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INVESTIGATIONS – REVIEWS – INQUIRIES

**An independent review into the approach and behaviour of
NHS South West in relation to the dismissal of John
Watkinson by Royal Cornwall Hospitals NHS Trust**

**A report for
the Chief Executive of the NHS**

December 2010

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Verita is an independent consultancy which specialises in conducting and managing investigations reviews and inquiries for public sector and statutory organisations.

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Contents

| | |
|---|-----|
| Introduction | 4 |
| Terms of reference | 7 |
| Executive summary | 8 |
| | |
| Details of the review | |
| | |
| Approach, structure and those involved | 19 |
| Questions raised | 26 |
| | |
| Part 1 - facts and findings | |
| | |
| Brief chronology | 30 |
| Upper gastrointestinal cancer reconfiguration | 42 |
| RCHT performance | 66 |
| Bromley report and the Hawker review | 96 |
| Other matters investigated | 133 |
| | |
| Part 2 - analysis and conclusions | |
| | |
| Analysis and conclusions | 151 |
| | |
| Appendices | |
| Appendix A Secretary of State for Health's announcement | 168 |
| Appendix B List of interviewees | 169 |
| Appendix C Documents reviewed | 170 |
| Appendix D Review team biographies | 174 |

Introduction

1.1 John Watkinson took up his post as chief executive of the Royal Cornwall Hospitals NHS Trust (RCHT) on 1 January 2007. The trust has a long history of financial difficulties and in 2007 was ranked by the Healthcare Commission to be the worst performing NHS organisation in the south west. In late 2007 it was one of four NHS organisations required to account for its poor performance at a meeting with Sir David Nicholson, NHS chief executive. RCHT is not a foundation trust¹.

1.2 Plans to transfer the surgical treatment of some upper gastrointestinal cancers (upper GI) from Treliske Hospital² in Cornwall to Derriford Hospital in Devon were the subject of controversy and dispute in Cornwall throughout 2008. RCHT obtained counsel's opinion confirming the need for public consultation before any change was decided. John Watkinson led the discussion on this opinion at a meeting of the RCHT board on 5 August 2008.

1.3 Mr Watkinson was the chief executive of Bromley Hospitals NHS Trust (Bromley) before his appointment to RCHT. In late 2007 Bromley commissioned an independent review into its financial management and governance, covering the period when Mr Watkinson was chief executive and the year after he left.

1.4 The Bromley report was published on 25 September 2008 and raised serious concerns about the financial management and governance of the trust. The RCHT board asked Mr Watkinson to take special leave and RCHT and NHS South West (the SHA) announced an independent review to:

“...consider whether the issues of competence and behaviour highlighted in the Bromley report have in any way occurred in the Royal Cornwall Hospitals Trust.

¹ NHS foundation trusts are established as independent public benefit corporations and are free from central government control and from SHA performance management. Instead they are regulated by Monitor and operate by the terms of their authorisation.

² RCHT is the main provider of acute services in Cornwall. It provides services to three sites including Royal Cornwall Hospital (Treliske Hospital, Truro), West Cornwall Hospital (Penzance) and St Michael's Hospital (Hayle)

The joint review will also clarify whether the Royal Cornwall Hospitals financial management and governance arrangements have been and remain appropriate.”

1.5 The RCHT board suspended John Watkinson on 2 October 2008.

1.6 RCHT and the SHA appointed a team of four independent experts, led by Professor Ruth Hawker, to undertake the review. The Hawker report was published on 20 March 2009 and criticised the trust’s financial management, governance arrangements, its board and its chief executive. The RCHT board accepted its conclusions and recommendations at a meeting convened to consider the report.

1.7 The RCHT board dismissed John Watkinson on 16 April 2009, the day after a meeting between him and two non-executive directors. The reason given in his letter of dismissal was:

“the board considers that your actions have led to a breakdown in trust and confidence and that there is no realistic alternative to termination of employment.”

1.8 John Watkinson’s appeal against this decision was heard by a panel of independent non-executive directors who upheld the decision to dismiss.

1.9 Mr Watkinson took his case to the employment tribunal. On 5 May 2010 the tribunal found that he had been unfairly dismissed because he had made a “*protected disclosure*” covered by the Public Interest Disclosure Act. The disclosure was of counsel’s opinion regarding consultation, made on 5 August 2008. The tribunal also found that RCHT acted as it did as a result of pressure from NHS South West. Mr Watkinson’s witness statement sets out his reasons for believing this was the case, and the tribunal seems to have accepted his arguments.

1.10 On 17 June 2010 the Secretary of State for Health announced an independent review into the SHA’s involvement in the decision to dismiss John Watkinson. Sir David Nicholson, NHS chief executive commissioned Verita to conduct it.

1.11 Verita is a consultancy specialising in the management and conduct of investigations, reviews and inquiries in public sector organisations. Lucy Scott-Moncrieff, Verita associate, and Ed Marsden, managing director of Verita, conducted the work.

1.12 Our terms of reference are set out in section two. Our review is concerned with the actions of NHS South West in relation to Mr Watkinson's dismissal. We have not reviewed the legality of John Watkinson's dismissal, which has already been adjudicated upon, nor have we reviewed the merits or otherwise of the reconfiguration of upper gastrointestinal (upper GI) cancer services in the south west peninsula. We have looked at the interaction between the SHA and RCHT only to the extent necessary to fulfil our terms of reference.

1.13 We identified a panel of experts with whom we discussed our evidence, findings and conclusions. They saw some of the documents as appropriate. The panel were: Kathryn Riddle, chair, NHS Yorkshire & Humber; Kate Gordon, chair, The Queen Elizabeth Hospital King's Lynn NHS Trust; and Sheena Cumiskey, chief executive, Cheshire and Wirral Partnership NHS Foundation Trust. None has a close association with the individuals or organisations involved in this review.

2. Terms of reference

2.1 The Secretary of State for Health announced this review in a written ministerial statement to the House of Commons on 17 June 2010.

2.2 The terms of reference for this review are:

To examine all the SHA's interactions with the Royal Cornwall Hospitals NHS Trust in relation to the dismissal of John Watkinson and, by association, the trust's position in relation to the provision of the upper GI services in Cornwall. In particular, to determine:

- *The chronology of events and decisions made in the running up to the dismissal of John Watkinson.*
- *What involvement NHS South West had in his dismissal and whether or not this was motivated by the reconfiguration of upper gastro-intestinal services or otherwise.*
- *Whether the SHA acted appropriately, proportionately, in keeping with its role and within its statutory responsibilities.*

The review should not duplicate the review of the proposals to reconfigure upper GI services in the southwest which was recently carried out by the Independent Reconfiguration Panel, nor any subsequent appeal of the employment tribunal's decision. However, it may consider these and any other relevant background evidence to make its determinations.

2.3 The ministerial statement appears at appendix A.

2.4 In conducting the review we did not and do not challenge the decision of the employment tribunal that Mr Watkinson was unfairly dismissed.

3. Executive summary

Introduction

3.1 This report provides an independent review of NHS South West's (the SHA) involvement in the dismissal of John Watkinson from the Royal Cornwall Hospitals NHS Trust (RCHT). It was commissioned by Sir David Nicholson, NHS chief executive, on behalf of the Secretary of State for Health who announced the review in a written ministerial statement to the House of Commons on 17 June 2010.

3.2 An employment tribunal decided in May 2010 that John Watkinson was unfairly dismissed because he had made a "*protected disclosure*" covered by the Public Interest Disclosure Act. The disclosure was of counsel's opinion regarding consultation on the reconfiguration of services made on 5 August 2008. The tribunal also found that RCHT acted as it did as a result of pressure from the SHA.

3.3 The terms of reference for the review are set out in section two of our full report. They required us to concentrate solely on the actions of NHS South West. We have not therefore inquired into the legality of John Watkinson's dismissal, which has already been adjudicated on, neither have we reviewed the merits or otherwise of the reconfiguration of upper gastrointestinal (upper GI) cancer services in the south west peninsula.

Our approach

3.4 This review started in July 2010 and was conducted in private. Our draft report was submitted to the Department of Health at the end of September.

3.5 We were provided with copies of the witness statements and associated papers available to the employment tribunal and we asked for and received a great deal of other documentation relating to the SHA, the trust, upper GI cancer services, inspection visits, and independent review reports. We conducted 38 formal interviews (including some by telephone) either in the Verita offices, the House of Commons or in Truro, Cornwall.

3.6 The interviews were recorded and those interviewed were advised that they might be quoted in the report. Everyone we interviewed had the opportunity to comment on the factual accuracy of interview transcripts and to amend or add to them if appropriate.

3.7 We were supported in the work by three experts with whom we discussed our evidence, findings and conclusions and who saw some of the documents as appropriate. One was a strategic health authority chair; one, the chair of an acute trust; and the third, the chief executive of a foundation trust. None has an association with the individuals or organisations involved in this review.

Background and brief chronology

3.8 More detailed facts and findings can be found in part one of the full report but key elements of the chronology are set out below to provide context and to aid understanding.

3.9 John Watkinson started at RCHT as the chief executive on 1 January 2007 having previously held a similar position at Bromley Hospitals NHS Trust. He was appointed by an interview panel that included the trust chair, an external assessor and Sir Ian Carruthers, chief executive of NHS South West.

3.10 He inherited a difficult situation. At that time, RCHT was judged to be the worst performing NHS organisation in the south west with a long history of financial difficulties. The trust had an underlying deficit of £17.1 million in 2005/2006 and the district auditor had published a public interest report pointing out that the trust's financial difficulties had been exacerbated by disagreements with the organisations that commissioned services from it.

3.11 In July 2007, the Healthcare Commission (HCC) wrote to the SHA expressing "*profound concerns about RCHT*" on behalf of itself, the Audit Commission and the Health and Safety Executive.

3.12 In September 2007, the HCC expressed serious concerns about the trust's performance against national benchmarks set out in *Standards for better health* and launched a formal investigation. The following month it announced that for 2006/2007 it

assessed RCHT - for the second annual health check in a row - as 'weak' for quality and 'weak' for use of resources.

3.13 In December 2007, the board of Bromley Hospitals NHS Trust commissioned Michael Taylor to carry out a review of its financial management and governance covering the period when John Watkinson was its chief executive and the year after he left.

3.14 In May 2008, RCHT declared that it had complied with 35 of the Standards for better health during the previous financial year, compared to 13 a year earlier. In July, the HCC carried out an inspection at RCHT, looking at four standards that had been reported as fully compliant and one that had been reported as partially compliant. The HCC produced a report in September 2008 saying that RCHT had not been compliant on any of the standards it had checked in July.

