

23 December 2015

Dr Alexander Minh

By email: hpmalexander@gmail.com

Dear Dr Minh,

I refer to your email of 25 November to the Monitor FOI Team in relation to the application of the 'Fit and Proper Person' test, in particular to the appointment of Ms Vasco-Knight.

Your email asks a number of questions which are set out below with our responses. Please note that our responses must be read in the context of the following two relevant and important points .

First, we have understood from the references to the Fit and Proper Person test in your email, that all of those references other than the only one to Monitor's Fit and Proper Person test in question 5, are to the CQC test for registered providers. That test is set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 at regulation 5 (reproduced at Annex 1 to this letter) and is part of the CQC's regulatory regime. It places an obligation in relation to this test on providers. Monitor's regulatory regime contains separate Fit and Proper Person criteria for those applying for or holding a Monitor NHS provider licence. That test, reproduced at Annex 2 of this letter, is not the same as the CQC's test and consists of matters that require a factual check only (for example, to establish whether they have been adjudged bankrupt or imprisoned for a criminal offence), not an assessment of an individual's character and fitness to act as a director.

Secondly, following on from the above, Monitor does not carry out the CQC Fit and Proper Person test on behalf of providers and recommend individuals as having passed it. It maintains a pool of candidates that may be suitable for interim roles ("Monitor interim pool"), from which it provides details to foundation trusts of individuals relevant to particular roles. Those providers need to ensure the suitability of individuals they then go on to appoint to any roles, including carrying out the CQC Fit and Proper Person test as required by the terms of their CQC registration.

1) Would Monitor would please confirm that it recommended Ms Vasco-Knight to St. George's NHS Foundation Trust as a Fit and Proper Person to be employed at executive director level.

Not applicable as explained in the two introductory points set out above.

2) When was Ms Vasco-Knight selected by Monitor to become a member of its interim pool?

Ms Vasco-Knight submitted her application for the Monitor interim pool on 16 April 2015. Monitor subsequently undertook its validation process to obtain references and verified case studies, and accepted and confirmed Ms Vasco-Knight's membership, over the course of May 2015.

3) What process did Monitor implement to assure itself that Ms Vasco-Knight was a Fit and Proper Person to be a Board member again, in the light of the Employment Tribunal's findings?

Not applicable as explained in the two introductory points set out above.

Please advise specifically what elements of assurance did Monitor relied upon in making such a determination and

(i) whether this included formal FPP assessment by Monitor's staff and or by third parties (please advise which third parties).

Not applicable as explained above.

(ii) any independent reports (please advise what organisation(s) undertook the report(s), when the report(s) were undertaken and who paid for these reports), please provide a copy of any such independent reports,

Not applicable as explained above.

(iii) please advise whether Monitor relied on references from Ms Vasco-Knight's recent employer East Lancashire Hospitals NHS Trust.

Not applicable as explained above.

(iv) Please advise if Monitor in any way facilitated Ms Vasco-Knight's interim appointment at East Lancashire Hospital NHS Trust.

Monitor was not involved with Ms Vasco-Knight's appointment at East Lancashire NHS Trust.

4) Please advise whether Monitor incurred any costs in ascertaining whether Ms Vasco-Knight was a Fit and Proper Person, and if so, what these were. Please specify the amount spent by Monitor.

Not applicable as explained above.

Please also advise:

5) Since February 2013, has Monitor has intervened or taken regulatory action against any regulated bodies because they have not met the requirements of the provider licence on grounds that a board member did not meet Monitor's Fit and Proper Person criteria? If so, please give numbers of such instances.

Monitor has not taken regulatory action in relation to a provider for failing to meet its Fit and Proper Person criteria.

6) Has Monitor has adjusted its process and criteria for determining whether a director is a Fit and Proper Person, to take into account the principles and recommendations of the Freedom to Speak Up Review report by Sir Robert Francis? If it has not done so, does Monitor have plans to adjust its process and criteria, and to seek any changes in legislation that may be required to achieve this?"

As explained above, the CQC is responsible for the Fit and Proper Person test reproduced in Annex 1 as part of its regulatory framework. There was no specific recommendation for Monitor relating to the Fit and Proper Person test in the Freedom to Speak Up Review. We have nevertheless considered the impact of this on our regulatory regime. The CQC has responsibility for enforcing the Fit and Proper Person test as part of its regulatory framework. Our Risk Assessment Framework, the main document that sets out Monitor's regulatory approach in relation to its NHS provider licence, provides that Monitor can (and indeed does) take into account CQC judgments in its regulation. It specifies that 'We will also consider whether CQC judgements in other relevant areas, such as the fit and proper persons requirements and the duty of candour contained in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, could be relevant to NHS foundation trusts complying with their governance condition.'

Decisions on any changes to legislation would be for the Department of Health rather than Monitor.

Yours faithfully



Mark Turner

Regional Director, London Region

Monitor