

26 July 2017

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London SE1 8UG

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E: nhsi.enquiries@nhs.net
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By email [REDACTED]

Dear [REDACTED]

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

I refer to your email of **29 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 “NHS TDA” are operating as an integrated organisation known as NHS Improvement. For the purposes of this decision, NHS Improvement means Monitor and the NHS TDA.

Your request

You made the following request:

“1. Any internal policy, process or other document that sets out the decision making process for segmentation of Trusts under the SOF

A list of metrics and any other information considered in the process

The governance process I.e. Which post holder or committee approves the segmentation

2. Documentation regarding the segmentation decision for each Trust”

We have added the numbering for ease of reference.

Decision

NHS Improvement holds the information that you have requested and has decided to release some of this information. NHS Improvement has decided to withhold the balance of the information it holds on the basis of the application of the exemption in section 12 of the FOI Act, as explained in more detail below.

Question 1

You requested any internal policy, process or other document that sets out the decision making process for the segmentation of “Trusts”. NHS Improvement published the Single

Oversight Framework (“SOF”) on 30 September 2016. This “internal” information you have requested, setting out the policy and process, is found in section 4 of NHS Improvement’s internal guidance on the SOF. This section of the internal guidance is attached to this letter.

As explained in the guidance, support for providers is determined on the basis of quality, finance and use of resources, operational performance, strategic change and leadership and improvement capability. Decisions on segmentation, from maximum autonomy in segment 1 to mandated support and special measures in segments 3 and 4 respectively, are made depending on the seriousness of the provider’s issues. Please refer to the attached guidance for further information.

Question 2

Documents regarding segmentation decisions have been withheld on the basis of the exemption in section 12 of the FOI Act, as explained below.

Section 12 - costs of compliance

Under section 12(1) of the FOI Act NHS Improvement is not required to comply with any request that potentially exceeds the relevant cost limit. The relevant cost limit is £450: see the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. This equates to a period of approximately 18 hours in which to locate, retrieve and extract the information that you have requested.

In accordance with its policy NHS Improvement has assessed all NHS trusts and NHS foundation trusts for the purposes of segmentation under the SOF. Segmentation decisions are subject to ongoing monitoring and may change from time to time. In total, there are 234 providers in England. As set out above and in the attached guidance segmentation decisions are based on all the available evidence. To comply with the second part of your request would require NHS Improvement to gather and extract a significant volume of information generated without reference to any specific time frame. In our view compliance with your request would exceed the cost limit and we have therefore applied the exemption in section 12 to this part of your request.

Advice and Assistance provided under section 16 of the FOI Act

NHS Improvement intends to publish a summary of its segmentation decisions for all providers in the autumn of 2017. At this stage there is no precise publication date but you would be welcome to contact us via our enquiries mailbox (enquiries@improvement.nhs.uk) in the autumn for further details.

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 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,