3.15 Throughout the first half of 2008 Cornwall and the Isles of Scilly Primary Care Trust was pursuing its plan to transfer the surgical treatment of some upper GI cancers from Treliske Hospital in Truro to Derriford Hospital in Plymouth. The plan had its roots in the *Guidance on commissioning cancer services: improving outcomes in upper gastrointestinal cancers (IOG)*, published by the Department of Health in 2001, which provided national guidance and recommended population sizes for an oesophago-gastric surgery service.

3.16 This plan had generated local controversy. Between the creation of the plan in 2006 and the final decision in July 2009 to move upper GI services from Truro to Plymouth, a number of actions were taken which caused clinicians, members of the RCHT board, health campaigners and others to believe that decisions were being taken without following due process and without the necessary evidence to justify the proposed change.

3.17 John Watkinson and the rest of the RCHT board supported the move of services to Derriford only if it complied with the IOG and if due process was followed. RCHT consequently obtained counsel's opinion confirming the need for public consultation before any change was made or even decided upon. This document is in the addendum to our report. John Watkinson led the discussion on this opinion at a meeting of the RCHT board on 5 August 2008.

3.18 Michael Taylor's report on Bromley Hospitals NHS Trust was published on 25 September 2008. It raised serious concerns about the way that trust had been managed during John Watkinson's tenure as chief executive.

3.19 That day, during a SHA meeting with the RCHT board to discuss the Bromley report, Sir Ian Carruthers said that in his opinion RCHT was heading towards corporate failure. John Watkinson subsequently contested this claim. Later that day the chair of RCHT, on behalf of the board, asked Mr Watkinson to take special leave pending a formal decision on whether he should be suspended.

3.20 The RCHT board suspended John Watkinson on 2 October 2008 pending an independent review into whether the problems detailed in the Bromley report were being repeated at RCHT. The review was also to consider whether the financial management and governance arrangements in RCHT remained appropriate. Just before this, on 30 September, Mr Watkinson wrote to the chair of RCHT complaining that he had been libelled in the press release issued by the trust to announce the review and suggesting that the real reason for his suspension was his stance on the upper GI reconfiguration.

3.21 RCHT and NHS South West announced on 6 October 2008 that they were jointly commissioning an independent review to be led by Professor Ruth Hawker.

3.22 The HCC reported on 16 October 2008 that RCHT had been assessed for 2007/2008 as 'weak' on quality but had improved from 'weak' to 'fair' on use of resources.

3.23 The Hawker report was published on 20 March 2009 and criticised RCHT's financial management, governance arrangements, its board and chief executive.

3.24 The RCHT board dismissed John Watkinson on 16 April 2009, the day after a meeting between him and two non-executive directors. The reason given in his letter of dismissal was that:

"The board considers that your actions have led to a breakdown in trust and confidence and that there is no realistic alternative to termination of employment."

3.25 John Watkinson appealed against the dismissal decision on 26 June 2009. His appeal was heard by a panel of independent non-executive directors. They recommended to the RCHT board that the original decision to dismiss John Watkinson be upheld. This was ratified at an RCHT board meeting on 14 July 2009.

The employment tribunal decision

3.26 The employment tribunal hearing John Watkinson's claim said in its May 2010 judgement:

"The reason for the claimant's dismissal was due to pressure brought to bear on the RCHT by the SHA and that the reason for that pressure was the claimant's stance over the issue of consultation [on the reconfiguration of upper GI cancer services].

The appeal was a travesty of anything approaching basic concepts of fairness.

We think there is significance ... in the fact that the Overview and Scrutiny Committee were due to meet on 27 April 2008 to reconsider the issue of consultation. Through Ian Carruthers, the SHA had expressed its determination to ensure that the transfer of upper GI services ... went ahead come what may. Those views had been expressed in very forceful terms. The SHA through Mike Pitt and Ian Carruthers had expressed serious criticism of the claimant. In our view, the claimant's action in tendering the advice to the respondent on 5 August was a severe irritant to the SHA's intentions. In our judgement it amounted to a protected disclosure in that if the RCHT proceeded without consulting they would, at the least, be likely to breach their obligations under the legislation. With the claimant in post, he could have been expected to have repeated the advice that he had been given by Counsel. Had he not been dismissed on 16 April 2009, there is every reason to expect that he would have resumed his post as chief executive and attended the OSC meeting on 27 April. Had he done so, he would undoubtedly have reiterated the advice thus presenting a further obstacle to the SHA's plans to transfer the service."

3.27 We take these findings as our starting point. The employment tribunal reached these conclusions after a long hearing, with both sides represented by counsel, and we

assume that the evidence was thoroughly tested. We note that the trust and SHA denied having acted improperly.

3.28 We were struck by the fact that the employment tribunal's judgement made no comment about the method by which it supposed the SHA managed to get the trust board to dismiss Mr Watkinson. RCHT and the SHA are different organisations, based in different towns some distance from each other. If RCHT was wittingly or unwittingly doing the SHA's bidding, there must have been a mechanism by which this was achieved.

The relationship between the SHA and the trust

3.29 The SHA is responsible for performance managing the NHS in the south west. It oversees the work of the primary care trusts and NHS trusts. Like other strategic health authorities, its three key functions are: to create a coherent strategic framework for its catchment area; to agree annual performance agreements with the organisations for which it is responsible and to manage delivery against those agreements; and to build capacity and support performance improvement.

3.30 We could see a number of ways in which the RCHT could have dismissed Mr Watkinson as a result of pressure from the SHA, arising from Mr Watkinson's stance on upper GI. For instance:

- the SHA could have told RCHT board members that they had to dismiss Mr Watkinson, but that they had to pretend to do it for another reason, and the board could have knowingly complied
- the SHA could have told the board that Mr Watkinson had to be dismissed because of the Hawker report, although its real reason was because of Mr Watkinson's stance on consultation about the reconfiguration, and the board could have innocently complied
- the SHA could have said nothing to the board about Mr Watkinson's dismissal, but the board dismissed him because it believed it knew that this was what the SHA wanted, and it believed the SHA wanted it because of the upper GI issue

- the SHA could have said nothing to the board about Mr Watkinson’s dismissal, but the board could have dismissed him because it correctly believed that this was what the SHA wanted — the board believed that the SHA wanted this because of Hawker and Bromley — but actually the SHA wanted it because of upper GI
- the board could have dismissed Mr Watkinson in good faith, but were manipulated into doing so by the SHA, which was motivated by Mr Watkinson’s stance on upper GI consultation
- the board could have dismissed Mr Watkinson in good faith, but were unconsciously responding to what they felt to be the wishes of the SHA, which they believed to be that the SHA wanted to get rid of Mr Watkinson because of his stance on upper GI services.

3.31 No doubt other explanations fit the employment tribunal’s finding. No doubt either that the degree of culpability of the SHA and the board would depend on which of these explanations was correct, if indeed the finding of the employment tribunal was correct.

3.32 The suggestion that the SHA pressurised the RCHT board into dismissing Mr Watkinson because of his stance on upper GI came from him and we have relied on his evidence to the employment tribunal and to us to make sure we have examined these allegations thoroughly.

3.33 In section five of the full report we set out the ways in Mr Watkinson thinks that this pressure may have been applied, and the questions we sought to answer arising from his concerns.

3.34 We must allow for the possibility that the employment tribunal was mistaken and that the SHA did not put pressure on the board to dismiss Mr Watkinson and that the board dismissed him because it had genuinely lost trust and confidence in him as a result of the Hawker report and his response to it. Such a conclusion would not challenge the employment tribunal finding that Mr Watkinson had been unfairly dismissed, although it would disagree with the employment tribunal’s finding about why he was dismissed.

The report

3.35 The bulk of our report seeks to answer the questions raised by the employment tribunal judgement and the concerns raised by Mr Watkinson. In view of Mr Watkinson's allegation that his suspension was also the result of improper pressure from the SHA on RCHT we have looked at the suspension in detail, as it was a significant part of the sequence of events that ended in Mr Watkinson's dismissal.

3.36 We analysed our findings to establish:

- what part the SHA played in Mr Watkinson's suspension
- what part, if any, the SHA played in the conclusions and recommendations of the Hawker review, and, if it played any part, how and why it did so
- what part, if any, the SHA played in the decision by the RCHT to accept the Hawker report, and, if it played any part, how and why it did so (We also considered what significance should be given to the decision of the RCHT board to accept the report without taking into account John Watkinson's rebuttal letters)
- what part, if any, the SHA played in the decision by the RCHT to dismiss John Watkinson, and, if it played any part, how and why it did so
- what part, if any, the SHA played in the decision by the independent appeal panel to uphold John Watkinson's dismissal, and, if it played any part, how and why it did so.

Conclusions

3.37 The evidence to support our conclusions is in the main body of the report.

John Watkinson's suspension

3.38 The SHA put pressure on the RCHT board, but was justified in doing so. It is clear that the highest levels of the NHS and Department of Health believed that the Bromley report justified a review in Cornwall. In light of the views expressed, we find it impossible to believe that such a review could have taken place while Mr Watkinson remained at work. We do not consider that the SHA had a 'hidden agenda'³.

3.39 The RCHT chair and non-executive directors were relatively inexperienced in the NHS and it was good practice for them to take advice from the more experienced SHA before making their own decision. We consider that they made the decision to suspend Mr Watkinson in good faith and for good reason.

The Hawker review

3.40 The SHA's involvement was that of a commissioner. It did not seek to influence the way the review was carried out or to control the witnesses the review team interviewed. Its involvement in the appointment of the team and drafting of the terms of reference was in accordance with established good practice for public bodies commissioning independent reports.

The Hawker report

3.41 The SHA, along with the RCHT board, checked the draft report for factual accuracy but otherwise did not seek to influence the conclusions or recommendations of the report.

³ Mr Watkinson says in his statement for the employment tribunal and in evidence to us that he believes that the SHA, and in particular Sir Ian Carruthers, wanted him dismissed because he had revealed that he had obtained an opinion from David Lock of counsel that a final decision on upper GI configuration could not be made without public consultation, that Sir Ian was determined to force the reconfiguration through without consultation, and that Sir Ian saw him as "*the last man standing*" who could stop this while he remained actively in post. For the sake of convenience we call this the SHA's alleged "hidden agenda".

3.42 As a matter of good practice, we think the board's approach in not considering Mr Watkinson's rebuttal letters was right. If the RCHT board had taken the letters into account before deciding whether or not to accept the report, it would have had to redo much of the review and would have had to reject, for instance, its own experience in relation to the HCC standards.

3.43 The RCHT board members accepted the report as an indictment against them, as well as against John Watkinson and intended to go forward with recommendations.

3.44 The RCHT board was under pressure to accept the report so that it could move on, but this pressure was mainly from trust staff.

