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By email only: d-ccg.corporateservices@nhs.net

Dear Sirs,

**Northern, Eastern and Western Devon Clinical Commissioning Group
("NEW CCG") - constitutional arrangements**

1. We represent Mr David Halpin, a retired consultant orthopaedic surgeon, and are instructed to write to you regarding the above.
2. Our client is a campaigner for, amongst other things, the continued health and vitality of the NHS.
3. As such, our client was invited to join a panel to discuss the NHS by BBC Radio Devon on one of its programmes. On that panel was your predecessor Chair of the NEW CCG (acting as an interim chair), Dr David Jenner.
4. We are instructed that, in the exchanges that comprised the panel discussion on the programme, Dr Jenner indicated that the governing body of the NEW CCG was elected and was not comprised of political appointees (as our client contended).
5. Our client then sought information from the NEW CCG regarding the elections that had taken place in respect of its governing body.
6. We pause here to make clear that the purpose of this letter is not to criticise or take issue with Dr Jenner's statement. It is, instead, to put on record the manner in which the NEW CCG handled our client's request for information, and, to now require that information in full.
7. Returning to our client's initial request for information; Mr Halpin wrote to Dr Jenner on 3 March 2017, stating the following:

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“My sister Mary, and myself, have hunted through the internet for records of this election process, but to no avail. I should be very grateful if you would link me to the minutes where and when this election took place for the NEW CCG board.”

8. Dr Jenner did not respond to this email personally. However, on March, Keri Ross, Communications Manager at the NEW CCG replied with the following:

“The election process is set out in the CCG’s constitution <http://www.newdevonccg.nhs.uk/who-we-are/our-plans/100092>

Appendix C standing orders (section 2) describes the election process.”

9. Clearly, this response did not answer the request made by our client, who had asked for evidence regarding the election that had taken place. Instead Ms Ross referred to the procedures required by NEW CCG’s constitutional arrangements. Even this was done in a wholly opaque manner. She simply provided a link to a page with a number of documents, including the 97 page constitution, which contains the 16 page Appendix C. We would submit that this is not an acceptable response to a perfectly valid and simply expressed request for information from a public body.
10. Our client responded to Ms Ross and she replied with further information about the constitutional arrangements of the NEW CCG along with minutes from the “NEW Devon Shadow CCG Governing Body Meeting” of 8 August 2012 (where Dr Jenner exited as the Chair and you took over, the “2012 Minutes”). The 2012 Minutes contained the following item:

“DJ asked if election results had been received formally from the LMC. It was confirmed there (sic) were only received verbally. ACTION: RH to contact LMC for formal outcome to include ranking.”

11. Our client then asked Ms Ross for evidence regarding the verbal receipt of the election results on 31 March. Ms Ross failed to reply and our client then ‘converted’ his request to a request under the Freedom of Information Act (the “Act”). It should be noted that *any* request made in writing for information to a public authority designated under the Act should be treated under the auspices of the Act. There does not need to be a formal request mentioning the Act. Therefore, the NEW CCG had 20 days from our client’s original request, on 3 March, to either

determine that such information was not disclosable under the Act, say that it did not have the information requested, or, to provide that information. The NEW CCG has breached the Act by not carrying out any of these actions.

12. On 2 June, our client received a holding response from the NEW CCG's FOI Team. On 22 June, our client received a substantive response stating the following:

“Devon Local Medical Committee (LMC) ran a process on behalf of its GP member practices, in relation to the appointment of clinical leads to NHS Northern, Eastern and Western Devon Clinical Commissioning Group's (NHS NEW Devon CCG) localities and Governing Body in 2012, and all elections since that time.

Should you require further information about this process, you may wish to have direct communication with the Devon LMC directly.”

13. This was a singularly unilluminating response. It is, again, opaque but is also cryptic, precisely the opposite of the aims of the Act. The first sentence refers to the Devon Local Medical Committee without explaining what that committee is and what its relationship with the NEW CCG is (it is not even clear whether it is part or not of the NEW CCG). The response then refers to the running of “a process” but does not say what that process was. The response does not mention any election and therefore it is the first intimation that an election was not part of the formation of the Board of the NEW CCG, contrary to Dr Jenner's statement on Radio Devon. Given that this was the issue that our client had first raised, NEW CCG (including its FOI Team) should have, in furtherance of its obligations under the Act, taken a purposive approach towards providing information about itself.
14. In any event, the information that was provided had already been provided by way of the 2012 Minutes. In relation to the information requested (the evidence of the verbal taking of votes referred to in the 2012 Minutes), NEW CCG had simply referred our client elsewhere.
15. It is entirely unacceptable that a request for information regarding the constitutional make up of a public body is not responded to and, ultimately, ‘outsourced’ to a non-public body (which the LMC is). It is contrary to the principle of Openness, one of the Principles of Good Governance committed to by the

NEW CCG in paragraph 4.2.1 of its constitution. That principle provides:

“Openness - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.”

16. If the NEW CCG does not have evidence of its compliance with its constitution (which is a non-delegable duty, even if other parties are involved in assisting NEW CCG in discharging this duty) then that is a serious matter which it must be open about and rectify, not obfuscate and seek to place any ensuing responsibility outside of NEW CCG and the NHS.
17. In light of the foregoing, our client puts the following question to the NEW CCG:
- (i) Does the NEW CCG possess documentary evidence of the outcome that Rebecca Harriot was actioned to obtain from the LMC, as set out in the 2012 Minutes?
 - (ii) If the answer to question (i) is ‘yes’; please provide that evidence.
18. Given the history of this matter and the legal importance of this matter being resolved properly, we would suggest that this is not a matter that is simply passed on to NEW CCG’s FOI Team but is dealt with properly and at the highest level. As Chair, the answers to the questions put above should, we would suggest, also be of interest to you (and, therefore, the collation of the answers would justify your own involvement and oversight).

Yours faithfully

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