NHS Improvement

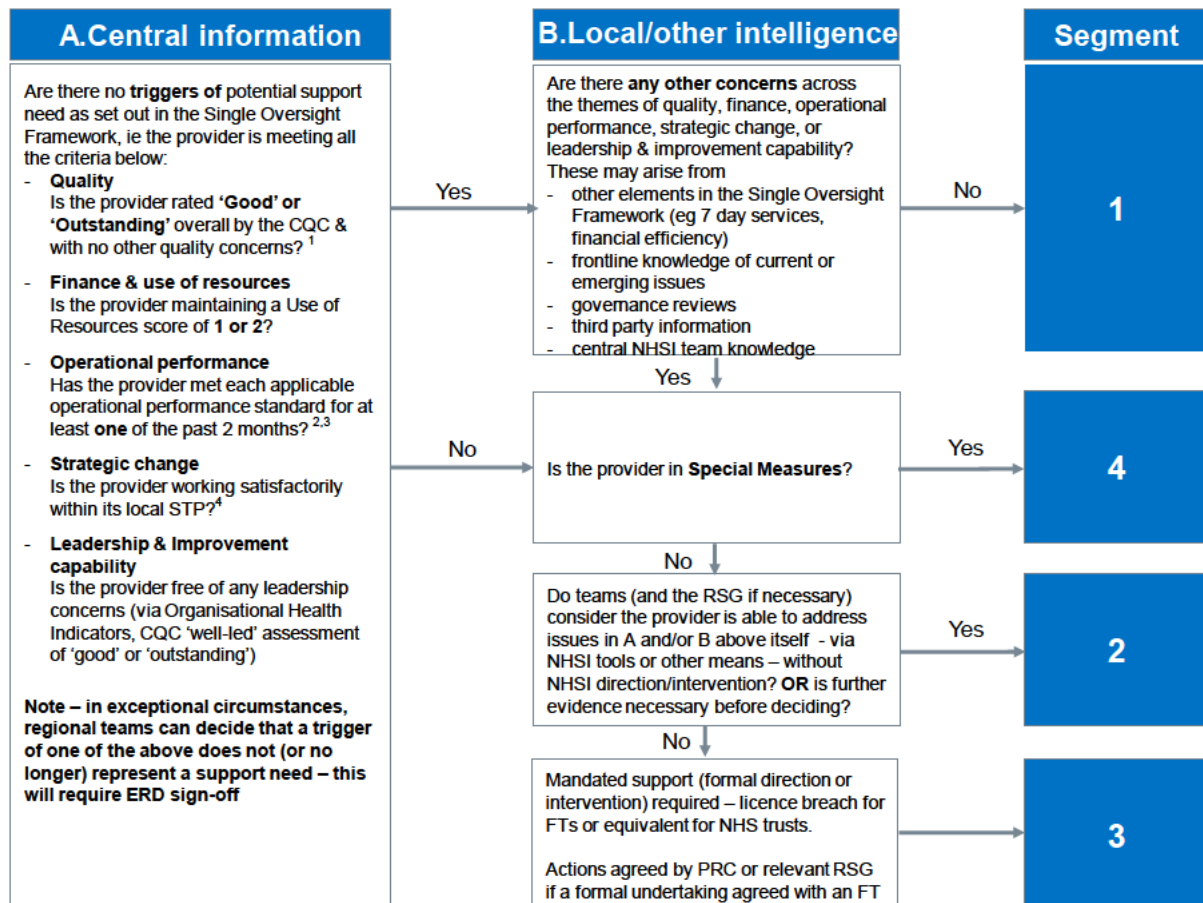
4. Segmentation

Once teams have considered the seriousness of the issue(s) providers face and the level of support required to address it, they will then need to consider whether these factors require them to recommend a change in segment. The criteria for each segment can be found in Annex 4.

Segmentation should be, as much as possible (bearing in mind the need for RSG, PRC involvement) done in real-time, reflecting providers' issues. **Consequently we do not envisage any fixed points in time for assigning providers to segments, a provider's segment should change to reflect teams' views of its support needs.** The central oversight tool will allow regions change providers' segments and add commentary on providers' circumstances. Once segmentation goes live, NHS Improvement plans to publish for each provider

- the provider's segment (1/2/3/4)
- a short summary of the reasons why the provider is in Segments 2,3 or 4 and any associated support

The diagram below sets out an indicative approach for identifying segments providers are in



¹ Eg no concerns emerging from the quality measures in Appendix 2 of the SOF, teams are satisfied any areas identified as requiring improvement by CQC are addressed

² Or last quarter for quarterly metrics; or, if failing standard but meeting its trajectory, with no concerns relating to governance or quality. SOF Appendix 3

³ Where relevant, breach reallocations (eg cancer 62-day) should be taken into account

⁴ Work is ongoing in this area but for the time being teams should view providers through the lens of their roles within their respective STPs

2

• Why is a provider assigned to a particular segment?