3.45 We found no evidence that the SHA applied inappropriate pressure on the board to accept the report.

John Watkinson's dismissal

3.46 We find no evidence that the RCHT board's dismissal of Mr Watkinson was motivated by any 'hidden agenda' of its own or of the SHA, or was a result of pressure from the SHA.

The independent appeal panel

3.47 There is no evidence to suggest that the SHA tried to influence the appeal panel, neither do we see any evidence to suggest that the appeal panel was, or thought it was, acting in accordance with the SHA's wishes.

The approach and behaviour of the SHA

3.48 We consider that the SHA acted appropriately given its performance management responsibilities for NHS organisations in the south west and the fact that RCHT was not a foundation trust.

3.49 The SHA was justifiably concerned about many aspects of RCHT's performance in the period leading up to the RCHT board's dismissal of John Watkinson. The trust was the

second worst-performing trust in the country. It was not compliant with HCC standards, had continuing financial and other performance problems. It had become embroiled in a public debate about the reconfiguration of upper GI services. Furthermore, the board seemed insufficiently aware of the problems that were so obvious to the SHA.

DETAILS OF REVIEW

4. Approach, structure and those involved

Approach to the review

4.1 We have been provided with copies of the witness statements and documents available to the employment tribunal and we note that neither the documents nor the judgement contain unequivocal evidence, such as an email or a reported conversation, to prove that the SHA wanted John Watkinson removed because of his stance on the reconfiguration of upper GI services. Neither is there any such evidence that the RCHT board dismissed him in compliance with this alleged wish. Mr Watkinson's case and the finding of the tribunal are based on inferences drawn from certain facts and events. This is often the case in unfair dismissal claims, and employment tribunals are skilled at drawing inferences in this way.

4.2 Like the employment tribunal, we have had to draw inferences from the information available. However, our review is not limited to the confines of an unfair dismissal claim so we have not only had access to the papers available to the court but have also been able to identify and obtain other information and evidence.

4.3 We have obtained information about the history of the RCHT and its board, the role of the SHA and its relationship with the RCHT, and evidence regarding the behaviour of the relevant individuals in this story. We have looked at the board's justifications for its actions, and tested their plausibility. We have looked at the SHA's expressed and alleged attitude to the upper GI issue and have explored the context of the reconfiguration to help us form a judgement about its relevance to Mr Watkinson's dismissal. We have examined John Watkinson's claims and sought documentary and other evidence to support or challenge those claims. Inconsistencies and contradictions have inevitably arisen which we have tried to resolve. We do not assume that inconsistencies denote dishonesty or evasiveness because we recognise that people's perceptions of events can differ legitimately and that recollection of events varies over time and as a result of events. We set out the evidence in as much detail as we can so that the reader may see how and why we have reached our conclusions.

4.4 The employment tribunal hearing was not recorded, but we have been told that witnesses gave evidence in accordance with their witness statements. In particular, Mr Watkinson told us that his witness statement was an accurate account of his position.

4.5 This review was undertaken in private. It comprised 38 formal interviews (including multiple interviews), other discussions and an examination of all available relevant documentation.

4.6 We conducted interviews with everyone relevant to our terms of reference, which were specifically about the actions and behaviour of the SHA. Our interviews were conducted in the Verita offices, the House of Commons and in Truro, Cornwall. The interviews were recorded and those interviewed were advised that they might be quoted in the report. We offered interviewees the opportunity to comment on the factual accuracy of interview transcripts or to amend or add to them if appropriate.

4.7 One interviewee said we were not taking sufficient account of the views of patients and their advocates. The interviewee would have liked us to spend more time in Cornwall hearing local opinion about John Watkinson's dismissal. We decided that we could fulfil our terms of reference without doing so but we conducted a number of formal, recorded, telephone interviews with those who wanted to speak to us.

4.8 We requested a large amount of documentation relating to the SHA, the trust, upper GI cancer services and the independent review report of Bromley Hospitals NHS Trust. Appendix C sets out what has been made available. We believe we have received all documents we requested where they existed or their nearest equivalent where they did not.

4.9 We made findings, comments and recommendations based on our interviews and the information available to us to the best of our knowledge and belief.

Structure of the report

4.10 The report is in two parts.

4.11 Part one contains a chronology and our evidence and findings. Section 6 is a chronology of relevant events from the time that upper GI reconfiguration was first discussed until the time that the Secretary of State announced the commissioning of this review. The chronology details the intertwined history of the upper GI reconfiguration, the performance of RCHT before and during John Watkinson's tenure and the stages and consequences of the Bromley and Hawker reviews. Sections 7, 8 and 9 disentangle these three strands, set them out in detail and look at the allegations made by Mr Watkinson in relation to them. Section 10 deals with other matters raised by Mr Watkinson.

4.12 Part two contains our overall analysis and conclusions.

4.13 Our findings from interviews and documents are set out in ordinary text. Our comments and opinions are in *bold italics*.

Trust and strategic health authority post-holders and others mentioned in this report

4.14 The people and posts referred to in this report are listed below, along with the period when the individuals were associated with the trust and the SHA. Some of them held more than one role or title during the period under review.

Chairs at Royal Cornwall Hospitals NHS Trust

| | <i>From</i> | <i>To</i> |
|-------------------------|---------------|-------------|
| Professor Colin Roberts | December 2005 | June 2007 |
| Peter Davies (interim) | June 2007 | August 2008 |
| John Mills (interim) | July 2008 | March 2009 |
| Martin Watts | March 2009 | present |

Chair at NHS South West

| | <i>From</i> | <i>To</i> |
|---------------|-------------|----------------|
| Sir Mike Pitt | May 2006 | September 2009 |

Non-executive directors at Royal Cornwall Hospitals NHS Trust

| | <i>From</i> | <i>To</i> |
|----------------|---------------|------------|
| Martin Watts | October 2006 | April 2007 |
| Roger Gazzard | October 2007 | present |
| Patrick Wilson | November 2007 | present |
| Rik Evans | November 2007 | present |

Chief executives at Royal Cornwall Hospitals NHS Trust

| | <i>From</i> | <i>To</i> |
|-----------------|---------------|---------------|
| Brian Milstead | 1993 | June 2006 |
| John Watkinson | January 2007 | April 2009 |
| Tony Parr | October 2008 | February 2009 |
| Peter Colclough | February 2009 | present |

Other directors at Royal Cornwall Hospitals NHS Trust

| | <i>From</i> | <i>To</i> |
|-----------------------|----------------|---------------|
| Jo Perry | September 2007 | November 2009 |
| Ian Gibson | October 2007 | October 2008 |
| Greg Moulds | November 2007 | February 2009 |
| Julia Dutchman-Bailey | January 2007 | December 2008 |

Chief executive at NHS South West

| | <i>From</i> | <i>To</i> |
|--------------------|-------------|-----------|
| Sir Ian Carruthers | July 2006 | present |

Other directors at NHS South West

| | <i>From</i> | <i>To</i> |
|-----------------|--------------|-----------|
| Andrew Millward | July 2006 | present |
| Bill Shields | January 2007 | present |

Other individuals referred to in the report

- Andrew Williamson, chair, Cornwall and Isles of Scilly Primary Care Trust
- Ann James, chief executive, Cornwall and Isles of Scilly Primary Care Trust
- Penny Bennett, Appointments Commissioner for the south west, Appointments Commission
- Lee Budge, district auditor, Audit Commission
- Ian Biggs, regional director - south west, Healthcare Commission
- Professor Mike Richards, national cancer director, Department of Health

Others

- Michael Taylor, author of the Independent review report of financial management and governance at Bromley Hospitals NHS Trust
- Professor Ruth Hawker, chair of the Independent review of management and governance report at the Royal Cornwall Hospitals NHS Trust

Organisations and bodies and their relationship with one another

4.15 The following organisations and bodies appear in this report:

The Peninsula Cancer Network (PCN) was established to advise the four PCTs on the standards, development and commissioning of cancer care in Devon and Cornwall. It also supports and advises trusts on the provision of high-quality cancer care. The network is led by a board comprising chief executives from each PCT and each acute trust, plus PCN executives and patient representatives. It commissioned the independent clinical review that recommended Plymouth as the specialist centre for upper GI surgery. It recommended PCT boards to adopt the clinical review's recommendations. It worked with Plymouth Hospitals to implement the decision.

The upper GI Network Site Specific Group (NSSG) is an advisory clinical sub-group of the PCN to address this specific form of cancer, drawing on the expertise in acute trusts. It looks at service mapping, service improvement and action planning.

The National Cancer Action Team (NCAT) is a national team that reports to the national cancer director. Its role is to support the NHS and facilitate the implementation of the NHS Cancer Plan. It works closely alongside the cancer policy team in the Department of Health and the cancer services Collaborative Improvement Partnership. The NCAT also works closely with the SHAs and cancer networks. Responsible for ensuring the PCN's plans for a second specialist centre would be compliant with the *Guidance on Commissioning Cancer Services: Improving Outcomes in Upper Gastro-intestinal Cancers*.

The Strategic Health Authority (SHA) is responsible for performance managing the NHS in the south west. It oversees the work of primary care trusts (PCTs) and NHS trusts. Like other strategic health authorities, its three key functions are: to create a coherent strategic framework for the south west; to agree annual performance agreements with the organisations for which it is responsible and to manage delivery against those agreements; and to build capacity and support performance improvement.

The provider NHS Trusts

- *Royal Cornwall Hospitals Trust* runs the district general hospital at Treliske, Truro, where most Cornish patients used to go for upper GI cancer surgery. Pre- and post-operative tests and care are still carried out here for these patients.
- *Plymouth Hospitals Trust* runs Derriford Hospital in Plymouth, which is now the sole specialist centre for upper GI cancer surgery in the south west peninsula. All Cornwall and Devon patients now go there for surgery, with pre- and post-operative tests and care still provided locally.
- *Royal Devon and Exeter Hospitals Trust* runs the district general hospital in Exeter, where most patients from Devon used to go for upper GI cancer surgery. It specialised in minimally invasive operations, which transferred to Derriford from 1 January 2010 along with all other upper GI surgery. Pre- and post-operative tests and care are still carried out here for local patients.

The Primary Care Trusts

- *NHS Cornwall and Isles of Scilly* commissions all health and some social care for the population of Cornwall and the Isles of Scilly. The PCT board supported the

recommendation of the PCN to establish the specialist centre for upper GI at Derriford.

- *NHS Devon* commissions all health and some social care for the population of Devon, excluding Plymouth and Torbay. The PCT board supported the recommendation of the PCN to establish the specialist centre for upper GI at Derriford.
- *NHS Plymouth* commissions all health and some social care for the population of Plymouth. The PCT board supported the recommendation of the PCN to establish the specialist centre for upper GI at Derriford.
- *Torbay Care Trust* commissions all health and social care for Torbay, south Devon. The care trust board supported the recommendation of the PCN to establish the specialist centre for upper GI at Derriford.

