

16 March 2017

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██████████  
**By email**  
████████████████████

Dear ██████████

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

I refer to your email of **1 March 2017** in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority (the “TDA”) have been operating as an integrated organisation known as NHS Improvement.

**Your request**

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

**Decision**

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

**Question 1**

NHS Improvement was not aware of the Court of Appeal judgment against North Essex Partnership University NHS Foundation Trust from January 2016.

NHS Improvement is responsible for overseeing NHS foundation trusts, NHS trusts and independent providers of NHS services. We offer the support these providers need to give patients consistently safe, high quality and compassionate care within local health systems that are financially sustainable. By holding providers to account, and, where necessary, intervening, we help the NHS to meet its short-term challenges and secure its future.

In exercising its statutory duties, NHS Improvements looks into both finances and governance of NHS foundation trusts and NHS trusts. NHS Improvement does not get involved with individual employment tribunal matters.

## **Question 2**

Not applicable.

## **Question 3**

Not applicable.

## **Question 4**

No.

## **Question 5**

No. As noted above, NHS Improvement does not get involved with individual employment tribunal matters.

## **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**

We were not aware of this judgement. The Trust is subject to regulatory action at present and we meet with them regularly. We will discuss this matter with them and ensure appropriate steps have been taken.

## **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 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', written in a cursive style.

### **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 a 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.”*