REVIEW OF ALLEGATIONS OF BULLYING AND HARASSMENT OF THE UNITED LINCOLNSHIRE HOSPITALS NHS TRUST BY THE EAST MIDLANDS STRATEGIC HEALTH AUTHORITY: SUMMARY OF FINDINGS, 28th OCTOBER 2009

Introduction

A series of letters received by the NHS Chief Executive's office on 21, 22 and 24 July 2009 alleged that the United Lincolnshire Hospitals NHS Trust (the Trust) was bullied and harassed by the East Midlands Strategic Health Authority (the SHA). In response, the NHS Chief Executive asked Neil Goodwin, an independent consultant and former strategic health authority chief executive, supported by Susan Pyper, Lord-Lieutenant of the County of West Sussex and an experienced NHS chair recently retired from an acute hospital trust, to investigate the allegations.

The terms of reference for the review were:
i. to investigate the allegations of bullying and harassment;
ii. to determine whether the SHA's response to the performance issues the Trust and health system faced are consistent with the SHA's own procedures, and to determine whether their response was fair and equitable; and
iii. to advise whether, in light of (i) and (ii), and subject to any relevant legal requirements, any further action should be taken in respect of any of the individuals involved.

Summary of Findings and Recommendations

Against each of the terms of reference, the review concluded:

i. To investigate the allegations of bullying and harassment

"We have investigated the allegations thoroughly and summarised our approach and findings in this report. We extensively reviewed nearly 160 pieces of correspondence, notes and media transcripts, and conducted almost 50 interviews. Although we obviously were not present when discussions took place between the SHA and the Lincolnshire, or any other, health system, if the SHA's style was characterised by bullying and harassment then we would have expected evidence of it to have emerged during this process but none did."

"In our professional judgement and opinion that there is no evidence of bullying and harassment of the United Lincolnshire Hospitals NHS Trust by the East Midlands Strategic Health Authority ..."

ii. To determine whether the SHA's response to the performance issues the Trust and health system faced are consistent with the SHA's own procedures, and to determine whether their response was fair and equitable.

"In the context of the role of strategic health authorities, the performance history and challenges of the Trust and Lincolnshire acute health system viewed against those for

the region as a whole, in our professional experience and opinion the SHA's approach was fair, consistent with its own procedures, equitable and patient."

iii. To advise whether, in light of (i) and (ii), and subject to any relevant legal requirements, any further action should be taken in respect of any of the individuals involved

"As the regional headquarters of the NHS, we are clear in our opinion that the SHA has a responsibility to ensure that the leadership of the Trust and PCT are of a sufficient standard to deliver required NHS national performance and to mutually develop and implement local NHS strategy for Lincolnshire. The departure of the Trust Chairman provides an opportunity to refresh the leadership of the Trust board. A decision needs to taken by the SHA, Appointments Commission and Interim Trust Chairman about the capacity and capability of the Trust's non-executive directors and the executive team; and whether changes need to be made. This should be undertaken as soon as possible. Similarly, the SHA and Appointments Commission need to satisfy themselves that the PCT board has the capacity and capability to work collaboratively with the Trust."

"We support the SHA's establishment of an overarching assurance but there is also urgent need to achieve a sustained relationship between the parties based on effective inter-organisational collaboration through the development of positive interpersonal relationships. This is because it is the development of 'soft skills' (such as relationship building), over and above the delivery of quantitative targets, which enables much organisational and inter-organisational success."

"Finally, it will be for the SHA to determine, in light of progress made, whether any further changes should be made to the leadership of the Lincolnshire health system. We believe three months is sufficient time for the SHA to decide whether it has confidence in sustained improvement being delivered or if further leadership changes are required."

Recommendations:

"1. Assess the capacity and capability of the Trust's non-executive directors and executive team; and ensure that the PCT board has sufficient capacity and capability to work collaboratively with the Trust."

"2. Development programmes should be commissioned to support the building of effective and sustained executive and non-executive relationships between the parties; and to develop the capacity and capability of the Trust board and executive team."

"3. Determine within three months whether further changes should be made to the leadership of the Lincolnshire health system."

Implications for the wider NHS

The Review also reflected on possible lessons for the NHS as a whole and concluded:

"Given the increasing pressures on NHS leadership and management that will result from the impact of the economic downturn on public services there is the possibility of firm performance management being interpreted as bullying or harassment. We have identified four interrelated lessons:

1. Detecting potential failure
2. Providing development support for challenging posts and health systems
3. Developing appropriate relationships and behaviours
4. Developing chairs and non-executive directors"

Detecting potential failure

"Warning signs of failure may be quantifiable or hard indicators, for example performance against national targets, ratings on a staff or patient satisfaction survey, or the number of patient safety incidents reported. Equally, a range of softer or qualitative indicators can give important clues about the culture of the organisation and how well equipped it is to respond to the challenge of performance problems."