The Overview and Scrutiny Committees (OSC)

- *Cornwall OSC* scrutinises healthcare services, plans and decisions in Cornwall.
- *Isles of Scilly OSC* scrutinises healthcare services, plans and decisions in the Isles of Scilly.
- *Devon OSC* scrutinises healthcare services, plans and decisions in Devon.
- *Plymouth OSC* scrutinises healthcare services, plans and decisions in Plymouth.
- *Torbay OSC* scrutinises healthcare services, plans and decisions in Torbay.

5. Questions raised

5.1 RCHT's reason for dismissing John Watkinson was:

"...the board considers that your actions have led to a breakdown in trust and confidence and that there is no realistic alternative to termination of employment."

5.2 The employment tribunal found Mr Watkinson had been unfairly dismissed because he had made a "*protected disclosure*" covered by the Public Interest Disclosure Act. The disclosure was that of counsel's opinion regarding consultation on upper GI reconfiguration, made on 5 August 2008. The tribunal also found that RCHT acted as it did as a result of pressure from the SHA.

5.3 Mr Watkinson says in his statement for the employment tribunal and in evidence to us that he believes that the SHA, and in particular Sir Ian Carruthers, wanted him dismissed because he had revealed that he had obtained counsel's opinion that a final decision on upper GI configuration could not be made without public consultation, that Sir Ian was determined to force the reconfiguration through without consultation, and that Sir Ian saw him as "*the last man standing*" who could stop this while he remained actively in post. For the sake of convenience we call this the SHA's alleged "hidden agenda".

5.4 John Watkinson identifies a number of matters in support of his belief:

- That in Sir Ian Carruthers' said in a speech at St Mellion on upper GI that there would be no consultation.
- That the SHA was obsessed with the upper GI reconfiguration.
- That Sir Ian Carruthers had recognised that the Bromley report was flawed and not a significant issue and had drawn up a protective press release with Peter Davies in June 2008. It was only after he discovered that John Watkinson had obtained a legal opinion which identified consultation as a legal necessity for RCHT as well as the PCT that he said the Bromley report was so serious.

- That Sir Ian Carruthers knew in April 2008 that John Watkinson rejected the criticisms made of him in the Bromley report but nonetheless used it as an excuse to get him suspended.
- That the SHA instigated a review of upper GI services at RCHT with a view to the service being closed so that patients would be forced to go to Plymouth and consultation would be bypassed.
- That there was an orchestrated plan for the publication of the Bromley report, the communication of the healthcare standards findings, and the communication of the Griffin report to fit with the long-standing SHA meeting in Truro on 25 September 2008.
- That the RCHT non-executive directors were threatened with being dismissed from the board if they did not agree to suspend him.
- That Sir Ian Carruthers told the RCHT board that the trust might be heading for corporate failure, which could not be justified on the basis of the information in his possession at that time.
- That Sir Mike Pitt had told John Mills that John Watkinson had tried to get him removed as chair in July 2008 and that this allegation was untrue.
- That no board member had been removed as a result of the finding that they failed to follow the spirit of the Code of Conduct and that this was because they had bowed to the pressure from the SHA.

5.5 John Watkinson’s concerns, if correct, implicate a number of organisations and individuals that must, wittingly or unwittingly, have been used as part of the alleged “hidden agenda” to help in his dismissal:

- Bromley Hospitals NHS Trust and NHS London

- The Appointments Commission and the Office of the Commissioner for Public Appointments
- The Healthcare Commission
- Professor Mike Richards, the national cancer director
- Cornwall and Isles of Scilly PCT
- Professor Ruth Hawker OBE, David Fielding MBE, Dr Neil Goodwin CBE and David Stout - authors of the independent review of RCHT
- Linda Nash, chair, Somerset Partnership NHS Trust; Tony Barron, chair, Wiltshire Primary Care Trust and Andrew Willis, non-executive director, Taunton and Somerset NHS Foundation Trust - the independent panel who heard Mr Watkinson's appeal against the decision of the RCHT board to dismiss him.

5.6 We put to some of these people and to representatives of these organisations the suggestion that they had been doing the SHA's bidding and that the SHA had a "hidden agenda". The results of our discussions are set out in our report.

5.7 Mr Watkinson believed that the RCHT board acted in response to improper pressure from the SHA in deciding to suspend and subsequently to dismiss him and that the improper pressure arose from the SHA's "hidden agenda".

5.8 These decisions were made while upper GI reconfiguration was a live issue. To provide a context for the decision making, we have looked at the board's position on upper GI and then considered the significant decisions of the RCHT board in chronological order:

- the decision to commission a review jointly with the SHA (the Hawker review)
- the decision to suspend John Watkinson
- the terms of reference of the Hawker review
- the decision to accept the Hawker report

- the decision of the hearing panel to recommend John Watkinson’s dismissal
- the decision to accept the recommendation of those conducting the hearing that John Watkinson be dismissed.

5.9 We looked at the professed reasons for these decisions, at the concerns of John Watkinson about them, at any evidence of a “hidden agenda” and in particular at the extent to which the upper GI controversy played a part in decision-making.

PART ONE - FACTS AND FINDINGS

6. Brief chronology

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| January 2001 | <i>Guidance on Commission Cancer Services: Improving Outcomes in Upper Gastro-intestinal Cancers published nationally</i> |
| July 2002 | The Peninsula Cancer Network (PCN) produces a plan for reconfiguring upper GI services in the region. It would involve moving surgery from Treliske Hospital, Truro to Derriford Hospital, Plymouth in 2009 and from the Royal Devon and Exeter Hospital to Derriford Hospital in 2010. |
| 12 September 2003 | Professor Mike Richards, national cancer director, confirms that the two-centre solution seems appropriate. He strongly recommends to the South West Peninsula Strategic Health Authority - predecessor to South West Strategic Health Authority (the SHA) that they do not endorse a three-centre option suggested by Royal Cornwall Hospitals NHS Trust. |
| 22 October 2003 | The upper GI network site-specific group (NSSG) considered the two-centre proposal (agreed by the Network Board and the South West Peninsula SHA) and decides instead to pursue a three-centre option. Martin Cooper, medical director of PCN, says he will stand down as NSSG chair. |
| 26 July 2005 | David Chambers (PCN director) on the advice of Professor Mike Richards commissions John Bolton to undertake a review on behalf of the Network and the SHA. |
| 1 December 2005 | Professor Colin Roberts appointed chair of RCHT. |
| 30 December 2005 | John Bolton recommends that cancer resections at Truro should cease and the specialist teams consolidated at Plymouth and Exeter. This should be an interim solution with the aim of establishing a single site within three to five years. |
| 17 February 2006 | The NSSG discuss John Bolton's report and agree to establish the single centre by 2010. |
| 24 March 2006 | The Network Board agrees with the single centre option. |

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| 3 April 2006 | South West Peninsula SHA invite Plymouth and Exeter to submit their bids to be the centre of excellence for the Peninsula. |
| 12 April 2006 | The National Cancer Action Team acknowledges that the network board will follow the recommendations of the Bolton review. Initially, a joint service will operate at both Plymouth and Exeter - moving to one of these in 2010. |
| 7 July 2006 | Sir Ian Carruthers OBE starts as chief executive at NHS South West (SHA). |
| 13 September 2006 | The Devon and Cornwall Audit Confederation reports that RCHT's 2005/06 declaration of compliance with the core <i>Standards for better health</i> was inaccurate. |
| 1 December 2006 | The lack of progress towards settling the location of the single centre is raised as a concern in the draft report of a peer review visit in September 2006. |
| 8 December 2006 | The PCN board agrees the need to designate the single site centre of excellence. It asks the four PCT chief executives to report to the board on this in March 2007 - in time for a start date in 2010. |
| 31 December 2006 | John Watkinson leaves Bromley Hospitals NHS Trust |
| 1 January 2007 | John Watkinson starts as chief executive at RCHT. |
| March 2007 | RCHT declares itself compliant with 21 of 44 of the Healthcare Commission's core standards. |
| 30 March 2007 | The PCN board learns that the PCT chief executives have not made a decision about the location of a single site and that the issue is to be reconsidered. |
| 13 June 2007 | Professor Colin Roberts stands down as chair of RCHT. |
| 14 June 2007 | Peter Davies is appointed interim chair of RCHT. |
| 29 June 2007 | The four PCT chief executives agree that Derriford Hospital should be designated as the single centre. |
| 11 July 2007 | The Healthcare Commission write to the SHA expressing " <i>profound concerns about RCHT</i> " on behalf of themselves, the Audit Commission and the Health and Safety Executive. |

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| <p>11 September 2007</p> | <p>The Healthcare Commission writes to John Watkinson expressing “<i>serious concerns</i>” in relation to RCHT’s performance against core Standards for Better Health. They subsequently launched a formal investigation.</p> |
| <p>20 September 2007</p> | <p>Bill Boa, interim finance director of RCHT (on secondment from NHS South West) reported to the RCHT board at their AGM that “<i>in terms of deficit versus turnover, the trust was among the poorest performing trusts in the NHS</i>”.</p> |
| <p>October 2007</p> | <p>The annual audit letter from the Audit Commission comments that the trust “<i>needs to urgently improve its financial reporting arrangements to ensure that it prepares accurate financial statements and has a clear understanding of transactions which may have had an impact on the subsequent years’ financial position</i>”.</p> |
| <p>18 October 2007</p> | <p>The Healthcare Commission announces that RCHT has been assessed for 2006/07 as weak for quality and weak for use of resources in the annual health check for the second year in a row.</p> |
| <p>29 October 2007</p> | <p>Devon County Council’s overview and scrutiny committee considers the network proposals for upper GI cancer surgery in the peninsula and resolves that Devon PCT should be asked to:</p> <ul style="list-style-type: none"> • undertake a wide-ranging public consultation on the proposals • submit an impact assessment prior to the next meeting. |
| <p>November 2007</p> | <p>Sir David Nicholson, NHS chief executive, meets the interim chairs and chief executives of four trusts in the whole of the NHS that scored “weak, weak” for two years running in the Healthcare Commission’s Annual Health Check. RCHT is one of the four trusts. It is accompanied to the meeting by the SHA.</p> |
| <p>9 November 2007</p> | <p>Michael Taylor is commissioned by Bromley Hospitals NHS Trust board in association with NHS London to undertake an independent review into the financial management and governance of the trust.</p> |

