

November 2011

I write with a request for information made under the Freedom of Information Act 2000. I have been informed that in 2010/11 4 adverse incidents took place at your organisation that are termed never events (in relation to wrong site surgery in May 2010, August 2010, November 2010 and May 2011).

I am interested in why the events occurred and would therefore like to request the following:

1. a copy of the report of the investigation of each incident
2. the full RCA document developed in investigating the incident
3. the resultant action plan for each incident

I am happy that you redact the report where necessary to the extent that confidentiality is preserved. If you believe that exemptions apply to any part of this request then please explain why. I have specifically requested 3 separate documents so that the release may be considered for each one.

Your questions have been considered as to whether the information sought is capable of disclosure having regard to the Freedom of Information Act 2000 (FOIA).

I would, of course, like to reassure you that it is the Trust's aim to provide information which is requested by the public under the Act promptly, provided the information exists, no exemptions apply and the fee limit is not exceeded having regard to the Freedom of Information and Data Protection (Appropriate Limit & Fees) Regulation 2004.

You will appreciate that the Trust is not at liberty to disclose personal identifiable information, including personal opinion evidence, into the public domain under section 40 (2) – personal information, if such disclosure would contravene Principle 1 of the Data Protection Act 1998 (DPA).

Further, having regard to the recent case of Galloway, and the Information Commissioner's advice (available on the Information Commissioner's website www.ico.gov.uk), disclosure of investigation reports into the public domain under the Freedom of Information Act may be considered contrary to the over-riding public interest in ensuring continued openness and frankness of those involved in future investigations of this nature. As a general rule in the course of investigations, statements are taken from staff in confidence (or with the expectation of confidence) and therefore, the exemption under section 41 of the FOIA (information provided in confidence) applies in relation to the decision to withhold information.

The issue in respect of disclosure under the Freedom of Information Act is the impact of making the disclosure potentially "to the world", which needs to be contrasted with circumstances whereby the Trust may be required to make disclosure due to an order

of the Court, or in accordance with court rules in the course of proceedings, when such information may be considered relevant and protection concerning onward or “at large” disclosure may be at the same time be ruled.

As you will appreciate investigations are intended to probe, subjectively and speculatively, into the root causes of incidents but are not intended as a means of establishing blame or liability having regard to legal criterion at all. In this regard, onward disclosure through an FOIA request may hinder future investigation, and limit the opportunity for learning, invoking application of the exemptions under section 31 - criminal and other investigations and section 36 - effective conduct of public affairs.

Taking account of the above, we do not consider that we are able to disclose individual reports to you.

However, I would assure you that in all incident investigations we focus on identifying any steps which may be taken to avoid recurrence of the same type of incident. Further control measures will often focus on additional awareness training with staff.

Where necessary processes /protocols may be revised or re-issued and we may also take the step of ensuring staff read and sign to say that they have understood the relevant policy or protocol. We will look at adding preventative barriers where possible and we will audit to ensure, for example in surgery cases that the WHO Surgical Checklist is being adhered to and the appropriate entries are being made in the SAPPHIRE system at different stages in confirming this.

As you will probably be aware data relating to these never event incidents are submitted to the NPSA and analysed centrally. The NPSA produced an Annual Report in 2009/10 and a further report from the NPSA is anticipated.

In addition, the [Operating Framework for the NHS in 2010](#) explained that PCTs would be expected to seek the recovery of costs related to never events. Could you please release the following:

4. the cost of each of the never events to your organisation in line with this guidance i.e. how much has each event cost you?

There is no costing process with regard to ‘never’ events or Serious Incidents (SI’s). Therefore, it is not possible to specify any costs related to these.

However, from April 2010, the Operating Framework 2010/11 clearly indicates that providers will not be paid where treatment results in one of the 7 (then) listed never events. Payment would depend upon whether a declared never event turned out upon investigation to be truly that and the costing process is on a case by case basis rather than there being as such an automatic no payment imposition on declaration of a never event. As you will appreciate, the Trust's Commissioner's are always informed and kept involved in serious incident investigations and would under the contract recover or withhold any payment as required.