The segment to which a provider is assigned represents the greatest level of support they need for any one of these individual themes. For example, a provider in financial special measures but not in breach of licence for other themes will be in segment 4. However placing a provider in segment 3 or 4 because they require mandated support for one issue (say finance and use of resources) does not mean that all their support needs to be mandated – they may have support needs on other areas, eg quality of care, which are not serious enough to be a breach of licence and/or require mandated action. Some examples to illustrate this can be found in Annex 3.

• When do I recommend changing a provider's segment?

As set out above, teams should ensure that segmentation reflects emerging concerns and identified support needs as they transpire in real time. Information underpinning this will come on both a regular (eg based on financial and operational performance data) and ad hoc (eg CQC and other third-party information) basis.

We envisage that, for providers in segments 2, 3 and 4, teams will consider segmentation at least monthly based on the information received. For providers in segment 1, unless information is received that could suggest emerging support needs, this should generally be quarterly, i.e. at the end of Q1 (ie July), Q2 (October), Q3 (January) and Q4 (April).

Although we will review the factors driving a provider's support needs and their resulting segment regularly, we expect providers to move relatively infrequently between segments on the whole. Length of time in a segment will depend on how frequently and significantly a provider's performance changes.

If the regional and/or central teams recommend a change in segment it is likely that conversations will have already started with providers about what upcoming support might look like. The segment reflects the support needs we consider a provider needs – it is not intended to serve as a formal rating of a provider. Unlike being found in breach of the licence, there is no formal appeals process for providers who may be unhappy about the segment they are in. However, the process by which associated mandated support is put in place for providers in segments 3 and 4 gives the opportunity for providers to make representations about what is proposed for RSG/PRC to take into account. In addition, conversations about the support required will be part of our ongoing day-to-day relationships with providers together with any more formal governance and legal process needed for mandated support decisions.

- **How do I recommend a provider move between segments?**

Regional teams assigned providers to an initial 'shadow' segment in October 2016. As providers' circumstances change, teams will need to consider whether any changes are required based on sections 3 and 4 of this document. The processes for moving providers' segments to reflect support needs and actions NHS Improvement may require are set out below.

Where a provider is in segment 1:

Regional teams review data, alongside local intelligence.

- If no support needs are identified, the provider remains in segment 1.
- If support needs are identified regional teams recommend the provider moves out of segment 1 and into whichever segment seems appropriate according to the scale of the issue and the level of support required.
 - If the regional team recommends the provider move into segment 2 it will go to the Regional Support Group for decision.
 - If the regional team recommends the provider move into segment 3 it will make a recommendation to the Regional Support Group or

Provider Regulation Committee depending on the enforcement action (see “Where a regional team is proposing mandated support”)

- If the provider is moving into segment 4 ie special measures (this is likely to be unusual) then a recommendation would need to be taken to the Provider Regulation Committee for decision.

Where a provider is in segment 2

Regional teams review data, alongside local intelligence, and gather evidence/investigate if required to determine the level of support required.

- If a provider is in a ‘steady state’, i.e. with established support needs but not in breach/requiring mandated support, they would remain in segment 2.
- For providers with emerging concerns, teams may need further evidence-gathering to establish the level of support needed⁷, and the provider may remain in segment 2 while this happens.
- If a provider has been identified with no support needs the regional team would recommend a move into segment 1 to the Regional Support Group.
- If providers are in breach and we know that mandated support is required, regional teams can recommend moving to segment 3 (or 4 if special measures) as part of the process of finding the provider in breach and mandating support through formal enforcement action.

Where a regional team is proposing mandated support (ie breach of licence)

- Where a regional team recommends moving a provider into segment 3/4 and it is seeking *actions* from the provider (eg *enforcement undertakings* under s.106 of the 2012 Act if an NHS foundation trust) it will make a recommendation to the Regional Support Group for decision.
- Where a regional team is requiring specific actions through
 - discretionary requirements under s.105 of the 2012 Act for NHS foundation trusts
 - licence modifications under s.111 for NHS foundation trusts⁸
 - directions for NHS Trusts

it will make a recommendation to the Provider Regulation Committee for decision, having been through a Regional Support Group.