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| <p>27 November 2007</p> | <p>The Overview and Scrutiny Committee of Cornwall County Council considers the network proposals. The minutes show that the committee resolved that <i>“the proposals do not represent a substantial change to services and therefore do not require a formal three month consultation process”</i>.</p> |
| <p>3 December 2007</p> | <p>Sir David Nicholson writes to Peter Davies, RCHT interim chair, setting the Department of Health’s expectations about improvements in performance.</p> <p>John Watkinson informs Sir Ian Carruthers that the Bromley review has been commissioned.</p> |
| <p>4 January 2008</p> | <p>RCHT and the SHA submit to David Flory, Director-General, Department of Health, an operational plan for 2008/09 on behalf of the trust.</p> |
| <p>10 January 2008</p> | <p>The RCHT board discusses the proposed move of upper GI services and decides that it needs six months to consult the clinical staff and to carry out a review.</p> <p>Joe Teape (new), director of finance reported at the RCHT board meeting that <i>“in terms of the current financial position there was still a planned surplus of £1.3m as agreed with the SHA.”</i></p> |
| <p>29 January 2008</p> | <p>Ann James, chief executive of Cornwall and Isles of Scilly PCT, writes to John Watkinson to say that she cannot continue to support upper GI resection being carried out at RCHT.</p> |
| <p>21 February 2008</p> | <p>Alan Hall, director of performance at the Department of Health writes to South West Strategic Health Authority expressing doubt that RCHT will improve on its weak/weak rating for 2007/08.</p> <p>The director of finance reports that the trust is still forecasting a surplus of £1.3m.</p> |

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| <p>10 March 2008</p> | <p>Cornwall and Isles of Scilly PCT and RCHT hold a joint board meeting to discuss cancer service proposals.</p> <p>Ann James makes clear that the plan should be implemented because the service is working outside the IOG and other guidance. She reiterates the PCT's position that no public consultation will take place unless Cornwall County Council's Overview and Scrutiny Committee demands it. However, there will be public engagement to explain the decision.</p> |
| <p>13 March 2008</p> | <p>RCHT declares itself compliant with at least 34 of the 44 core standards set by Healthcare Commission and anticipates that it will be compliant with all 44 by 31 March 2008.</p> |
| <p>25 March 2008</p> | <p>Public demonstration about the transfer of cancer services out of Cornwall at County Hall, Truro, ahead of Cornwall County Council Overview and Scrutiny meeting.</p> |
| <p>April 2008</p> | <p>The Appointments Commission is made aware of the draft and future publication of Michael Taylor's report into financial management and governance at Bromley Hospitals NHS Trust and the potential for this to impact upon RCHT.</p> |
| <p>1 April 2008</p> | <p>Sir Ian Carruthers chairs a meeting in Taunton to discuss upper GI cancer surgery. It is attended by chief executives from all the relevant PCTs and hospital trusts, representatives from the PCN and other members of the SHA. Sir Ian expresses concern that upper GI is the subject of public disagreement and continued debate by NHS leaders. The minutes show that Ann James and John Watkinson agree to work together to transfer services as quickly as possible - recognising the need to provide further explanation to the public. The action plan shows that the transfer of the service is to be made by 30 June 2008.</p> |
| <p>10 April 2008</p> | <p>John Watkinson writes a rebuttal letter to the chair of Bromley Hospitals NHS Trust after seeing the draft report. He copies it to the chair of the RCHT board and to Sir Ian Carruthers.</p> |

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| <p>2 May 2008</p> | <p>Sir Ian Carruthers speaks at the Peninsula Cancer Network conference in St Mellion about the proposed reconfiguration of upper GI services. He makes forceful points about the need for clinical evidence to be the driving force for change.</p> |
| <p>15 May 2008</p> | <p>At the RCHT board meeting, Peter Davies, chair, reports that: <i>“...a meeting of the Cancer Network had taken place on 2 May 2008 at which Sir Ian Carruthers, Chief Executive of NHS South West, had spoken and had reported that the Upper GI, gynaecology and head and neck cancer services would move from Cornwall with the recommendations of the Cancer Network being implemented. Subsequently a meeting had been held with the Primary Care Trust and a public engagement process had been set up by the PCT. RCHT would support the PCT in having public engagement in respect of Upper GI only... RCHT would support the engagement process to ensure the relevant information was in the public domain.”</i></p> |
| <p>19 May 2008</p> | <p>A draft statement by the PCT, RCHT and the PCN supports the proposed reconfiguration and gives information about the engagement process. The letter is copied to relevant MPs.</p> |
| <p>16 June 2008</p> | <p>A news release from RCHT says it tops the Healthcare Commission’s <i>“most improved”</i> table which shows that in 2006/07 it met 13 out of 44 standards and in 2007/08 35 out of 43.</p> |
| <p>28 June 2008</p> | <p>Nicholas Ball, chair, Cornwall and Isles of Scilly audit committee writes to Andrew Williamson, chair of Cornwall and Isles of Scilly PCT. The letter discusses the reconfiguration and mentions a meeting with the trust where he forms the view that John Watkinson and most other board members doubt the advantages of the reconfiguration and want it delayed for one reason or another. He is concerned about the governance and possible clinical negligence if the PCT continues to commission the surgery despite its being unlicensed by the Cancer Action Team. He says that legal advice on this point is needed obtained.</p> |

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| July 2008 | The trust's internal performance review shows substantial progress in many areas. |
| 3 July 2008 | <p>John Watkinson receives a telephone call from Ian Biggs, regional director, Healthcare Commission inviting him to consider whether the trust should reconsider its self-declaration.</p> <p>At a regular meeting of chairs and chief executives, Sir Michael Pitt, chair of the SHA board and Sir Ian Carruthers, at the request of Cornwall and Isles of Scilly PCT, meet John Watkinson, Peter Davies, chair of the trust board, Ann James and Andrew Williamson. The SHA suggest that a joint statement on upper GI is prepared to ensure a consistent NHS position or clarify where differences existed. Concern about wider performance at the trust is also raised, particularly the concern that energy is being diverted into an issue that affects only a few people, while performance and quality of all other services are not improving fast enough.</p> |
| 10 July 2008 | Peter Davies writes to Sir Michael Pitt, resigning from the board and saying that the joint statement does not have the support of most non-executive directors. |
| 11 July 2008 | John Mills starts as interim chair at RCHT. |
| 15 July 2008 | The overview and scrutiny committee of Cornwall County Council considers the GI issue again and receives a paper describing the outcome of the public engagement undertaken by the PCT. Professor Mike Griffin attends to provide clinical review. As a result of the high volume of public concern, the committee revises its earlier judgement and finds that the proposals do represent a substantial change to services. |
| 29 July 2008 | David Lock of counsel advises RCHT that both the trust and the PCT would be acting unlawfully if they try to move the upper GI services from Truro to Plymouth without public consultation. |

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| <p>31 July 2008</p> | <p>Jo-Anne Wass, chief of staff to the NHS chief executive, forwards to Sir Ian Carruthers an email she has received from Anne Rainsberry at NHS London. This states that the Bromley Hospitals NHS Trust board is to consider the Bromley report in part two of its August board meeting. The report is to be finalised and then taken back to a public board in September 2008.</p> <p>Ms Wass says a personal copy of the report will be shared with Sir Ian Carruthers.</p> <p>A copy of the Bromley report is sent to Sir Ian Carruthers.</p> |
| <p>4 August 2008</p> | <p>The HCC email the draft inspection reports to John Watkinson for RCHT's comments.</p> |
| <p>5 August 2008</p> | <p>The part one minutes of the RCHT board meeting record a discussion regarding finance and performance, note adverse variance against plan of £2.15m, a high risk to achieve the year-end target, concern about additional costs needed to reach targets and the possibility of a rollover loan being needed</p> <p>The part 2 minutes record that John Watkinson presents counsel's opinion on upper GI reconfiguration. He explains that according to this advice the trust and the PCT are under a duty to take part in the consultation. The part one minutes record <i>"The board resolved to support the PCT in developing and delivering an effective public consultation"</i>.</p> |
| <p>15 August 2008</p> | <p>The HCC send John Watkinson copies of the draft reports, which have been amended to take account of the trust's comments.</p> |
| <p>18 August 2008</p> | <p>Professor Mike Richards writes to Sir Ian Carruthers expressing concern about the upper GI service in Cornwall. The PCT subsequently commission Professor Mike Griffin and Bill Allum to undertake a clinical review.</p> |
| <p>22 August 2008</p> | <p>Ann James emails John Watkinson confirming the review and hoping it can be done in the first week of September and factored into the timetable for the consultation they have committed to undertake.</p> |
| <p>28 August 2008</p> | <p>The Bromley board discusses the Bromley report.</p> |

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| 12 September 2008 | Bill Shields, director of finance and performance at the SHA, writes to John Watkinson expressing his concerns about RCHT performance and says the trust chair needs to be briefed. |
| 17 September 2008 | A teleconference about the Bromley report takes place involving Penny Bennett, Appointments Commissioner for south west, Andrea Sutcliffe, chief executive of the Appointments Commission, Sir Ian Carruthers and Sir Mike Pitt. |
| 19 September 2008 | <p>Sir Michael Pitt phones John Mills, interim chair of RCHT, to tell him the Bromley report will be published the following week. He says the report is serious and “one of the most damning he has ever seen”. They discuss the matters the RCHT board should consider.</p> <p>An urgent meeting is arranged with John Mills and the trust non-executives for 25 September 2008 with Sir Michael Pitt and Sir Ian Carruthers.</p> |
| 22 September 2008 | <p>Ann James sends a copy of the Griffin and Allum review report to the Overview and Scrutiny Committees in Cornwall and the Isle of Scilly. Her covering letter ends:</p> <p><i>“The PCT is keen to discuss with the joint OSC as soon as possible the implications of the recommendations of the Independent Clinical Review in relation to the planned consultation - both within Cornwall and the Isles of Scilly - and more widely across the peninsula.”</i></p> <p>She also sends a copy of the report to John Watkinson and John Mills.</p> |
| 23 September 2008 | The RCHT non-executive directors meet and consider the Bromley report. |
| 23 September 2008 | John Mills and John Watkinson respond positively to the upper GI review report in their reply to Ann James’ letter of 22 September. They want to go ahead with all the options. |

