

23 March 2017

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██████████
By email
████████████████████

Dear ██████████

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

I refer to our letter of **16 March 2017** in which we responded to your email of **1 March 2017** requesting information under the FOI Act. It has come to our attention that NHS Improvement was made aware of the Court of Appeal judgment against North Essex Partnership University NHS Foundation Trust¹.

I therefore set out below our amended response to the questions previously raised.

Your request

Your request is set out in the annex to this letter.

Decision

NHS Improvement holds the information that you have requested and we have answered the questions relating to your request.

Question 1

Yes, NHS Improvement was aware of the Court of Appeal judgment against North Essex Partnership University NHS Foundation Trust (the “Trust”).

Question 2

NHS Improvement became aware of the judgment in April 2016.

¹ Bone v North Essex Partnership NHS Foundation Trust [2016] EWCA Civ 45 (01 February 2016)

Question 3

In April 2016, NHS Improvement was approached by the Trust for clarification and guidance as to whether a payment proposal to settle the case by way of mediation required Monitor or HM Treasury approval. We responded that it did (as it was an ‘extra-contractual payment’ – a category of Special Payments under Annex 4.13 of the Treasury’s “Managing Public Money”²) and submitted a business case to HM Treasury on behalf of the Trust. The payment was approved by the Treasury.

Question 4

In April 2016, NHS Improvement was informed that the Trust had spent £145,000 in legal fees.

Question 5

NHS Improvement was not consulted about the expenditure (and did not scrutinise, or approve it), however we were consulted on the settlement as noted in the answer to question 3 in accordance with Managing Public Money.

Question 6

Monitor’s regulatory regime for NHS foundation trusts contains Fit and Proper Person criteria for those applying for a provider licence under the Health and Social Care Act 2012. The criteria is set out at paragraph 2 of the Schedule to The National Health Service (Approval of Licensing Criteria) Order 2013 and consists of matters that require a factual check (for example, to establish whether they have been adjudged bankrupt or imprisoned for a criminal offence). Monitor’s Licensing Application Guidance which can be found [here](#) explains these provisions at section 4.

The Care Quality Commission (“CQC”), the independent regulator of health and adult social care in England, has its own Fit and Proper Person Test. That test is set out at regulation 5 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and is part of the CQC’s regulatory regime. The Secretary of State for Health has delegated his responsibilities for appointing the chairs and non-executive directors of NHS trusts to the TDA and NHS Improvement is required to ensure that those it appoints to these roles comply with the CQC Fit and Proper Person Test (and it has its own internal process for this). A further explanation of the TDA’s requirements can be found [here](#).

Question 7

The Trust is subject to regulatory action at present and we meet with them regularly. We discuss this and other similar matters with them to ensure appropriate steps have been taken.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

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.

Publication

Please note that this letter 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 'Ruth Forbes', with a stylized flourish at the end.

Ruth Forbes

Senior Delivery and Improvement Manager- Midlands and East

Annex

Your request:

“Dear Sir,

Action by NHS Improvement in response to Court of Appeal judgment against North Essex Partnership University NHS Foundation Trust

1) Please advise if NHS Improvement is aware of this January 2016 Court of Appeal judgment against North Essex Partnership University NHS Foundation Trust:

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2016/45.html&query=>

This judgment upheld an earlier judgment by the Employment Tribunal that there had been serious failings by trust management, characterised as “weak and lamentably ineffective” and “limp and ineffectual”. The Court of Appeal upheld a finding that the trust allowed harassment against an trade union activist because this harassment suited its own purpose:

“I consider that the employment tribunal were entitled to find, as they did, that in respect of four occasions the Trust subjected Mr Bone to detriment by their deliberate failure to act, and did so for the main purpose of preventing him or deterring him from taking part in the activities of the WEU [a trade union]”

2) If NHS Improvement is aware of this judgment, when did NHS Improvement (or its predecessor Monitor) become aware of this judgment?

3) What action, if any, did NHS Improvement or its predecessor body take upon learning of the judgment?

4) Is NHS Improvement aware of the cost to the public purse of this trusts litigation on this case in the Employment Tribunal, the Employment Appeal Tribunal and the Court of Appeal?

5) Was NHS Improvement (or its predecessor Monitor) consulted about this expenditure and did NHS Improvement (or its predecessor Monitor) scrutinise, agree and or approve any of this expenditure?

6) Please disclose NHS Improvement’s policy and any related guidance on Fit and Proper Persons.

7) If NHS Improvement was not aware of this Court of Appeal judgment, please advise what steps if any it will now take in response to the judgment.”