

07 April 2017 07/04/2017

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By email

Dear [REDACTED]

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

I refer to your email of 21 February 2017 in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS TDA are operating as an integrated organisation known as NHS Improvement. The functions relevant to your request are those of Monitor, and so for the purposes of this decision, NHS Improvement means Monitor.

Your request

Your email related to your complaint about the pricing of adult hearing services by Shropshire Clinical Commissioning Group (CCG) and you made the following request:

Questions

- 1- *Please provide a copy of Monitor’s analysis of Shropshire CCG’s pricing of adult hearing services. Please include details of how this was consistent with pricing rules in that year (i.e. not pricing rules/guidance published in late 2016).*
- 2- *If the response to question one does not include it, please explain how quality was defined by Monitor when assessing the impact of locally agreed prices?*
- 3- *Was Monitor aware that there was more than one contract in place for adult hearing services? If so, did Monitor assess the exclusion/inclusion criteria and for overlap and whether this was against its own and NHS England guidance for AQP?*
- 4- *If answer to number three is yes, did Monitor analyse what impact this might have on local services and CCG duties?*
- 5- *Did the Procurement, Patient Choice and Competition team review the local CCG’s process/decision based on information obtained by the pricing team?*
- 6- *Did the pricing team and/or Procurement, Patient Choice and Competition team contact the Trust to establish how it would deliver sustainable services at a fraction of its reported cost? If so what was the response?*

Decision

NHS Improvement holds 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 exemption in section 31 of the FOI Act, as explained in detail below.

Information withheld – investigation report

In question 1 you ask for our analysis of the CCG's pricing of adult hearing services. Please note that we did not carry out a detailed analysis of how the CCG calculated prices. Our consideration was limited to assessing the evidence as to whether the CCG had, when setting its prices, complied with the applicable national tariff rules. As part of our work, a report on our informal investigation and assessment was compiled. We are however withholding the content of that report on the basis of the exemption in section 31 of the FOI Act (law enforcement).

Section 31(2)(c) of the FOI Act exempts from disclosure information that would or would be likely to prejudice the exercise by NHS Improvement of its functions for the purposes of ascertaining whether circumstances exist which would require regulatory action. In the present case, in considering the CCG's pricing, NHS Improvement was exercising its functions for the purposes of determining whether there had been a breach of the national tariff rules which would justify regulatory action against the CCG is justified – namely directions under section 117(4) or (5) of the Health and Social Care Act 2012.

In order to carry out those functions effectively, NHS Improvement must be able to draft and circulate detailed internal reports, containing candid advice and assessment as to whether there had been any failure to comply and the extent of any such failure, without being concerned that such reports will be made public. Disclosure of such internal advice and assessment would reduce the detail, frankness and candour with which advice and assessment was communicated. In addition, such reports contain advice provided in confidence by those bodies being investigated, or third parties. If such information were to be disclosed, this would discourage such parties from providing full and frank disclosure, which is necessary to enable NHS Improvement to investigate complaints and consider tariff compliance effectively. The effect of disclosure would therefore be to undermine the effectiveness of the assessment carried out by NHS Improvement, and so prejudice the exercise of our regulatory enforcement functions.

Section 31 is subject to a public interest test. We have considered whether, in all the circumstances of the case, the public interest in maintaining the exemption from disclosure outweighs the public interest in disclosing the information, and decided that it does.

We have considered the general public interest in disclosing this information on the grounds of accountability and transparency. We also recognise the public interest in disclosing information that fosters transparency, and enables the public to hold CCGs and NHS Improvement to account, in particular in relation to how CCGs use public funds to purchase health services, such as adult hearing services. However, we have also considered the strong public interest in enabling NHS Improvement to regulate and enforce the national

tariff's pricing rules efficiently and effectively. This includes being able to conduct and circulate detailed and candid assessments of the evidence as to whether a CCG has complied with the national tariff rules, and receiving information from CCGs and other parties to enable such assessment to be carried out. We also considered the extent to which the information provided below in this letter addresses the public interest in transparency and accountability in relation our actions in relation to Shropshire CCG's decisions on adult hearing services.

In these circumstances, we are satisfied that the public interest in disclosure is outweighed by the public interest in maintaining the exemption in section 31 in relation to NHS Improvement regulatory enforcement functions.

Information disclosed in response to your questions

Although we are withholding our internal report, we have the following responses to your questions.

1. *Please provide a copy of Monitor's analysis of Shropshire CCG's pricing of adult hearing services. Please include details of how this was consistent with pricing rules in that year (i.e. not pricing rules/guidance published in late 2016).*

As explained above, we are withholding our internal assessment report. However, we can confirm that we considered the CCG's process for setting prices and evaluating services, with a view to establishing the extent of any evidence that the CCG had failed to comply with the rules and principles for locally determined prices, as set out in section 7.1 and 7.4 of the National Tariff 2014/15, and whether a formal investigation was appropriate. We also considered the Prioritisation Framework set out in our [Enforcement Guidance](#). Our conclusion was that no further action was appropriate.

2. *If the response to question one does not include it, please explain how quality was defined by Monitor when assessing the impact of locally agreed prices?*

When assessing compliance with the requirement to apply the principle that local payment approaches must be in the best interests of patients when agreeing local prices, we consider whether and how commissioners have considered quality. In particular, we examine whether providers and commissioners have considered the relevant factors and applied a proper process. We would expect providers and commissioners to have:

- a. obtained sufficient information;
- b. used appropriately qualified/experienced individuals to assess the information; and
- c. followed an appropriate process to arrive at a conclusion.

3. *Was Monitor aware that there was more than one contract in place for adult hearing services? If so, did Monitor assess the exclusion/inclusion criteria and for overlap and whether this was against its own and NHS England guidance for AQP?*

Yes, we were aware. NHS Improvement was investigating the specific case in line with the National Tariff 2014/15. NHS England guidance for AQP was not in scope of our review.

4. *If answer to number three is yes, did Monitor analyse what impact this might have on local services and CCG duties?*

No. We looked at compliance with the locally determined pricing principles in the National Tariff 14/15.

5. *Did the Procurement, Patient Choice and Competition team review the local CCG's process/decision based on information obtained by the pricing team?*

Yes.

6. *Did the pricing team and/or Procurement, Patient Choice and Competition team contact the Trust to establish how it would deliver sustainable services at a fraction of its reported cost? If so what was the response?*

No.

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 'Igor Popovic', with a long horizontal flourish extending to the right.

Igor Popovic
Pricing Regulation Director