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| <p>24 September 2008</p> | <p>The Griffin and Allum review into services at Truro is published by Cornwall and Isles of Scilly PCT and recommends that:</p> <ul style="list-style-type: none"> • stand alone surgery at Truro should cease as soon as practicable • a further, similar review should be carried out in Plymouth and Exeter to decide at which of the three hospitals the combined service should be based. <p>The HCC holds its feedback meeting with RCHT to discuss the outcome of the inspection.</p> |
| <p>25 September 2008</p> | <p>The RCHT non-executive directors meet with Sir Michael Pitt and Sir Ian Carruthers to discuss the Bromley report. Sir Michael and Sir Ian advise them that a jointly commissioned independent review should be undertaken into the management and governance of the trust to assure the boards of RCHT and the SHA that the problems identified at Bromley are not recurring in Cornwall. John Mills asks John Watkinson to take special leave for a few days to allow the board to consider, in accordance with due process, whether he should be formally suspended.</p> |
| <p>30 September 2008</p> | <p>John Watkinson writes to John Mills saying he does not object in principle to an independent review, subject to a fair procedure being followed. He says that the press release issued when the review was announced is defamatory of him. He goes on to say that he believes that his request for proper consultation to comply with the trust's legal obligations is the real reason for the current action against him.</p> |
| <p>30 September 2008</p> | <p>The annual audit letter from the Audit Commission for 2007/2008 says:</p> <p><i>“the trust reported a surplus of £1.2 million which is a significant improvement on its performance in the previous year when it incurred a deficit of over £36 million. The trust’s overall financial standing does, however, remain a serious cause for concern as it has an accumulated debt of approximately £45 million.”</i></p> |
| <p>2 October 2008</p> | <p>John Mills writes to John Watkinson to suspend him.</p> |

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| 6 October 2008 | The Hawker review is jointly announced by RCHT and the SHA. |
| 15 October 2008 | John Watkinson's lawyers write to John Mills about the trust's press release on 25 September, the Bromley report, the RCHT review and his suspension. They say that the Bromley report and RCHT's press release are defamatory. They assert that Mr Watkinson's detrimental treatment is a result of his support for the retention of cancer services. |
| 16 October 2008 | The Healthcare Commission announces that RCHT has been assessed for 2007/08 as 'weak' on quality of service and 'fair' on use of resources. |
| 23 October 2008 | John Watkinson writes to Professor Ruth Hawker to say he is willing to cooperate with the review. He sets out conditions for his involvement. He says he is seeking to pursue his legal rights in respect of the damage to his reputation following publication of the Bromley report. |
| 30 October 2008 | The director of finance reports to the RCHT board that the trust could be <i>"between £4 million and £6.9 million off plan, dependent upon discussions with the PCT"</i> . |
| 23 December 2008 | Mr Watkinson's lawyers write to Sir Ian Carruthers, Sir Mike Pitt, John Mills and Tony Parr raising a claim for libel. |
| 29 January 2009 | Mr Watkinson's lawyers respond to Professor Hawker and colleagues about the draft independent review. |
| 10 February 2009 | Professor Hawker and Dr Neil Goodwin present the findings of the independent review to the RCHT and SHA boards. |
| 17 February 2009 | Mr Watkinson's lawyers send further comments to Professor Hawker and colleagues. |
| 5 March 2009 | The RCHT board resolve to accept the recommendations and conclusions set out in the Hawker report. |

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| 10 March 2009 | Jo Perry, on behalf of the RCHT board invites John Watkinson to a hearing on 17 March to “ <i>consider whether there had been a breach of trust and confidence between you (John Watkinson) and the trust as your employer and if so whether your position as chief executive remains tenable.</i> ” The letter states that the panel would consist of two non-executive directors, Roger Gazzard and Patrick Wilson. |
| 16 March 2009 | John Mills’ last day as interim chair of RCHT board. |
| 17 March 2009 | Martin Watts starts first term as chair of RCHT board. |
| 20 March 2009 | The Hawker report is published. |
| 15 April 2009 | John Watkinson’s trust and confidence hearing is held, resulting in a recommendation to dismiss him. |
| 16 April 2009 | The RCHT board meets and accepts a recommendation to dismiss John Watkinson. |
| 21 April 2009 | The RCHT board send John Watkinson a letter of dismissal. He appeals against the finding. |
| 26 June 2009 | John Watkinson’s appeal panel is heard and recommends upholding the decision to dismiss. |
| 14 July 2009 | The RCHT board accepts the recommendation that the original decision to dismiss John Watkinson be upheld. |
| 5 May 2010 | The employment tribunal finds that John Watkinson was unfairly dismissed. |
| 17 June 2010 | The Secretary of State for Health announces an independent review of the SHA’s involvement in Mr Watkinson’s dismissal. |

7. Upper gastrointestinal cancer reconfiguration

Introduction

7.1 The Guidance on Commissioning Cancer Services: Improving Outcomes in Upper Gastro-intestinal Cancers (IOG), published by the Department of Health in 2001, provided national guidance and recommended population sizes for oesophago-gastric surgery services. Local cancer networks developed and agreed action plans for implementing the guidance. These networks involved commissioners and providers. The national cancer action team approved local plans. This process was followed in the south west peninsula between 2001 and 2006, culminating in an agreed action plan.

7.2 Between the creation of the action plan in 2006 and the decision in July 2009 to move upper GI services from RCHT to Derriford Hospital in Plymouth, a number of developments set out below caused clinicians, members of the RCHT board, health campaigners and other members of the public concern. They believed that decisions were being taken without following due process and without the necessary evidence to justify the proposed change.

7.3 John Watkinson and the rest of the RCHT board supported the move of services to Derriford only if it complied with the IOG and if due process was followed. Mr Watkinson said in his evidence that the PCT and SHA wanted to force through the change without consultation and he was concerned that this was unlawful. He cited as evidence an impromptu speech by Sir Ian Carruthers at a cancer network conference in St Mellion on 2 May 2008.

7.4 On 15 July 2008 the OSC decided that the reconfiguration was substantial and ordered consultation. Later that month, on behalf of the RCHT board, John Watkinson obtained written legal advice from David Lock of counsel on the steps that the PCT, and possibly RCHT, would need to take to comply with due process regarding the proposed reconfiguration. Mr Watkinson suspected that the SHA arranged for the national cancer director, Professor Mike Richards, to suggest that a review of the safety of the RCHT

service should be undertaken. Professor Mike Griffin and Bill Allum⁴ conducted this review at the request of the PCT, who published the report on 24 September. Mr Watkinson said the timing was orchestrated to coincide with a long-standing SHA board meeting due to take place in Truro on 25 September. The RCHT board had a meeting that day with the SHA in attendance for the first part of it. It then sent Mr Watkinson on special leave and on 2 October suspended him. He has maintained that the real reason for his suspension was his disclosure of the legal advice. He said the SHA wanted to neutralise him and “bullied” the RCHT board into suspending him, and that the board’s position on the reconfiguration later changed.

7.5 Mr Watkinson was suspended for over six months while the trust board and SHA commissioned an independent review of the management and governance of RCHT. The report of the review was published in March 2009. The RCHT board dismissed Mr Watkinson on 16 April 2009. He claimed that a significant reason for his dismissal was that an OSC meeting to take an important further decision on the reconfiguration plans was taking place on 27 April, 11 days after he was dismissed. He thought his dismissal was intended to stop him attending this meeting. He said that due process by way of consultation had not yet been complied with and that the proposed reconfiguration might have been delayed if he had pointed this out at the meeting.

7.6 The RCHT board denied that there was a causal link between Mr Watkinson’s stance on upper GI and his dismissal. We have therefore tested Mr Watkinson’s claims and have sought to answer the following questions arising out them:

- What was the RCHT board’s approach to the proposed reconfiguration during 2008 and 2009?
- What was John Watkinson’s approach from 2007 through to 2009?
- Did Sir Ian’s speech at the Peninsula Network cancer conference in St Mellion on 2 May show that he was determined to force the reconfiguration through without public consultation?

⁴ Mike Griffin is professor of gastrointestinal surgery at the University of Newcastle upon Tyne and a consultant surgeon at the Newcastle upon Tyne Hospitals NHS Foundation Trust. Bill Allum is a consultant surgeon at the Royal Marsden NHS Foundation Trust.

- Did the SHA instigate Professor Mike Richards, the national cancer director's decision to suggest a review as a way of driving through the transfer?
- Did the SHA/PCT commission the Griffin report as a route to close upper GI services at RCHT?
- Was the Griffin report published as a push to transfer upper GI surgery services without public consultation?
- Was the publication of the Griffin report orchestrated to coincide with the meeting on 25 September?
- Did John Watkinson's suspension and/or dismissal alter the stance of the RCHT board?
- What is the significance of the OSC meeting on 27 April 2009?

What was the RCHT board's approach to the proposed reconfiguration during 2008 and 2009?

7.7 The trust board first discussed the reconfiguration of upper gastrointestinal cancer services at their January 2008 meeting. One of the non-executive directors asked for the matter to be put on the agenda because he had heard from the consultant surgeon responsible about the proposed change. Three clinicians spoke at the meeting. They represented the specialties of upper GI surgery, head and neck cancer surgery and gynaecological oncological surgery.

7.8 Peter Davies, the former interim trust chair, said of the meeting:

“When we had the presentation from the consultants at the board meeting in January, I immediately asked for a meeting with Andrew Williamson, chairman of the PCT, and with Ann James to say, ‘Look, there is a real issue here. We need to have proper consultation; we need to get the SHA involved’. But the board had always taken the view that we will support three going into one. We could see the logic of that. What we were really frightened of, that Cornwall, down here, on its own, failing hospital, could go first; Royal Devon and Exeter would not go... you could just see that this might not happen because of politics. So Cornwall would lose its service whereas Exeter would retain its, and Plymouth would be there...”

7.9 The board decided at the meeting that it needed six months to consult clinical staff, carry out a review and discuss the matter with other organisations. In particular, the board believed that wider clinical ramifications arose from the reconfiguration. Roger Gazzard, non-executive director, told us:

“The part that made me uncomfortable, was the consultants on upper GI particularly were saying there were wider ramifications...The one that particularly stuck with me is they said there will be no one here who can open a chest, and that stuck with me.”

7.10 From May to June 2008 the PCT oversaw a public engagement process but this did not satisfy RCHT because it did not involve a reconsideration of the reconfiguration decision.

7.11 Peter Davies and John Watkinson attended a routine chair and chief executives meeting at the SHA on 3 July. They arrived early so that representatives of the SHA and the PCT could discuss upper GI with them. The SHA asked at the meeting that they produce a draft position statement for upper GI with the PCT in anticipation of an OSC meeting on 15 July that was due to consider the proposed reconfiguration. A draft statement was agreed, although the RCHT board would not accept the statement, so Peter Davies resigned on 10 July.

Comment

Mr Watkinson claimed in his letter to John Mills of 30 September 2008 that Peter Davies’ resignation resulted from his refusal to sign the draft position statement. However, Mr Davies confirmed to us that, as he had said at the time, he resigned because he could not persuade the board to accept the agreed statement, and he was not willing to present it at the OSC meeting without the agreement of the board. He also told us that if the board had been willing to accept the statement he would have signed it and taken it forward.

