

13 May 2016

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## By email

Dear [REDACTED]

### **Request under the Freedom of Information Act 2000 (the “FOI Act”)**

I refer to your email of **26 April 2016** in which you requested information under the FOI Act from Monitor. Since 1 April 2016, Monitor and the NHS Trust Development Authority are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor.

### **Your request**

You made the following request:

*“Please disclose any recorded information you hold in relation to any investigations into County Durham and Darlington Foundation Trust since January 2014.”*

### **Decision**

NHS Improvement does hold the information that you have requested and has decided to withhold this information on the basis of the applicability of the exemptions in section 31 FOI Act as explained in detail below.

#### **Section 31 – law enforcement**

We consider that the withheld information is exempt from disclosure under sections 31(1)(g), 31(2)(a) and 31(2)(c) of the FOI Act. Section 31(1)(g) provides that information is exempt if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2). Section 31(2)(a) covers the purpose of ascertaining whether any person has failed to comply with the law. Section 31(2)(c) covers the purpose of ascertaining whether circumstances exist or may arise which would justify regulatory action in pursuance of an enactment.

NHS Improvement is currently undertaking an investigation into County Durham and Darlington NHS Foundation Trust (“the trust”). To disclose the information more widely is likely to be prejudicial to the consideration by NHS Improvement on what action, if any, NHS Improvement should take in relation to this and other (both current and future) investigations.

#### Public interest test

The public interest in accountability and transparency by making access to the information available has been weighed against the detrimental impact that is likely to ensue if disclosure is permitted. The investigation at the trust remains live. NHS Improvement does not produce investigation reports but we do make public our main findings and any action resulting from our investigations.

NHS Improvement announced this investigation on 22 December 2015 and published a press release stating that we will announce the outcome of these investigations in due course ([here](#)). The trust has released extracts of minutes of meetings of the Board and the Council of Governors, which recorded the Board and Council’s discussions on the investigation. These documents are attached. I consider that this information is sufficient to meet the public interest in transparency.

As mentioned above, the investigation is ongoing. I have concluded that the need to avoid adversely affecting its continuing investigation into the trust and the need to ensure that providers are able to share information with NHS Improvement without fear that such disclosures will enter the public domain outweighs the public interest in disclosure of the information that is being withheld.

#### **Review rights**

If you consider that your request for information has not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you can try to resolve this informally with the person who dealt with your request. If you remain dissatisfied, you may seek an internal review within NHS Improvement of the issue or the decision. A senior member of NHS Improvement’s staff, who has not previously been involved with your request, will undertake that review.

If you are dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information has been dealt with in accordance with the FOI Act.

A request for an internal review should be submitted in writing to FOI Request Reviews, NHS Improvement, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to [nhsi.foi@nhs.net](mailto:nhsi.foi@nhs.net).

## **Publication**

Please note that this letter and the attached information will shortly be published on our website. This is because information disclosed in accordance with the FOI Act is disclosed to the public at large. We will, of course, remove your personal information (e.g. your name and contact details) from the version of the letter published on our website to protect your personal information from general disclosure.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Carla Moody', with a long horizontal flourish extending to the right.

**Carla Moody**  
Senior Regional Manager

**CONFIDENTIAL Extracts regarding “Monitor Investigation of CDDFT”  
taken from minutes of meetings of the Council of Governors  
of County Durham and Darlington NHS Foundation Trust  
for the period October 2015 to February 2016 (inclusive)**

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**Extract from:**

MINUTES OF THE PUBLIC MEETING OF THE COUNCIL OF GOVERNORS  
held in the Executive Board Room of Darlington Memorial Hospital  
on Wednesday 3 February 2016 from 17:00hrs

**Extracted text:**

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Ms Jacques began her presentation by advising that those who had been Governors for some time would have had sight of two letters issued by Monitor, the second of which had stated Monitor's intention to formally investigate the financial position of the organisation. Ms Jacques went on to report that, since then, she had had a telephone conversation with Monitor – the contents of which she was prepared to share with the caveat that, until assurance had been received in writing, this position could not be assumed to be final. Essentially, for 2016-17, Monitor had offered CDDFT £15.6m in excess of tariff in return for the delivery of a £6.5m surplus. Whilst the next financial year would remain financially challenging, clearly, this had changed the Trust's plans. For 2015-16 the organisation had always reported that it was delivering in-year but had also looked forward to 2016-17 plans to return a financial surplus. During the course of that telephone call with Monitor, Ms Jacques had been asked to confirm that the Trust intended to return a financial surplus in 2016-17 and whether the organisation would be likely to accept that extra funding – with the conditions attached. Ms Jacques cautioned Governors that, by accepting this offer, the Trust would be required to deliver financially - along with some, yet unknown, trajectories in respect of improvements in overall cancer waiting times. To put this into context, all providers of emergency care and emergency medicine had received similar offers from Monitor. Returning to the content of that telephone conversation, Ms Jacques reported that Monitor had stated that, if CDDFT was to undergo two planned pieces of external assurance, that is, the Northumbria Healthcare NHS Foundation Trust's assessment of CDDFT's financial 'grip and control' as well as the independent accounting review of 2016-17 plans, scheduled to take place from 29 February, Monitor was minded not to take any further action in terms of a formal investigation of CDDFT's financial position. Further, Monitor was prepared to remove CDDFT's 'formal investigation' status from its website. Essentially, then, that formal investigation may not proceed and Ms Jacques took this opportunity to flag that Monitor had actually not commenced any work in that connection. Ms Jacques assured Governors that, as soon as any formal confirmation was received, a briefing would be issued.

