

Freedom of Information Act 2000 disclosure log entry

Reference

16-17078

Date sent

15/06/2016

Subject

Compromise Agreements/MARS

Details of enquiry

- 1) How many compromise agreements/MARS has the Trust entered into with staff or former staff? Please include all agreements in this figure
- 2) How many of these compromise agreements/MARS require staff members not to disclose the existence of the compromise agreement itself?
- 3) How many of these compromise agreements/MARS contain non-disparagement clauses that require staff members not to criticise the employees of the Trust?
- 4) What is the total cost for each year
- 5) Please provide a copy of your standard non-disparagement clause that require staff members not to criticise the employees of the Trust?

Response Sent

- 1) How many compromise agreements/MARS has the Trust entered into with staff or former staff? Please include all agreements in this figure

2011 - 1
2012 - 2
2013 - 4
2014 - 1
2015 – 22 *
2016 - 2

* Please note that in 2015 the Trust received authorisation from Monitor (now NHS Improvement) to open a voluntary severance scheme in line with the MARS process described in the NHS Terms and Conditions of Service. This is why the number of agreements significantly increases in 2015.
- 2) How many of these compromise agreements/MARS require staff members not to disclose the existence of the compromise agreement itself?
None of the agreements contain a clause like this.
- 3) How many of these compromise agreements/MARS contain non-disparagement clauses that require staff members not to criticise the employees of the Trust?
All of them
- 4) What is the total cost for each year
2011 - £10,895
2012 - £24,689

2013 - £33,673

2014 - £63,000

2015 - £857,027**

2016 - £102,599**

** Please note that in 2015 the Trust received authorisation from Monitor (now NHS Improvement) to open a voluntary severance scheme in line with the MARS process described in the NHS Terms and Conditions of Service. Many of the individuals that left the organisation did so in 2015, however, some also left in early 2016. This is why the value increased in these two years.

- 5) Please provide a copy of your standard non-disparagement clause that require staff members not to criticise the employees of the Trust?

The Trust changed its template for settlement agreements in February 2016. The clause used prior to February 2016 was worded as follows:

[individual] will not make any untrue statement in relation to the Trust or make any statement to any person which is intended to or which might have the effect of damaging or lowering the reputation of the Trust or any of its officers, employees, Directors or Trustees.

The Trust will use its reasonable endeavours to ensure that its employees and officers do not make any untrue, adverse or derogatory statement about [individual] and the Trust shall use its reasonable endeavours to ensure that its employees and officers shall not do anything which shall, or may, bring [individual] in to disrepute.

The clause currently used is worded as follows:

You will not, directly or indirectly, make any detrimental or derogatory statements about your Employment, its termination, the Trust or any Associated Persons except in accordance with clause 15.

The Trust confirms that it will not authorise its directors, officers and employees to make any detrimental or derogatory statements about you, provided that this clause does not prevent us giving full disclosure as required by law or by any regulatory authority or as required by the Trust for any internal or external reporting or audit purposes affecting the Trust, or for the purpose of ensuring compliance with the terms of this Agreement.

For the avoidance of doubt, clause 15 as referenced above reads as follows:

disclosure of information

For the avoidance of doubt, nothing in this Agreement shall prevent you disclosing information:

pursuant to any order of any Court of competent jurisdiction; or

which has come into the public domain otherwise than by a breach of confidence by you or on your behalf.

Equally, nothing in this Agreement, including but not limited to clauses 11, 13 and 14, shall prejudice any rights that you have or may have under the Public Interest Disclosure Act 1998 ("PIDA") (or any other enactment which PIDA amends) and/or any obligations that you have or may have to raise concerns about patient safety and care with regulatory and other appropriate statutory bodies pursuant to your professional and ethical obligations including those obligations set out in guidance issued by regulatory or other appropriate statutory bodies from time to time.