7.12 Roger Gazzard confirmed that the objections of the non-executive directors continued and strengthened after Peter Davies resigned and John Mills took over as interim chair.

7.13 The Cornwall OSC met on 15 July 2008. The issue of consultation over upper GI services was discussed for the third time. The OSC concluded that the upper GI proposals represented a substantial variation and that the PCT should therefore undertake full public consultation to allow the OSC to decide whether or not to refer the reconfiguration to the Secretary of State for Health. This was contrary to the OSC's previously expressed position.

7.14 RCHT was subsequently concerned that the PCT still wanted to implement the original decision on reconfiguration without the necessary consultation and obtained legal advice from David Lock of counsel about its own responsibilities in such a situation.

7.15 The trust board considered the legal advice in part two of the meeting on 5 August. The full text of the advice appears in the addendum to this report. In essence, it said that the reconfiguration decision had been made without prior public consultation, and the law required that it should be reconsidered after such consultation.

7.16 Interviewees told us and the records confirm that the advice was neither unexpected nor unwelcome. Jo Perry pointed out that RCHT was already in discussion with the PCT about the consultation required as a result of the OSC decision on 15 July.

7.17 In September 2008 a review of upper GI services was carried out at Treliske, which recommended centralisation and that reviews should also take place at Exeter and Plymouth to decide where the centralised service should be sited.

7.18 John Mills wrote to the OSC on 8 October 2008, shortly after John Watkinson's suspension. He referred to the legal advice and made it clear that he expected the consultation to continue, repeated the need to consider making Treliske the centre for cancer services and in no way suggested that the trust was giving in on the issue of upper GI consultation.

7.19 Professor Griffin and Bill Allum conducted reviews of Exeter and Plymouth in late 2008 and early 2009. The PCT engaged in widespread consultation of the proposals arising from the reviews. The RCHT board believed that their concerns about due process and IOG compliance were being properly addressed. The clinicians at Treliske accepted the recommendations and the board supported them.

Comment

The entire RCHT board including the non-executive directors supported opposition to the PCT's 2007 plans to move upper GI services from RCHT to Derriford. Peter Davies and then John Mills opposed plans to move the service without consultation.

John Mills in his capacity as interim chair of the trust supported the need for legal advice. The actions of the PCT after 15 July conformed to the legal advice obtained by RCHT, and the RCHT board's position reflected this. We find the board's position remained consistent from January 2008 until the PCT formally agreed the reconfiguration in July 2009.

What was John Watkinson's approach from 2007 through to 2009?

7.20 The Cornwall OSC considered the proposals for upper GI reconfiguration in November 2007. John Watkinson agreed to the move on the basis that three services were moving into one. On 20 December 2007 Mr Watkinson took part in a videoconference with Ann James and others to discuss the cessation of upper GI resections at RCHT by 31 December 2007. Support for the single centre was reaffirmed.

7.21 When the RCHT board first discussed the matter in January 2008, Roger Gazzard described John Watkinson's reaction:

"John at that stage was looking mighty uncomfortable I have to say. John was given a very rough time with the board because he had gone out and done something without board approval.."

7.22 Roger Gazzard felt that after Peter Davies' resignation, John Watkinson:

"...was coming round a little bit. He was moving to our way of thinking."

7.23 We asked Mr Mills if Mr Watkinson's stance on upper GI was in accordance with that of the non-executives and whether he thought the SHA understood this:

“...he was at all times...speaking the board’s views. He was not out on a limb at all.”

7.24 Mr Watkinson contacted the SHA twice in early July expressing concern that John Mills might depart from the official NHS position on upper GI at the OSC meeting on 15 July.

Comment

This suggests that John Watkinson was trying to prevent the dispute from becoming public and was also making clear to the SHA that he was not being troublesome about the reconfiguration.

7.25 On 30 September 2008, after going on special leave but before official suspension, John Watkinson wrote to John Mills claiming that his impending suspension was motivated by his stance on upper GI.

7.26 John Watkinson said in his witness statement that Peter Davies, the previous interim chair, had left because of PCT/SHA pressure on this issue. He added that the SHA had threatened to remove the board and that he was “*the last man standing*” who had objected to the PCT/SHA’s position; he had done so “*on grounds of a legal obligation that could not be easily swept away*”.

7.27 Mr Watkinson has said he did not consider that the process of review and engagement between September 2008 and April 2009 was compliant with the written legal advice to the board discussed at the 5 August meeting.

Comment

Mr Watkinson and the board apparently disagreed about the proposed reconfiguration from 30 September 2008 onwards. They agreed about the need for consultation in accordance with the law, but the board thought that the law was being complied with while Mr Watkinson did not.

Did Sir Ian's speech at the Peninsula Network cancer conference in St Mellion on 2 May show that he was determined to force the reconfiguration through without public consultation?

7.28 Sir Ian Carruthers was due to open the conference at St Mellion with a 20-minute speech. Instead, according to those present, he spoke for about one hour and 20 minutes about the upper GI reconfiguration.

7.29 We asked why Sir Ian Carruthers had made this intervention. Andrew Millward, director of communications and corporate services at the SHA said:

"I wasn't there, but it might have been my fault to be honest. I phoned Ian just before he was due in the meeting, just to say, 'You need to be aware that there is a big press story', which was the one I referred to, the one with Peter Davies on the front page, 'It just says that he wants to keep the service in the Royal Cornwall'. Given my life is about briefing everybody about everything, particularly the Department, I felt I should phone Ian. In hindsight I probably shouldn't have phoned Ian, but I phoned him and said, 'Before you go in, because you might be asked about this story, you need to be aware that Peter has said this'. He was fine; he just said, 'Fine, thanks Andrew; it is really helpful, even though again it is an example of people saying different things in the media'. It was left at that".

7.30 An RCHT consultant gynaecological oncologist Alberto (Tito) Lopes made notes that were widely circulated and extracts of which were presented at the Cornwall OSC meeting on 15 July.

7.31 The employment tribunal also had a copy of Tito Lopes' notes, and put the matter like this:

"IC spoke at length, during which he forcefully made the point that transfers to Derriford were going to take place and that media pressure would make no difference. He criticised the leadership of the Trusts. Mr Lopes' notes include the following:

- i. *Disappointed with the leadership to this point. Therefore need to change structure.*
- ii. *Sympathy for Cornwall as will lose some things, neither will it all be in Plymouth because of roads, needed to argue between Plymouth and Exeter.*
- iii. *Your family get less good care if you don't move*
- iv. *Lack of leadership by doctors*
- v. *Public not cheering this, at least not what I'm thinking*
- vi. *More to worry about than 40 operations in 95,000, like worrying about 1 tin of beans when the larder is full*
- vii. *On that issue everyone is losing and ultimately user and carer losing*
- viii. *Public outcry will not work - waste of effort. Real effort is moving from 2 to 1 centre and it won't be Cornwall*
- ix. *Whole of Cornwall can sign petition but won't change outcome*
- x. *What people remember is your mistakes*
- xi. *All I remember you lot for is you can't sort 100 re-sections in 95,000 operations. I won't lose sleep over it."*

7.32 We asked Sir Ian about this meeting:

"My account is simple. First of all, it was a wide range of people. You know, let's be quite honest, I spoke for too long, but what I was trying to get over were a number of quite basic things.

One was that firstly the change would happen, and it didn't matter how many protests there were, how many decibels, how many campaigns, they would not change the evidence and the evidence said that better outcomes for patients would be in centralised centres. Therefore, the best outcome for the safety of patients was in one centre.

Secondly, I made the point therefore that centralisation was inevitable based on the evidence. Thirdly, I indicated that Royal Cornwall had many features, but it wasn't sustainable in that area, and that this was no comment about surgeons but if people wanted to do that type of surgery they need to work in the centres that were best prepared for it.

The fourth thing was I did say I understood the position in Cornwall because of their loss of local services, but it was more productive if in fact we recognised that and focused on things we could decentralise, because a lot of things were being decentralised. One of the pleasing things of the IRP recommendations for me is to pick up the West Cornwall bit - we will come back to this - but we were getting over-consumed by one topic that affected small groups of people whilst we were in jeopardy of putting things at risk for half a million.”

7.33 He pointed out that the PCTs and trusts had made the decisions on reconfiguration before he became chief executive, that his only concern was getting the best outcome for the people and that his involvement in the issue was to this end.

Comment

We do not consider that Sir Ian’s intervention shows evidence of an obsession with the proposed reconfiguration.

7.34 Among the comments recorded by Tito Lopes but not quoted at the OSC or the employment tribunal are:

- “1. *Can’t see why we can’t decentralise radiotherapy and chemotherapy especially in geographic rural areas.*
2. *Every surgeon isn’t of the same standard. The problem is arguing and using data rather than improving.*
- 2a. *The patient is first, we wouldn’t have so many arguments if we did that but we are putting clinicians first, then organisations and not patients.*
3. *He can’t push PCTs to invest in cancer services but they are just squabbling.*
4. *Only three priorities:*
 1. *Implement outstanding commitments*
 2. *Ensure delivery in three years not five*
 3. *Go further in cancer reform in two or three areas.*

Upper GI

5. *In Peninsular do 90,000 operations and only 70 upper GI resections. .*

6. *Would like to have every place having RT (radio therapy) and chemo therapy. 44 day wait for RT - not enough kit.*
7. *He is reviewing cancer networks”*

Comment

The précis of the notes shows that Sir Ian was certain that the service would move from Truro, that the final central unit might be in Plymouth or Exeter, that no amount of protest could alter the evidence for change, that those needing the service and their families and carers would lose out if the move did not take place, and that he was disappointed with the local NHS leadership, including the doctors. The full note also shows that Sir Ian felt that the dispute was motivated by putting the interests of clinicians and organisations ahead of those of patients and that other services were being decentralised into Cornwall.

It is perhaps understandable that a senior official who expresses himself so vehemently, so publicly and at such length on a controversial issue might be seen as suggesting that he was prepared to force through the reconfiguration regardless of any legal requirement for consultation. However, that is not what Sir Ian said.

7.35 We have looked carefully at the decision-making process for upper GI to see if it suggests that change was being forced regardless of the law. We note that:

- in November 2007 the OSC agreed that the proposed reconfiguration was not substantial and did not require public consultation
- in July 2008 the OSC said that the proposed reconfiguration was substantial, and did require public consultation
- between September 2008 and February 2009 the affected PCTs carried out reviews of all three hospitals to inform the consultation that was to take place
- in March 2009 the OSC agreed the public engagement plan proposed by the PCT, which included an IPSOS Mori Poll of 1,000 people, public meetings and letters being sent to people in Cornwall who had received upper GI services, and their families, asking for their views

- in April 2009 the OSC decided the change was not substantial so no formal consultation was required
- in July the PCT formally decided to transfer the service to Plymouth
- on 1 January 2010 the service was transferred.

