

28 June 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 **31 May 2017** in which you requested information under the FOI Act from NHS Improvement. Since 1 April 2016, Monitor and the NHS Trust Development Authority (TDA) 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 [the numbering has been inserted by NHS Improvement for ease of reference]:

*“1. Please may I have a copy of the RTT report on the investigation into Kettering General Hospital Trust.*

*2. I would also like copies of all correspondence relating to the RTT between NHSI and the trust*

*3. and background paperwork and content of interviews with the trust.*

*For clarity, I have included a copy of the minutes from the Council of Governors. It refers to the report being produced around June 2016.*

*(Kettering General Hospital Trust Council of Governors minutes June 2016  
RTT Data*

*Mr Foster reported that the formal investigation work surrounding RTT data had now been undertaken by NHSI with the validation of records. NHSI had received an immense amount of paperwork and had recently conducted interviews with staff involved in waiting list management including the Executive team. NHSI would next be producing a report based on their investigation, which, once presented to their own internal scrutiny committee, would be released back to the Trust.*

*It was noted that although the investigation was over, NHSI were likely to add legal undertakings to the Trust about managing risk in IT data management and risk reporting.)”*

## **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 31 and 40 of the FOI Act, as explained in detail below.

### **Question One**

In answer to question one, NHS Improvement did not produce a final report regarding its investigation into RTT at Kettering General Hospital NHS Foundation Trust which was released back to the Trust. Following the investigation, NHS Improvement staff produced a paper which was presented to NHS Improvement’s own internal committee. This paper was not released back to the Trust.

We have decided to withhold this paper on the basis of the exemption in section 31 of the FOI Act.

### **Question Two**

NHS Improvement holds the information requested.

NHS Improvement has decided to release two documents it holds which are within the scope of this request. The documents are attached to this letter. The documents contain minor redactions on the basis of the exemption in section 40 of the FOI Act.

We have decided to withhold the remaining information we hold within the scope of this question on the basis of the exemption in section 31 of the FOI Act.

### **Question Three**

NHS Improvement holds some of the information requested.

NHS Improvement has decided to withhold the information we hold within the scope of this question on the basis of the exemption in section 31 of the FOI Act.

## **Section 31 (law enforcement)**

NHS Improvement considers that the withheld information is exempt from disclosure under section 31(1)(g) of the FOI Act. This section provides that information is exempt if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in section 31(2).

NHS Improvement considers that section 31(2)(c) is engaged and that disclosure of the information in question would be likely to prejudice the exercise by NHS Improvement of its functions for the purpose of ascertaining whether circumstances exist which would justify regulatory action in pursuance of an enactment. NHS Improvement considers that releasing the investigation working documents and internal papers would be likely to prejudice its relationship with providers and therefore NHS Improvement's regulatory role in the performance management of the service.

NHS Improvement relies on full and frank information from trusts in order to carry out its functions effectively. This is particularly the case in regards to carrying out NHS Improvement's investigatory functions, which require the full cooperation of the relevant trust and the provision of confidential and commercially sensitive information, in order to be effective. NHS Improvement relies on having a safe space in which providers are freely able to share sensitive and confidential information in the knowledge that the information, or any analysis derived directly from it, will not be disclosed more widely. To disclose that information more widely is likely to have a detrimental impact on the quality and content of exchanges between NHS Improvement and the bodies it collectively regulates and its ability to make effective and fully informed regulatory decisions.

#### 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 information, and decided that it does.

We have considered the public interest in disclosing this information on the grounds of accountability and transparency, both in relation to how NHS Improvement carries out its role and in relation to quality of care provided by NHS foundation trusts. But we consider that the strong public interest in NHS Improvement being able to oversee and regulate trusts effectively, and the need to ensure that trusts are able to share confidential or sensitive information with NHS Improvement without concern that such information will enter the public domain, outweigh the public interest in disclosure of the information being withheld.

