

11 June 2021

Confidential
 Ms Liz Perloff
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Dear Ms Perloff

Thank you for your letter of 3 May received on 7 May in which you have asked for enquiries into the “fitness of the CEO of NHS Resolution”. You go on to say “*i believe their actions have failed to meet Regulation 5 of the Health and Social Care Act. Also known as the ‘Fit and Proper Person Test’*”. I note that you have subsequently had exchanges with Tinku Mitra, Head of Corporate and Information Governance who confirmed to you that I would be responding in my role as an independently appointed Chair of NHS Resolution Board.

My principal responsibilities under the terms of our complaints policy are to investigate any complaint against the organisation that the complainant believes has not been properly addressed by the management (at stage 1 of the policy) and to assess whether our procedures, including the complaints policy have been followed. Our policy sets out that the following does not constitute complaints for the purposes of the policy, but will be dealt with in accordance with the established procedures for dealing with such matters (page 5 of the policy enclosed):

Disagreements arising from the normal handling practices and negotiation inherent in the management of claims handled by NHS Resolution (including when compensation payments are refused because negligence has not been established and all appropriate processes for establishing such have been followed). This will include complaints that may have other minor contributing factors but the principle complaint is centred around the management of the claim;

I have also considered whether your enquiry on the “fit and proper person test” (FPPR) to which you referred fits within the terms of our policy. The FPPR is applied by regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and applies to “service providers” who are providers that are registered with the Care Quality Commission for the carrying out of a regulated activity and does not apply to NHS Resolution.

Nevertheless I have considered how the principles that are set out in the FPPR overlap with the Nolan principles in public life. The most relevant requirement is that directors of registered providers should be of “good character”. Whilst there is no statutory guidance as to how “good character” in Regulation 5(3)(a) of the 2014 Regulations should be interpreted, the CQC has issued non-statutory guidance that refers to the following as some of the features that are normally associated with “good character” which also overlap with the Nolan Principles and includes the following:

Advise / Resolve / Learn

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our [privacy statement at resolution.nhs.uk/privacy-cookies/](https://resolution.nhs.uk/privacy-cookies/)



INVESTORS IN PEOPLE
 We invest in people Silver



- honesty
- trustworthiness
- integrity
- openness (also referred to as transparency)
- ability to comply with the law

Accordingly your complaint does meet the terms of the complaints policy. In addition, I have reviewed how we handled your claim with reference to the above principles and our own organisational values, which are: professional, ethical, expert, respectful. My review has looked broadly at our systems and not focussed solely on the Chief Executive.

Your claim against Barnsley Hospital NHS Foundation Trust

I have reviewed the handling of this claim given its lengthy history and in view of the concerns raised in your complaint although I also note you have a second claim against Barts Health NHS Trust. I do not underestimate how challenging this must be for you personally but I have not seen any evidence that our systems and processes were in any way unfair to you, or breached the principles outlined above.

It is also worth noting whilst NHS Resolution has processes to manage a claim, these operate within a framework which is enshrined in the Ministry of Justice civil procedure statute and the pre-action protocol relevant to the type of claim. In the case of clinical negligence, it is the Pre-Action Protocol for the Resolution of Clinical Disputes.

Specifically, I would turn to the following examples where I consider the organisation to have acted in good faith and with fairness in providing you with a number of opportunities to present your position:

- NHS Resolution did not deem the claim to be out of time when the original Claim Form was not served in April 2016.
- NHS Resolution engaged in mediation in order to understand your concerns and progress the claim. All allegations of negligence were responded to in substance by providing four separate Letters of Response dated 23 June 2015, 26 May 2016, 9 April 2020 and 3 November 2020. The investigation of the claim was informed by independent expert evidence and a second orthopaedic expert report commissioned in order to address concerns raised by you at the mediation. Both the reports from the Consultant Orthopaedic Surgeons were disclosed to you on a without prejudice basis. A financial offer in final settlement of the claim for damages and costs has been made in a genuine attempt to resolve the claim and remains open for acceptance.
- Multiple extensions of the limitation period were agreed to allow time for pre-action resolution.
- I believe the content and tone of all correspondence from NHS Resolution has been in line with the Nolan Principles and NHS Resolution values. Your case has been handled by senior members of the teams, adopting various different approaches to bring the matter to a resolution in terms of the negligence claims.
- There were a number of complaints made since January 2017 which have been fully addressed and which have also been escalated and considered by the Chief Executive (and by our former Chair) Ian Dilks. These include:
 - Concerns raised in relation to the conduct of NHS Resolution's expert and other parties
 - Conduct at the mediation
 - Issues of conduct raised in relation to the handling of the claim against Barts Health NHS Trust
 - Complaint to the Information Commissioner's office.

In summary, for the reasons I have set out above I disagree that our handling of your claims have in any way been in breach of the principles which I outlined. For this reason, I do not uphold your view that the Chief Executive has failed in her actions to hold to account the management of the claim given that there is no basis to suggest that the handling of your claim has been flawed. I know that this may be a disappointing outcome given your view set out in the complaint but I do want to assure you that I have taken the matter

seriously and I do hope that we do resolve matters in respect of your claims as soon as is practicable. You have requested that this is undertaken via Alternative Dispute Resolution. Please may I suggest that you should pursue this (by contacting our claims management team directly)?

Yours sincerely

A handwritten signature in blue ink that reads "Martin Thomas". The signature is written in a cursive, flowing style.

Martin Thomas
Chair