

NHS Improvement FOI response to Clare Sardari 19 July 017

Dear Ms Sardari,

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

I refer to your email of **19 June 2017** in which you requested information under the FOI Act from NHS Improvement. 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 and the TDA.

Your request

You made the following request:

“On 3 May 2016 news broke that Paula Vasco-Knight had been suspended from her post as acting Chief Executive at St Georges, two weeks after taking up post, on grounds of financial allegations. She was later convicted of de-frauding the NHS and received a suspended prison sentence.

On the evening of 3 May 2016 Jim Mackey emailed Mike Richards CQC Chief Inspector and Simon Stevens NHS England chief executive about the Fit and Proper Persons Test at St. Georges.

Mike Richards replied on 18 May 2016 stating that he would be happy to discuss the matters raised by Jim Mackey’s email.

On 18 May 2016 a senior advisor from the NHS Improvement Executive Office asked to meet with Mike Richards.

Please disclose:

- 1) Did a meeting take place between Mike Richards and NHS Improvement as suggested, and if not what was the reason for this? If a meeting did take place, please indicate when it took place and what records and actions resulted from the meeting. Please disclose the relevant meeting records and action plan.*
- 2) Please disclose the contents of the above mentioned email from Jim Mackey of 3 May 2016.*

3) *Please disclose all correspondence between NHS Improvement and NHS England about the Fit and Proper Person Test at St Georges in relation to Paula Vasco-Knight*

4) *Please advise what actions NHS Improvement has taken in response to learning of:*

- *Paula Vasco-Knight's suspension by St Georges in May 2016*
 - *Paula Vasco-Knight's conviction for fraud in January 2017*
- or in implementing any action plan arising from the above mentioned meeting and or other liaison with the CQC on this matter."*

Decision

NHS Improvement holds some of the information that you have requested. NHS Improvement has decided to withhold some of the information that it holds on the basis of the applicability of the exemptions in section 36 of the FOI Act as explained in detail below.

Questions 1

NHS Improvement's Head of Private Office met with Sir Mike Richards on 26 May 2016 at the offices of the Care Quality Commission ("CQC") in London to discuss the fit and proper persons test. NHS Improvement does not hold a record of the meeting with Sir Mike Richards on 26 May 2016 and has decided to withhold the follow up email sent after the meeting under section 36 of the FOI, as set out below.

Questions 2 and 3

The information requested under questions 2 and 3 of your request has been withheld, as explained in detail below.

Section 36 – prejudice to effective conduct of public affairs

We consider that the exemptions in section 36(2)(b)(ii) and 36(2)(c) of the FOI Act are engaged in relation to the correspondence between NHS Improvement and the CQC and NHS England.

The exemptions are engaged as NHS Improvement's qualified person, its Chief Executive (Jim Mackey), is of the opinion that disclosure of this information would inhibit the free and frank exchange of views for the purposes of deliberation, and would be likely to otherwise prejudice the conduct of public affairs.

Section 36(2)(b)(ii) free and frank exchange of views

The correspondence in question represents senior executives exchanging views about the investigations against Paula Vasco-Knight and the fit and proper person test. The correspondence was intended to prompt discussion and learning from the case of Ms Vasco-Knight, and how this situation could be avoided in the future.

Sharing information between bodies ensures that we are able to respond to situations effectively and efficiently. In order to carry out their functions, the officials of NHS Improvement, NHS England and the CQC must be able to exchange information freely, without concern that the detail of that information exchange will be disclosed inappropriately. If the information were published, it would be likely to restrict the organisations' willingness to share and discuss information, due to the possibility that this information may be made public. That would have an adverse impact on the ability of NHS Improvement, NHS England and the CQC to liaise effectively on leadership and operational issues at NHS trusts and foundation trusts and would inhibit the free flow of information.

Section 36(2)(c) other prejudice

This exemption is engaged as disclosure of correspondence on how to prevent similar conduct in the NHS as that in the Vasco-Knight case may damage the relationship of trust and confidence between NHS Improvement and other national bodies involved, as well as inhibit the free flow of information. As such, disclosure of the information would be likely to otherwise prejudice the conduct of public affairs.