Ms Jacques advised that, later on the agenda, Governors would hear that the Trust was developing draft operational plans for submission to Monitor by 8 February – with final plans to be submitted on 11 April.

Ms Jacques then invited questions or comments. None were raised.

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**Extracts regarding “Monitor Investigation of CDDFT”  
taken from minutes of meetings of the Board of Directors  
of County Durham and Darlington NHS Foundation Trust  
for the period October 2015 to February 2016 (inclusive)**

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**Extract from:**

Minutes of a public meeting of the Board of Directors of County Durham and Darlington NHS Foundation Trust held on Wednesday 16 December 2015 from 09:00hrs in the Executive Board Room, Darlington Memorial Hospital

**Extracted text:**

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**158/16 Chief Executive’s Report**

**Monitor**

Ms Jacques provided an update with regards to the Monitor assessment of the Trust and their on-going review. A Financial Risk Rating of 2 had been confirmed for the Quarter 2 period, as expected. The Governance Rating continued to be flagged as “under review” as further information had been requested.

A meeting had been held with Monitor at their request on 4<sup>th</sup> December, as detailed at the previous Trust Board meeting. The Trust had sought to set out a timeline relating to movements in its financial position from 2015/16 to date, as well as forecasts into 2016/17. A formal letter was awaited, following the meeting and apologies for the delay had been received from Monitor, however no expected date of receipt had yet been confirmed. Ms Jacques advised that, in the meantime, work was being carried out internally to provide the two items requested by Monitor at the meeting, detailed as follows:

1. Further detail on the high level proposals included in the plan for 2016/17, including more detail on the £42m efficiency opportunity. Additional planning guidance was expected to be received shortly, which would inform the development of plans to realise this opportunity. Further work was taking place internally to progress the schemes on the list.
2. A breakdown of the 8.3% efficiency requirement for 2014/15. Board members had already seen the detail on this previously, however this was available if required and had now been issued to Monitor.

Ms Jacques asked the Board to delegate authority to her to continue this work. The Trust Board **AGREED** to delegate this authority.

Mr Young provided his perspective on the meeting with Monitor. He had been pleased that the Trust had been given the opportunity to respond in terms of the efficiency requirement in 2014/15. The Trust had been faced with additional requirements over and above the national percentage required due to contracting issues with commissioners and Mr Young felt it was important to convey this to Monitor properly. He noted that, additionally Monitor believed that some of the Trust’s reserves were discretionary and Mr Dawson had agreed to provide more detail on this for the Board to review again. Prof Keane agreed that Monitor appeared to have previously been focusing on historical performance.

Dr Waterston asked whether operational efficiency was being focussed on as an issue by Monitor. Mr Dawson advised that the issue in question was financial control.

For the benefit of members of the public, it was explained that the national efficiency requirement for the NHS in 2014/15 was 4% and due to a process of mediation and arbitration with commissioners, the resulting efficiency requirement for the Trust had been closer to 8%.

Ms Jacques then explained that Monitor had recently introduced a cap on overall agency nursing costs as a percentage of total expenditure. This included a cap on the price per hour and a requirement to use only agencies on the Government framework and Monitor are to be advised of all departures from these requirements. Arrangements were being put in place within the Trust and this would be discussed further in the private part of the meeting.

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**Extract from:**

Minutes of a public meeting of the Board of Directors of County Durham and Darlington NHS Foundation Trust held on Wednesday 27 January 2016 from 09:00hrs in the Executive Board Room, Darlington Memorial Hospital

**Extracted text:**

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**189/16 Chief Executive's Report**

**Monitor investigation**

Ms Jacques reported dialogue with Monitor. The outcome of which was that Monitor would await the results of two pieces of assurance work, taking place within the Trust, before considering the next steps in their formal investigation of the Trust. These comprised the peer review of financial governance and an external review of the Trust's financial plan for 2016/17. The peer review with Northumbria on financial governance had now commenced, with co-ordination of the Trust's evidence submission being led by Mr Dawson.

Monitor had requested that the Trust's completion of actions agreed in response to the Audit Committee's review of the Trust's financial position be covered within the scope of the external review. Mrs Jacques undertook to keep the Board informed of dialogue with Monitor and the outcomes of their deliberations once the results of the above work were available.

Ms Snowball expressed her view that the specification for the Audit Committee review referred to was a review of what had happened, rather than being for the purpose of making recommendations. The wider response from the Trust needed to be considered and the Trust needed to be clear with Monitor about the limitations of the scope. Ms Jacques agreed with Ms Snowball's view of the specification but noted that this had been previously shared with Monitor.

Moving on, Ms Jacques advised that she, along with the Chairman had attended a recent meeting with Helen Goodman at BAH, to discuss breast screening and MLU. This had been very valuable in terms of hearing the views of the public.

Ms Jacques also reported that, as part of the Five Year Forward View, Trusts had been invited to bid to take part in the development of an 'exemplar site' and the Trust had submitted a bid to take part.

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