"The 2009 DH NHS Performance Framework: Implementation guidance raises important questions about the timing of intervening in underperformance:

> *Although the NHS has now established a good track record on organisational turnaround...the overall approach to addressing underperformance and supporting recovery has not always been systematic, transparent or consistent. Local PCT commissioners have taken different approaches to contracting for service delivery and to determining when and how to intervene to address underperformance. Similarly, SHAs have sometimes taken different approaches to the performance management of organisations in their regions...*
>
> *While local judgement and flexibility will continue to be an essential part of deciding how best to deal with underperforming organisations, we also need to be clear with patients and the public about what they can expect from their NHS services and how the system will hold organisations, and the people that run them, to account.*

"The Framework also specifies who is responsible for intervening and escalating levels of intervention when underperformance has been identified but importantly adds:

> *The results of the Framework will not inhibit SHAs from discharging the other duties expected of them. For example, if an organisation is performing but the SHA has lost confidence in the board, it would still be able to take steps to address any deficiencies.*
>
> *The escalation process...will not preclude SHAs and PCTs from undertaking more frequent reviews of progress if required. Again, local intelligence will be key in informing the frequency of these escalation discussions.*

"The key to successful implementation of the Framework is not only good performance management but also knowing when to intervene, especially if there are emerging concerns about an organisation's or health system's leadership that have not yet manifested themselves in adverse bottom-line performance. For example, there may be a lack of confidence in senior managerial capability, and/or concerns about the strength of partnership relationships, particularly if over time there has been a move from face-to-face meetings to communicating via emails and letters. In these situations a decision to intervene, for example by a strategic health authority, may be driven by its senior management's personal experience, judgement and intuition."

Recommendations:

"1. There is now a sufficient body of NHS casework on adverse performance and failure covering boards, organisations and systems that, along with the six symptoms of potential failure, should be captured in terms of the learning about failure and intervention; and used to enhance the NHS Performance Framework and the ongoing development of boards and senior managers of NHS organisations."

"2. To minimise the risk of future adverse performance and resultant failure, local organisations should agree, in the context of their health system challenges, annual health system development plans. This is not only to be clear about key inter-dependent strategic and operational challenges but also the development required to strengthen collaborative and partnership working. The delivery of these plans should be included in performance management and regulatory assessments."

Relationships and behaviours

"Documents that allude to these issues include the NHS Constitution and the two Codes of Conduct for NHS Managers and NHS Boards respectively. The Constitution establishes the principles and values of the NHS in England whilst the Codes of Conduct emphasise public service values, the roles and responsibilities of NHS organisations and boards, and the importance of working inter-organisationally. The two Codes were last reviewed in 2002 when the NHS was contextually different to what it is now, and maintaining them perpetuates a dichotomy between executive and non-executive directors. This does not help the development of unitary boards and the discharging of corporate as well as individual accountability."

"Producing written guidance on relationships and behaviours is important for clarifying what is acceptable behaviour within and between organisations because, among other things, it will help strengthen the accountability of leaders. However, written guidance alone will not drive successful implementation, which requires leaders to model appropriate personal and collaborative behaviour. This is important in the context of long-term relationships providing the best foundation for sustained organisational and personal success."

Recommendation:

"To emphasise the required individual and corporate behaviours of NHS organisations and the importance of developing inter-organisational trust, a single code of conduct should be agreed between the DH and regulators. The new code should not only have clear links to the NHS Constitution but also demonstrate accountability for behaviour and relationship building through NHS performance and other relevant regulatory compliance frameworks.

Support for challenging posts and health systems

"Some NHS chief executive posts are more challenging than others because of a mix of organisational complexity, performance challenges, strategic development, stakeholder engagement, relationship challenges, and internal and/or external politics. If chief executive posts are identified as challenging then it follows that the organisation's chair, board, executive team and clinical leadership roles will be similarly challenging."

"Those appointing chief executives, executive teams, chairs and boards to challenging organisations have a responsibility to not only determine the amount of senior managerial experience required for a particular role but also to ensure they have sufficient personal and organisational development support to optimise organisational and personal success. There may be reluctance from those appointed to lead challenging organisations to accept proposals for help on the basis of pride or because they relish the satisfaction of putting things right without external support. This reluctance should be resisted."

Recommendations:

"1. Challenging posts should be clearly identified and the leadership and managerial challenges made explicit before any appointments are made."

"2. Development support necessary to increase the probability of personal, organisational and system-wide success should be clearly agreed between all parties at the time appointments are made."

"3. Chief executives, chairs and board directors should not be appointed to work in a challenging or turnaround environment without previous relevant managerial and board-level experience."

Development of chairs and non-executives

"The Appointments Commission has recently introduced a new induction process for chairs and non-executive directors, which includes emphasising the importance of board dynamics and team building. In addition, Monitor, the regulator for NHS foundation trusts, has commissioned development programmes for non-executive directors; the DH has established a framework for developing PCT boards; and the National Leadership Council is formulating guidelines for board development.

"To a large extent the challenges that face the United Lincolnshire Hospitals NHS Trust are a challenge of effective board and inter-board working. Publishing guidance

and recommended approaches to board development is undoubtedly useful. However, it is largely dependent on the insight of boards, especially chairs and chief executives, whether to systematically pursue development activities for their boards and in conjunction with the boards of their partner organisations."

Recommendation:

"Assessing board effectiveness should be a required component of the annual work programme for all NHS boards and the results included in performance management and regulatory assessments."