

University Hospitals of Morecambe Bay



NHS Foundation Trust

Freedom of Information Office

Westmorland General Hospital

Burton Road

Kendal

LA9 7RG

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Web: www.uhmb.nhs.uk

Reference Number:5775 (5711)

Friday 24th June 2016

Minh Alexander

minhalexander@aol.com

Dear Dr Alexander

RE: REQUEST FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT (FOI Act)

Further to your recent enquiries, please find enclosed a revised response to your Freedom of Information enquiries.

Following your correspondence with our Chief Executive, I was asked to not only process the additional questions, but to escalate the previous review to the Executive Director responsible for our Workforce and request that we re-examine our previous responses.

The reason for now being able to provide additional detailed information is due to the knowledge of the Executive Director and his ability to then direct his team to where the information is held. Your questioning has shown that we need to make some changes to our processes and record keeping and that is underway. In relation to Freedom of Information reviews, these will continue to be processed by myself, but escalated in the first instance to the responsible Executive Director to oversee.

REVISED RESPONSE AND RESPONSE TO LATEST QUESTIONS:

Please disclose in relation to the past 5 years:

- a) **the trust's total spend on services by Capsticks LLP (whether these relate to legal services, investigations, training, sub-contracting consultants or investigators or any other services).**

Trust Headquarters:
Westmorland General Hospital
Burton Road
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Tel: 01539 732288

CHAIR: PEARSE BUTLER
CHIEF EXECUTIVE: JACKIE DANIEL

2011/12	Nil
2012/13	£11,308.38
2013/14	£1,321.92
2014/15	£100,290.12
2015/16	£264,988.61

Of this spend with Capsticks LLP, I can provide the breakdown for employment law spending as follows:

2012/13

Employment Law Spend £0

2013/14

Employment Law Spend £0

2014/15

Employment Law Spend £73,770

Of which,

Legal Services £73,770

2015/16

Employment Law Spend £159,686

Of which,

Legal Services £142,186

Training £4,000

Sub-Contracting Consultants £3,500

Other Services £10,000

Please also note that the costs included in this secondary breakdown are for fees only, and exclude VAT & disbursements.

- b) what proportion of this total amount has been spent in cases where staff members had previously made public interest disclosures, and how many such cases were handled by Capsticks LLP.**

Of the total amount spent on employment law with Capsticks LLP over this period, 39.8% was spent in relation to staff who has raised public interest disclosures. 2 cases were handled by Capsticks LLP.

- c) No question submitted**

- d) how many of these cases involving Capsticks LLP in which staff members had previously made public interest disclosures ended in dismissal of the staff concerned.**

None

- e) how many such staff were dismissed not for misconduct or incapability issues, but via "Some other Substantial Reason"**

Not Applicable (as none dismissed)

- f) how many trust compromise agreements has Capsticks LLP handled in the last 5 years.**

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Please disclose in relation to the past 5 years:

- a) **total spending on Capsticks services in cases in which trust staff had previously made public interest disclosures**

£92,519

- b) **the number of trust compromise agreements that have been handled by Capsticks**

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Please can you disclose the total spending on Capsticks' services in the case of the two well-publicised UHMBT breast screening whistleblowers, whose concerns triggered the Public Health England review.

£92,519

Please also review and disclose the number of compromise agreements in total that the trust has applied in the five year period January 2011 to December 2015 inclusive, whether or not these were handled by Capsticks.

The number of compromise agreements by year is set out below:

2011/12	2
2012/13	3
2013/14	2
2014/15	4
2015/16	2

- 1) **How many of these compromise agreements in this period included a clause that prevented the disclosure of the very existence of the compromise agreements. Please include all COT3s in this figure.**

All of the compromise agreements included specific confidentiality clauses – the nature of these has changed over time to reflect differences in employment law provider, plus any changes in legislation and regulatory requirements.

2) How many of these compromise agreements included a non-disparagement clause that prevented criticism of the trust and its employees.

All of the compromise agreements contained standard confidentiality clauses (which were amended from time-to-time) that bound both parties (employer and employee) not to make or publish untrue, disparaging, misleading or derogatory statements about the employer, its directors, officers or employees.

3) How many compromise agreements were applied in the cases of staff who had previously made public interest disclosures.

There are two compromise agreements concerning staff who had made public interest disclosures.

4) If staff who have entered into a compromise agreement with the Trust were to voice concerns about reprisal by the Trust for whistleblowing, would the Trust consider this to be an actionable breach of non-disparagement clauses, or would it consider the raising of such concerns to be qualifying disclosures under PIDA?

The compromise agreements contain express provisions to prevent the ‘gagging’ of the individual from sharing information which may otherwise be in the public interest and which may be deemed to compromise patient safety. The clause reflects legislation, best practice, the openness and transparency encouraged by the NHS/NHS Employers, and following the findings of the Francis Report.

The confidentiality agreement also does not prevent a statutory body from looking into issues, i.e. CQC, GMC, NMC, National Audit Office.

I hope that this response, following the review by the Director of Workforce answers your questions.

If you are unhappy with the way the Trust has handled your request, you may ask for an internal review by contacting: Phil Woodford, Associate Director of Corporate Affairs, Westmorland General Hospital, Burton Road, Kendal LA9 7RG.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

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If you require any further clarification or assistance regarding this request, please do not hesitate to contact the Freedom of Information office on 01539 715213. Please remember to quote the reference number above in any future communications.

Kind regards

PHIL WOODFORD
ASSOCIATE DIRECTOR OF CORPORATE AFFAIRS