As an additional consideration, regulatory action taken by NHS Improvement in response to any investigatory work it undertakes is published on our website. The regulatory action regarding Kettering General Hospital NHS Foundation Trust can be found here: <https://www.gov.uk/government/groups/kettering-general-hospital-nhs-foundation-trust>.

#### **Section 40 (personal information)**

NHS Improvement considers that some of the information is exempt from disclosure under section 40(2) of the FOI Act on the grounds that it amounts to personal data and that the condition set out in section 40(3)(a)(i) is satisfied namely that disclosure would amount to a breach in personal data protection principles. This is an absolute exemption and consideration of the public interest test is not required. The redacted information contains personal data of staff whom are neither senior staff nor staff in public-facing roles, and they would have a reasonable expectation that their personal information would not be disclosed.

Please note that NHS foundation trusts, NHS trusts, and the Department of Health are subject to the FOI Act and as such it is open to you to seek information directly from them. They will need to consider whether information can properly be provided by them in response to any such requests within the terms of the FOI Act.

### **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 and the attached information 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 'Jeff Worrall', written in a cursive style.

**Jeff Worrall**

Delivery and Improvement Director

Graham Foster  
Chair  
Kettering General Hospital NHS Foundation Trust  
Rothwell Road  
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16 May 2016

Dear Graham

**Kettering General Hospital NHS Foundation Trust (“the Trust”): Notification of Decision to Open a Formal Investigation into the Trust’s Compliance with its Licence**

1. As we discussed in our Progress Review Meeting on 25 April 2016, I am writing to inform you of NHS Improvement’s decision to open a formal investigation into the Trust’s compliance with its licence. This investigation has been opened due to the following triggers:
  - 1.1 The identification of c. 22,000 incomplete +52 week patient pathways from a total of c. 1.3 million total incomplete patient pathways (subject to validation), previously unknown to the Trust and the likelihood that, as a result, moderate or significant patient harm may have been suffered.
  - 1.2 The issues identified within a number of external reports commissioned by the Trust and CCG which give rise to serious concerns around RTT data governance, reporting and data quality.
  - 1.3 The Trust’s decision to suspend Referral to Time (RTT) and diagnostic reporting from December 2015, following concerns over the quality and reliability of its own RTT data; and
  - 1.4 Non delivery of the (RTT) target since Q3 2014/15 with no agreed RTT recovery plan in place.
2. The purpose of this letter is to:
  - 2.1 Set out NHS Improvement’s concerns in relation to the Trust’s performance; and
  - 2.2 Confirm the process that NHS Improvement will adopt in assessing the extent of these concerns, whether they amount to a breach of the Trust’s licence and any regulatory action that may be appropriate as a consequence.

3. I would be grateful if you would ensure that this letter is shared with your Board of Directors and Council of Governors.

4. **NHS Improvement's Concerns**

- 4.1 Why the Trust Board and its sub committees did not identify the nature and scale of the RTT issues and the implications that these may have had in relation to patient harm and quality of care, over the period concerned?
- 4.2 That there are underlying data governance concerns which have led to the trust Board's decision to suspend RTT elective and diagnostic reporting from December 2015.
- 4.3 The overly simplistic criteria used to exclude patients from non admitted (in excess of 36 weeks) and admitted (in excess of 52 weeks) pathways, as referred to within the cpa consulting report dated March 2016, and that patient harm may have been suffered as a result.
- 4.4 That the current number of real +52 week waiters remains unknown at this stage, and as such moderate or significant patient harm may have occurred as a result of the inappropriate management of RTT patient pathways.
- 4.5 A number of external reports commissioned in relation to RTT raise a number of concerns, specifically the failure of the Trust Board to identify the issues in reporting and data quality in a timely way.
- 4.6 The capacity and capability of the Trust to effectively deliver improvement on multiple concerns simultaneously including RTT, the cyber incident, emergency care performance and financial improvement.

