

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 21 August 2008 13:54  
**To:** [REDACTED]; [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Appeal: Primary and secondary prevention of osteoporotic fragility fractures in post menopausal women

**NHS**  
**National Institute for  
Health and Clinical Excellence**

Midcity Place  
71 High Holborn  
London  
WC1V 6NA

Tel: 0845 003 7780  
Fax: 0845 003 7784

Sent via email

[www.nice.org.uk](http://www.nice.org.uk)

Dear [REDACTED]

**Appeal: Primary and secondary prevention of osteoporotic fragility fractures in post menopausal women**

Thank you for your letter of 19 August.

In so far as the appeal points you raise are included within your judicial review claim, it must be correct that they are dealt with in that claim. The validity of those points has been considered by the Institute in its response to your claim. At best, it would add nothing to have the points also considered by an appeal panel. At worst, there would be questions over whether any such reconsideration could be valid, as it might be said that the appeal panel would be reluctant to depart from the Institute's position as set out in litigation.

This also deals with your comments concerning the Court of Appeal decision in Eisai. It is correct that the Court of Appeal judgement has effect as a statement of the law unless and until overturned, but it is notable that even in that specific case the Court of Appeal did not order that an executable model would be released until after the conclusion of any appeal to the House of Lords. It is quite incorrect, and gratuitously pejorative, to claim that "the Institute is wilfully continuing to act unfairly" where (1) the Institute is not at present obliged to release even the Eisai model (2) the facts of this case are very different to Eisai and it begs the question to assert that non-release in this case is unfair, and (3) you are in effect berating the Institute for not conceding one of your grounds of challenge in your judicial review, which it is perfectly entitled not to do. The Institute is not evading scrutiny on this issue, it simply says that you have chosen to have that scrutiny carried out in the High Court and that in consequence it is not right to consider the point again on appeal.

In so far as the appeal points are not within your judicial review claim, it remains the case that they have already been adjudicated on, as your appeal letter itself acknowledged. In the absence of any change of circumstance I do not think it can be correct that they should be reconsidered.

Finally I can confirm that, after the first appeal in this appraisal, the Institute did approach the WHO for permission to release the model, and that permission was refused.

Yours sincerely

Mark Taylor  
[REDACTED]