Public interest test

Section 36 is a qualified exemption and therefore requires that a public interest test be carried out to determine whether the exemption should be maintained. We recognise that there is a general public interest in accountability and transparency in relation to public decision-making. We also recognise that in relation to cases of fraud or illegality in the NHS there is a public interest in transparency, particularly in order to understand and aid understanding of the process by which information is detected and how allegations are pursued. We have however weighed these considerations against the public interest considerations in favour of withholding the information, as set out below.

There is a strong public interest in NHS Improvement, NHS England and the CQC being able to hold free and frank discussions and exchange information without concern that information will be disclosed inappropriately. There is a public interest in ensuring those organisations are able to have the open and confidential discussions necessary to ensure effective decision making.

Taking into account these considerations, our decision is that, the public interest in maintaining the exemption outweighs the public interest in disclosing this information. NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.

Question 4

NHS Improvement has decided to treat question 4 of your request as an enquiry but for ease of reference we have set out our response below.

As part of its role in overseeing St George's University Hospitals NHS Foundation Trust, NHS Improvement assured itself that the Trust had taken the appropriate action in response to the allegations against Paula Vasco-Knight and her subsequent conviction for fraud in January 2017.

The fit and proper persons requirement under Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014) continues to be in place and it is employers' responsibility to assure themselves that candidates are fit and proper persons.

NHSI have no direct involvement in the completion of the fit and proper person test for executive staff by NHS Trusts. Owing to the confidential nature of the content within the FPPT, we rely on a self-assessment by the NHS Trusts that this process has been completed. NHS Trusts are asked to complete a template notifying NHSI of the outcome of the selection process and within this template includes a box for the trust to confirm the FPPT has been completed.

See link here to NHSI Guidance on Executive Appointments:

<https://improvement.nhs.uk/resources/supporting-providers-executive-hr-issues/>

The CQC is currently proposing changes to the way in which it will carry out its role in relation to the fit and proper persons requirement (Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014), including the way CQC will share information with providers when it receives information of concern from a third party. CQC will also provide additional guidance for providers on interpreting 'serious misconduct and serious mismanagement. The detail of this is set out in the consultation which was published in early June and which is available on CQC's website. <http://www.cqc.org.uk/get-involved/consultations/our-next-phase-regulation-consultation-2>

When CQC receives concerns from the public or health and social care staff about the fitness of directors, the current approach is to assess the information and to ask the provider to consider and respond only to the information that CQC believe is relevant. In future, CQC proposes to continue to notify providers of all concerns relating to their directors and to ask them to assess all the information it receives. CQC will ask the person providing the information for their consent to do this, and will seek to protect their anonymity if necessary. In some exceptional cases, CQC will need to progress without consent when it is concerned about the potential risk to people using services. CQC will also inform the director to whom the case refers, but will not ask for their consent and will not disclose the identity of the person who provided the information.

When CQC share information of concern with a provider it will ask them to detail the steps they have taken to assure themselves of the fitness of the director. CQC will also indicate what type of response it will expect from them after it notifies them about the concern. This response will need to include assurance from a provider that: NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.

- they have used a fair and proportionate process to establish the primary facts of any matter giving rise to a concern about the director (the investigation stage)
- having ascertained the primary facts, they have assessed whether the facts establish that the director falls within any of the categories in Regulation 5(3) (the assessment stage)

If the response does not satisfy CQC that the provider has followed a robust process and reached a reasonable decision, CQC will either, ask the provider for further information, carry out a follow-up inspection, or potentially take regulatory action. If a provider has demonstrated that they applied the appropriate checks but CQC have concerns that the decision it has made about the fitness of a director is a decision that no reasonable person would have made, CQC will apply its Enforcement Policy to decide if there has been a breach of the regulations.

Regulation 5(3)(d) states that “the individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England would be a regulated activity”.

Providers have asked CQC to clarify what is meant by “serious mismanagement” and “serious misconduct”. The new guidance set out in the consultation is intended to help providers interpret and implement the regulation.

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 NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National

Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.

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,

Jonathan Brown

Head of Private Office