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**Our reference: FOI DA2997**

I am responding to your request for information received on 15<sup>th</sup> January 2019. This has been treated as a request under the Freedom of Information Act 2000.

I am now enclosing a response which is attached to the end of this letter. Please do not hesitate to contact me on the contact details above if you have any further queries.

Yours sincerely,

Anita Crosby  
FOI & Information Governance Officer

If you are dissatisfied with the Trust's response to your FOIA request then you should contact us and we will arrange for an internal review of this decision. If you remain dissatisfied with the decision following our response to your complaint, you may write to the Information Commissioner for a decision under Section 50 of the Freedom of Information Act 2000. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 01625 545700  
Web: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

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**Request:** The Off-payroll legislation was introduced in Chapter 10 of the Income Tax (Earnings and Pensions) Act 2003, with the new legislation going live from April 6th 2017. This new legislation overrode, in the public sector, the existing Intermediaries Legislation (Chapter 8, ITEPA).

One of the key differences between the chapter 8 and chapter 10 is that the public authority is required to decide whether the off-payroll working rules (Chapter 10) apply based on whether the conditions have been met in section 61M(1)(d).

This requires the public authority to test whether the worker would be considered an employee based on employment status case law.

These assessments would have been completed by you with each assessment receiving its own determination.

**Question 1.** Please can you provide:

**A monthly breakdown, from April 2017 onwards of the number of assessments conducted by you, together with the number of assessments that are considered to be “inside IR35” (i.e. 61M(1)(d) applies) and the number that are “outside IR35” (i.e. 61M(1)(d) does not apply)**

**Answer:** In view of the impending legislation, prior to April 2017, East London NHS Foundation Trust contacted all off-payroll contractors and advised them that they needed to transfer to the Trust bank from 1<sup>st</sup> April 2017. We had a limited number of external contractors and the affected staff either transferred onto the bank or their services were ceased.

Any individuals wanting to be paid by invoice are now advised that we can only agree to make payment on this basis where the contract has been adjudged to fall within the self-employment criteria set by HMRC. Any decision to pay staff off payroll requires the approval of the Director of Finance.

We keep a record of individuals who have completed the test and been signed off by the Director of Finance. The total number inside IR35 in 2017-18 was four.

We do not hold information on applications that have been rejected.