⁷ Using the investigations team if necessary

⁸ In isolation or in combination with a s.106 enforcement undertaking

In reviewing proposed regulatory action (or equivalent) for providers in segments 3 or 4, the RSG or PRC, as the case may be, will also review the high level proposed support package for that provider.

See Annex 1 for information on mandated actions and interventions. These also apply where further actions are recommended to providers already in Segments 3 and 4 (below).

Where a provider is in segment 3

Regional teams review effectiveness of the action/support in place.

- If there are no significant changes providers may remain in segment 3.
- If there has been improvement, regional teams, with central team input where required, can recommend providers move to segment 1 or 2.
- If there has been deterioration, central teams, with regional team input, can recommend providers move to segment 4 and into special measures for decision by Provider Regulation Committee.

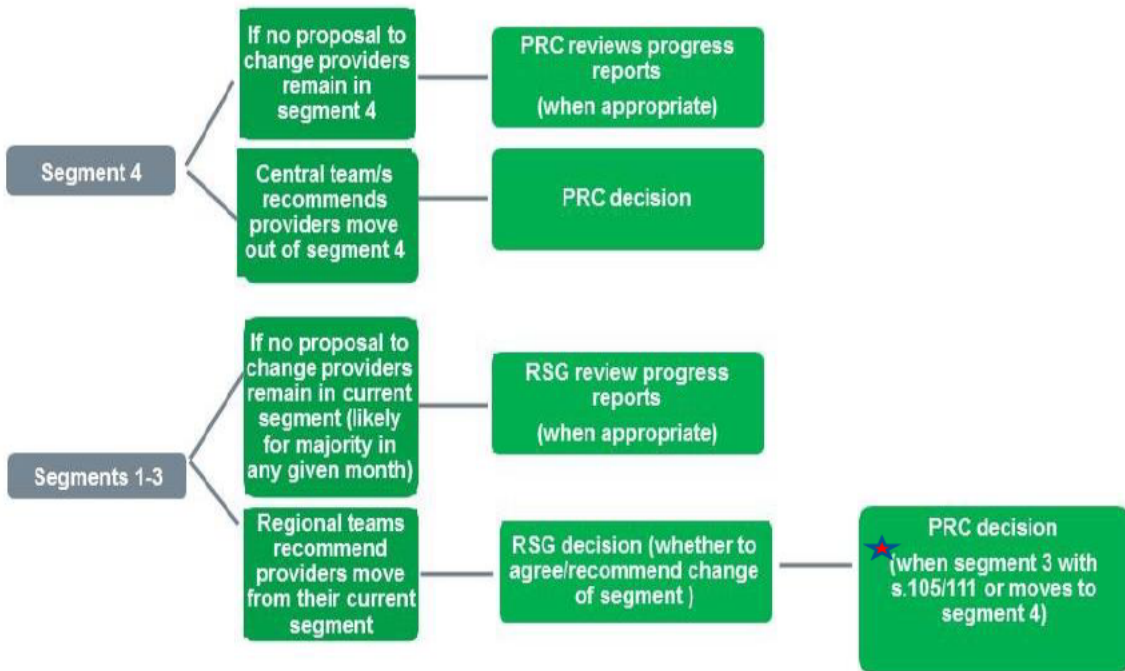
Where a provider is in segment 4 (special measures)

- All decisions to place, keep or remove a provider from special measures (segment 4) will be taken by the Provider Regulation Committee. Recommendations to place a provider in or remove a provider from special measures will be led by central teams, with regional input.

The decision-making processes at regional and national levels are summarised in the flow diagram below. More information on the roles of RSG and PRC can be found in the relevant terms of reference which are due to be finalised shortly⁹.

NHS Improvement regional and national governance

⁹ Contact the Board Secretariat for more information



Please see information in Annex 1 for more information on the licence.