it due to value or complexity.

The Central Legal Office would not employ external Counsel for simple procedure cases, unless there was an important legal point which might affect multiple other claims.

The internal review panel also agreed that the information provided in response to Question 5 should be reworked in order to present the data in financial years using "Date of Settlement" as the basis for breakdown as this is based upon the settlement date of claims where advocate charges are accumulated per claim where applied.

Payments for Advocates employed on individual claims may be paid as work is carried out, or may be accumulated and billed many months later, hence why there may be more than one payment per claim across the years a claim is progressing and may not necessarily be in the year that the work was carried out. All invoices for the services of advocates are billed by Faculty Services.

Therefore, we have supplied the reworked information presented in financial years within Appendix I below.

I hope that this information is useful to you, however if you have any queries regarding this FOISA internal review letter please do not hesitate to contact me at the following address:

Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB

or via email at NSS.FOI@nhs.net

If you are dissatisfied with the outcome of the review you have the right, within six months of receipt of this review decision, to apply for a decision to the Scottish Information Commissioner who can be contacted at:

Kinburn Castle
Doubledykes Road
St Andrews
KY16 9DS

You also have the right of appeal, on a point of law, to the Court of Session.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roddy Mitchell', written in a cursive style.

Roddy Mitchell
Corporate Records & FOI Organisational Lead

APPENDIX I

5. In years 2017 to 2019 in how many claims - by individual year- has involved the use of private firm advocates in claims defended by NHS CLO when the claim value has been £5000 or less?	Information below provides details on the number of claims settled in each financial year indicated and where private firm advocates were employed by NHS CLO in their defence
Settlement Period - 1 Apr 2016 - 31 Mar 2017	The number of claims settled for a figure of £5,000 or less was 10. Of these number where the sum sued for was £5000 or less was NIL .
Settlement Period - 1 Apr 2017 - 31 Mar 2018	The number of claims settled for a figure of £5,000 or less was 25. Of these number where the sum sued for was £5000 or less was 2.
Settlement Period - 1 Apr 2018- 31 Mar 2019	The number of claims settled for a figure of £5,000 or less was 16. Of these number where the sum sued for was £5000 or less was NIL.