

2 October 2015

The logo for Monitor, featuring the word "Monitor" in a sans-serif font with a blue arc above the "o".

Making the health sector
work for patients

Wellington House
133-155 Waterloo Road
London SE1 8UG

T: 020 3747 0000
E: enquiries@monitor.gov.uk
W: www.gov.uk/monitor

[REDACTED]
[REDACTED]

By email only

Dear [REDACTED]

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

Thank you for your emails of 5 and 7 September to David Bennett, which sought information about Monitor’s whistleblowing handling practices. We have treated your emails as requests under the Freedom of Information Act 2000 (FOIA).

Monitor has decided to release all of the information that it holds.

I have set out our response to your specific questions below, but I think it might be helpful to explain that we have recently reviewed our handling of whistleblowing concerns and have a newly strengthened team that deals with all complaints and whistleblowing cases we receive. As explained in our annual report, this will further improve the service we provide people who take time to raise concerns with us, as well as improve how we use the intelligence they give us about the health sector. It will also provide more enhanced record keeping. This will enable us to provide more detail than before in our annual report for 2015/16 about what action we have taken on whistleblowing cases, meeting the new reporting obligations we have as a prescribed person.

Your request of 5 September (4 parts to the request)

i) Please may I be provided with an analysis of the nature of [whistleblowing] concerns for each of these financial years 2013-2014 and 2014-2015

The nature of the whistleblowing concerns we received in those years is wide ranging covering governance issues, trust performance issues, financial issues, employment matters and quality issues. Each whistleblowing disclosure was individually analyzed and added to the other information we hold on the relevant trust. However we do not hold an overall analysis of the nature of the whistleblowing concerns that we received across the years 13/14 or 14/15. In future years, we will be improving the way we use whistleblowing information to meet the new reporting requirements, but we have yet to determine the details of what we will produce.

ii) Please can Monitor advise whether it received any notifications from the Employment Tribunal Service about PIDA claims against NHS organisations, and if so, how many did it receive in each of these financial years

We received four notifications from the tribunals service in 14/15. We received two notifications in 13/14. These notifications related to NHS foundation trusts or NHS trusts which were being assessed for FT status. We did not receive notifications about any other type of NHS organisation.

iii) Please can Monitor advise whether it tracks indicators of detriment suffered by NHS staff who have made disclosures to Monitor, including suspension, disciplinary action and dismissal? If Monitor collates this data, please could data be provided for each of the financial years 2013-2014 and 2014-2015.

This is not information that we track or hold.

iv) Monitor stated in its annual report 2014-2015 that it investigated all cases where disclosures raised potential governance issues. Please could Monitor advise what the range of Monitor's investigatory action was in these cases, and how many cases were investigated in each of the financial years 2013-2014 [and 2014-2015]

2014/15

As reported in Monitor's Annual Report, 28 whistleblowing cases were received. In the cases that raised potential governance issues, we informally investigated in 14 of the 28 cases by raising those concerns that were relevant to our role with the trust in the first instance. However, we did not take any formal enforcement action as a direct result of the findings. In one case we incorporated the concerns into an existing formal regulatory investigation. In another case, the concerns raised made a significant contribution to a decision to open a regulatory investigation.

2013/14

Of the 39 whistleblowing cases we received, we informally investigated 17 of them further by raising those concerns that were relevant to our role with the trust, as described above. None resulted in a formal regulatory investigation or in formal enforcement action.

Your request of 7 September 2015 (2 parts to the request)

1) I would be grateful to know how Monitor makes its decisions on whether to act upon ET findings, and what criteria it applies. Related to this, I would be grateful to know the reasons why ET findings of detriment to whistleblowers do not appear to have triggered Monitor investigations.

Monitor's Risk Assessment Framework ('RAF') sets out how we will assess the risks posed to NHS foundation trusts, specifically in terms of their governance and finances. It details the information we will take into account when assessing the governance and finances of a foundation trust. With regards to information received from third parties about FTs (including ET findings against FTs) that raise potential governance concerns, the RAF says:

"Monitor also considers information from third parties, either supplied directly or via the NHS foundation trust (see Section 2.4). While our initial response is likely to be a request for further information from the trust in question or others, where appropriate we may investigate formally (see Chapter 5) and consider whether an NHS foundation trust is, or will be, in breach of its licence."

Our primary consideration as to what action we take on the basis of information from third parties is whether or not that information indicates a breach, or potential breach, of the trust's provider licence. If it does, our initial response is likely to be to request further information from the trust, or other relevant organisations (eg, the Care Quality Commission).

As you will have noted above, we receive very few official notifications from the employment tribunals service that raised whistleblowing concerns.

2) If I am wrong and Monitor has conducted investigations as a result of ET findings of detriment against whistleblowers, I would be grateful to know how many such investigations have been carried out and whether it is possible for Monitor to provide copies of the investigation reports.

We did not open any regulatory investigations as a direct result of employment tribunal findings of detriment against whistleblowers in 13/14 or 14/15. This year (15/16) we opened an investigation into Derbyshire Healthcare Foundation Trust following an employment tribunal decision. In that case the tribunal found that the claimant was unfairly dismissed and that the claims of direct sex discrimination, harassment and victimisation should succeed. However it did not identify her as a whistleblower who suffered detriment.

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 Monitor of the issue or the decision.

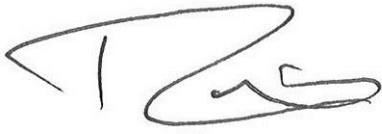
A senior member of Monitor's staff, who has not previously been involved with your request, will undertake that review. If you are dissatisfied with the outcome of any internal review conducted by Monitor, you may complain to the Information Commissioner for a decision on whether your request for information 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, Monitor, Wellington House, 133-155 Waterloo Road, London SE1 8UG or by email to foi@monitor.gov.uk.

Publication notice

Please note that this letter will shortly be published on our website. This is because information disclosed in accordance with the Freedom of Information Act 2000 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 be 'Tom Grimes', written in a cursive style.

Tom Grimes

Head of Enquiries, Complaints and Whistleblowing