5. **NHS Improvement's Process to Determine what, if any, Regulatory Action is Appropriate**

- 5.1 NHS Improvement considers all relevant factors in assessing what, if any, regulatory action is appropriate in relation to its concerns, including:
  - Information gathered from the Trust and relevant third parties;
  - Any Trust Board assurance that the Trust is able to continue to meet the requirements of its licence;
  - Monitor's published guidance relating to the requirements of the licence; and
  - The factors set out in Monitor's Enforcement Guidance.
- 5.2 We may also seek further information from the Trust and will consider any relevant information from third parties, such as the Care Quality Commission and the Trust's commissioners.

## 6. Investigation Process

- 6.1 As part of NHS Improvement's investigation into the concerns outlined in section 4, we intend to cover the following points through completion of a desktop review and site visit to the Trust:
- 6.1.1.1 Did the Trust Board take appropriate action, both historically and more recently, in relation to risk identification and escalation with regard to the RTT and diagnostic data quality and reporting issues?  
Consideration being given to:
  - 6.1.1.2 What are the internal reporting arrangements to sub committees and the main Trust board on RTT performance and data quality issues?
  - 6.1.1.3 Whether the Board oversight and challenge on RTT reports, action plans and supporting information is effective?
  - 6.1.1.4 What actions have been taken by the Board to obtain assurance over RTT reporting, including risk identification and escalation, data capture and reporting and issue resolution?; and
  - 6.1.1.5 Whether the Trust Board and/or Monitor had been misled over the nature of RTT issues, performance reporting and progress reportedly made against recovery plans?
- 6.1.2 We will consider whether the Trust has a robust and deliverable action plan in place to address the RTT issues identified by the Cymbio, NHS IMAS team and CPA reports and the concerns raised at the assurance meeting chaired by NHS Improvement on 30 March 2016; in particular whether the plan:
- 6.1.2.1 Clearly sets out the key milestones and interdependencies necessary for recovery, and whether these are agreed with key stakeholders and quality reviewed by external experts.
  - 6.1.2.2 Supports a return to national reporting within the timescales agreed with NHS Improvement.
  - 6.1.2.3 Incorporates the recommendations from Cymbio, CPA Consulting and IMAS reports and NHS Improvement's concerns.
  - 6.1.2.4 Supports a timely return to sustained future compliance with the RTT target.
  - 6.1.2.5 Includes a summary dashboard with KPIs and clear outcomes to track progress against the action plan.
  - 6.1.2.6 Clearly sets out the steps to be taken to establish whether patient harm has occurred and address the outcomes of any clinical harm reviews; and
  - 6.1.2.7 Has the Trust sufficient leadership, in respect of capacity and capability?
- 6.1.3 We will also review whether the Trust has appropriate structures and processes in place to assess clinical harm arising from the weaknesses in the RTT reporting as identified through the Cymbio, CPA and NHS IMAS reports? We shall consider:
- 6.1.3.1 What is the process and methodology for identifying the full cohort of patients to be included in the clinical harm review?
  - 6.1.3.2 How has the Trust agreed the criteria regarding the level of harm sustained by a patient as part of a clinical harm review?

- 6.1.3.3 How are the Board to be informed of the process and outcome of the harm reviews?
- 6.1.3.4 What external oversight has the trust sought to provide independent assurance?
- 6.2 In order for us to consider fully and carefully all relevant information as part of our investigation, please provide us with the information set out in the appendix to this letter, to reach us by 25 May 2016.
- 6.3 Once we have had a chance to review the documentation requested in 6.2 above, we would like to arrange a site visit to the Trust offices to gain any additional assurances and hold discussions with the relevant Trust personnel. We will contact you to arrange a time and date for this. This site visit will provide an opportunity for the Trust to explain and provide evidence as to the nature and strength of its governance arrangements and its consideration of the concerns set out in section 4 of this letter.
- 6.4 Once we have had an opportunity to consider the information received in 6.2 and 6.3 above and any relevant information received from third parties, if it is felt that there would be benefit in holding a further meeting with the Trust Board, we will contact you to arrange a time and date for this. It is most likely that this meeting will form part of the Progress Review Meetings (PRMs) that take place monthly with the next meeting scheduled for 8 June 2016.
- 6.5 Any meetings with members of the Trust Board that take place will form part of the evidence NHS Improvement will take into account in determining what, if any, regulatory action is appropriate. They will also form part of the evidence for any formal enforcement action that may be considered appropriate, in line with our Enforcement Guidance.
- 6.6 Meetings will be chaired by NHS Improvement and attended by members of our investigations project team for the Trust; a representative from NHS Improvement's legal team will also attend, if required. We expect attendees from the Trust to include the RTT Project Lead and any other personnel having responsibility for progressing a resolution of the issue, along with other members of Trust Board that are normally in attendance at the PRMs.
- 6.7 Should formal enforcement action be considered as a result of our investigation, the Trust will be afforded an opportunity for further engagement, in line with our Enforcement Guidance.

## 7. **Next Steps**

- 7.1 The Trust's governance rating will remain unchanged from Red as it is already in breach of its license conditions. Further guidance on how NHS Improvement assigns a governance rating to Trusts is set out in paragraph



4.2 of the Risk Assessment Framework.

7.2 NHS Improvement will be issuing a press release on Tuesday 17 May 2016 announcing that we have opened a formal investigation into the Trust's compliance with its licence.

8. If you have any questions in relation to the matters set out in this letter, please contact your relationship manager, [REDACTED] on [REDACTED] or by email at [REDACTED]

Yours sincerely



Frances Shattock  
**Regional Director**

cc: David Sissling, CEO

## **Appendix – Further Information Required From the Trust**

The Investigation work will require:

Interviews with a number of key trust staff, Finance Director, Deputy Chief Operating Officer, Head of Information and Reporting, NEDs and executive Board members during the proposed site visit to the Trust.

A review of the following documentation prior to the proposed site visit:

- RTT reports not received as identified within the CPA report (CEAC Audit Report – Waiting Lists March 14; Nottingham Information Services Review).
- Board and Trust Management Committee and other sub committee minutes and RTT papers / and performance reports applicable over the period from March 14 to December 15.
- Divisional and trust risk registers
- Trust's final RTT recovery plan
- Details of the process and methodology used by the Trust to identify the patient cohorts to be included in the clinical harm review
- Details and definitions of the criteria agreed with the CCG regarding the level of harm sustained by a patient as part of a clinical harm review
- Trust actions taken to manage/mitigate patient harm
- Any papers/analysis relating to potential patient harm arising from the RTT issues
- Trust committee structure and lines of accountability in relation to RTT performance
- Internal audit report on RTT
- Papers of elective divisional performance group from March 14 to December 15
- Any other information the Trust deems relevant to the scope of the investigation

Our ref: DS/SLN/26052016

26<sup>th</sup> May 2016

Frances Shattock  
Regional Director  
NHS Improvement  
Wellington House  
133 – 155 Waterloo Road  
LONDON  
SE1 8UG

Dear Frances

**Kettering General Hospital NHS Foundation Trust: Notification of Decision to Open a Formal Investigation into the Trust's Compliance with its Licence**

As requested in your letter dated 16<sup>th</sup> May 2016, please find attached the evidence that you require.

If you require any further points of clarity or further information, please do not hesitate to contact Rebecca Brown, Chief Operating Officer – direct line [REDACTED]

I am aware that you are provisionally looking at the 6<sup>th</sup>/7<sup>th</sup> June for the proposed site visit. If you could confirm these dates as soon as possible, we will arrange the days accordingly.

Yours sincerely



David Sissling  
**CHIEF EXECUTIVE**

**Encs.**

cc: Mr G Foster, Chairman, KGH  
Mrs R Brown, Chief Operating Officer  
[REDACTED]