Comment

This chronology shows that the PCT at all times acted in accordance with the decisions of the OSC. The employment tribunal suggested that the SHA tried to ride roughshod over the need for consultation because it did not want to delay the transfer of services. However, the OSC agreed with the PCT that consultation should not start until the reviews of all three hospitals had been undertaken, which delayed matters by at least six months. This does not suggest an organisation trying to push something through quickly.

Did the SHA instigate the decision of Professor Mike Richards, to suggest a review as a way of driving through the transfer?

7.36 On 18 August 2008 Professor Mike Richards wrote to Sir Ian Carruthers reporting the concerns of Professor Mike Griffin and Bill Allum which included:

- *“lack of specialist cover 24/7 as the surgeon operating on the cases is single-handed*
- *very low workload which will impact on the necessary exposure the MDT needs to enhance overall experience. This is not just important in surgery, but is essential for both radiological and pathological expertise, as well as for all members of the MDT*
- *An apparently low proportion of patients being selected for surgery, compared to the national average*
- *30-day mortality and one year survival rates which are below the national average, despite low resection rates (which might therefore be expected to have above average outcomes).”*

Professor Richards suggested to Sir Ian that an urgent review of the services be carried out.

7.37 Mr Watkinson presumed that this letter was prepared and sent at the instigation of the SHA and Sir Ian Carruthers. However, Sir Ian told us that he had nothing to do with the sending of the letter.

7.38 We asked Professor Richards about the letter. He said:

“I had been looking at the numbers in different hospitals across the whole country and - again, taking a whole country look at this - it tended to be that those places that were doing ten or less a year pretty readily said, ‘Okay, we will stop’. Those that were doing somewhere between ten and 30 major oesophago-gastric procedures were the ones who always were reluctant to change and those that were doing more than 30 were mainly the large centres anyway, so they were going to be getting more as time went on.”

7.39 When Sir Ian received Professor Richards’ letter saying that a review should be conducted, he considered it a local matter so he passed the letter to the PCT who commissioned a review of RCHT.

Comment

A review by eminent, independent clinicians was exactly the approach that RCHT had been seeking, so we find it difficult to put a sinister interpretation on Professor Richards’ letter or Sir Ian Carruthers response to it.

Professor Richards makes plain in the letter that he was writing as a result of the concerns of Professor Griffin who had been liaising with the PCT and had attended the OSC meeting on 15 July.

Did the SHA/PCT commission the Griffin report as a route to close upper GI services at RCHT?

7.40 Professor Griffin told us that he was first asked to undertake this review by Teresa Moss, director of the National Cancer Action Team, and Professor Richards on 11 March 2008.

7.41 Professor Griffin and Bill Allum visited the hospital on 4 and 5 September 2008 and sent their report to the PCT on 17 September 2008. It said:

“The current service is not sustainable and services should be discontinued as soon as possible and centralised.”

7.42 We asked Professor Griffin whether this was saying that the upper GI surgery should no longer be carried out at RCHT at all, or that it should no longer be carried out at RCHT as a separate service, but might be if Truro was the best site for the centralised service. He told us that he meant the latter, and that when they carried out the reviews of the services at the three hospitals they were doing so starting from scratch in considering whether the services should be centralised, and, if so, which hospital would be the best site.

7.43 John Mills told us about his impression of the robustness of the review:

“When Griffin came down, round about the end of August, I remember I did come in and have a half hour welcome meeting with him and Allum before they went on to see the experts, and it was immediately apparent that these were really good blokes. I remember we came away from the conversation...feeling incredibly reassured that at last someone who knew what they were talking about was going to cut a swathe through all this palaver. And so it proved.

Not only were we pleased by the report, because it confirmed that although we were not sustainable, we were safe...but when we said something like, ‘You are going to look at Exeter and Plymouth, aren’t you?’ he said ‘Of course we are’. So the boil was lanced in an instant. Whatever those guys said, you would have followed because they knew what they were talking about.”

Comment

Professor Richards and Teresa Moss triggered the commissioning of the review in the spring of 2008. Professor Richards' letter to Sir Ian Carruthers appears to have prompted a piece of work that was already planned. We found no evidence to suggest that the PCT commissioned the work to force through reconfiguration without consultation.

Was the Griffin report published as a push to transfer upper GI surgery services without public consultation?

7.44 The PCT received the Griffin report on 17 September 2008. Ann James sent John Watkinson and John Mills a copy of the report on 22 September, explaining in her letter that the PCT proposed to publish it on 24 September. She also raised matters concerning quality of service and clinical governance about which the PCT wanted assurance.

7.45 Mr Watkinson said in his witness statement that he believed that:

"...this was the further push to transfer the services without public consultation and it was thought that if I were no longer in place then the transfer could be forced through."

7.46 However at the time he and John Mills responded to Ann James in a jointly signed letter on 23 September shown in the addendum. They raised no objections about publication the following day. Their letter said:

"We note in particular the thoughtful and valuable comments about the lack of agreement within the Peninsula Cancer Network about the process by which a single centre is achieved, and the recommendations for a comprehensive and inclusive approach to achieving this.

It is very good to see the explicit recommendation that there should be equivalent reviews of services at both Exeter and Plymouth to inform a decision about a single centre from 2010. As you know, we have always felt this to be essential in order to reassure patients - and public opinion - in Cornwall that a single centre,

however it is achieved, will indeed improve patient outcomes and genuinely cover the 1-2 million population recommended within the Improving Outcomes Guidance. We look forward to hearing of your plans to take this recommendation forward within the Network. The end result can then be a genuine single centre within the Peninsula, based upon agreement, in which everyone should be able to have full confidence.”

Comment

The report did exactly what the board and Mr Watkinson had hoped for - to recommend a complete review of the decision about where the centralised service should be, and to make suggestions to meet the concerns of people worried about the consequences if the service moved to another hospital. We cannot reconcile Mr Watkinson’s comment in paragraph 7.44 with the comments made in his letter in paragraph 7.45.

Was the publication of the Griffin report orchestrated to coincide with the meeting on 25 September?

7.47 The report was made available to the press under embargo on 23 September. It was tabled in part one of the PCT board meeting on 24 September and put on the PCT’s website.

7.48 Tracey Lee, director of communications and corporate governance at Cornwall and Isles of Scilly PCT, explained to us that the PCT had undertaken to publish the outcome of the review as soon as it could. This was a result of the high level of public interest in upper GI reconfiguration.

Comment

The PCT shared the Griffin report with the trust before publication and told it about their plans. The trust did not object to what they were proposing. We have no reason to believe that the PCT were publishing the report as part of an orchestration of events around the SHA board meeting on 25 September.

Did John Watkinson's suspension and/or dismissal alter the stance of the RCHT board on the issue of upper GI reconfiguration?

Comment

We find no evidence that the board altered its stance between January 2008 and July 2009, when the PCT formally agreed the reconfiguration.

The board's position throughout this time had been that it had no objection in principle to the reconfiguration so long as due process was followed and the proposed reconfiguration was IOG compliant. This was also John Watkinson's position. Between January and August 2008 the board did not consider that these conditions were met; between September 2008 and July 2009 it considered that they were met.

What is the significance of the OSC meeting on 27 April 2009?

7.49 In its judgement, the employment tribunal said:

"What was the reason for the dismissal? In our judgement the criticisms that we have put forward as to the procedural fairness, may shed light on the respondent's true reason for dismissing the claimant. We think there is significance, as argued by Miss McCafferty, in the fact that the OSC were due to meet on 27 April to reconsider the issue of consultation. Through IC, the SHA had expressed its determination to ensure that the transfer of upper GI services went ahead come what may. Those views have been expressed in very forceful terms. The SHA through MP and IC had expressed serious criticisms of the claimant. In our view, the claimant's action in tendering the advice to the respondent on 5 August was a severe irritant to the SHA's intentions. In our judgement it amounted to a protected disclosure in that if the RCHT proceeded without consulting they would, at the least, be likely to breach their obligations under the legislation. With the claimant in post, he could have been expected to have repeated the advice that he had been given by Counsel. Had he not been dismissed on 16 April 2009, there is every reason to expect that he would have resumed his post as chief executive and attended the OSC meeting on 27 April. Had he done so, he would undoubtedly

have reiterated the advice thus presenting a further obstacle to the SHA's plans to transfer the services."

Comment

With respect, the advice did not say that the RCHT had to consult on the reconfiguration. Rather, it explained that the law required public consultation to take place on any occasion when proposals for changes in the way services are provided are being considered.

7.50 Counsel's advice set out the special provisions that apply when an OSC decides proposals are substantial but says that in all cases consultation must at least:

- *"provide sufficient reasons for particular proposals so as to permit those consulted to give intelligent consideration and response*
- *be undertaken at a time when proposals are still at a formative stage*
- *give adequate time*
- *have its products conscientiously taken into account when the ultimate decision is taken."*

7.51 Counsel's advice also explained:

"It is perfectly lawful for the PCT to consult on just one option if the PCT considers that there is really only one viable option to put before the public..."

Comment

The advice explains that the PCT and RCHT have a duty to consult, but makes it clear that if the PCT carries out this consultation, RCHT does not have to do so. When the advice was obtained in July 2008, the decision on the reconfiguration had not been reopened and Griffin reviews of the three hospitals had not taken place. These reviews fulfilled the first requirement set out in the advice, providing information to allow intelligent consideration and response.

7.52 Subsequently, the following actions were taken by the PCT and PCN, with the agreement of the OSC and RCHT:

- The PCT organised a single-issue focus group meeting with local involvement network representatives to develop a series of local events focusing on patients and their families/carers in order to hear their views on the non-clinical issues raising concern such as transport, accommodation, parking and emotional support.
- At this meeting the potential for local focus groups was discussed and an outline engagement plan drawn up and agreed by the joint OSC at its meeting in March 2009. The views of the patient support group chair were sought on the themes for engagement.
- Between 2 and 9 April 2009 the PCT held four engagement events in Penzance, Truro, Bodmin and Bude. Patients and carers who had recently had surgery for an upper GI cancer were notified by letter from the PCT via their treating hospital. Twenty people attended, while others who could not attend sent comments.
- The local cancer network commissioned Ipsos MORI to carry out wider research across the peninsula, with three strands of work:
 - Local events, each with representative groups of 20 members of the public, who were asked in depth about the principles of centralising specialist cancer surgery. Five half-day events took place, at Lifton, Redruth, Barnstaple, Exeter and Plymouth.
 - Personal interviews with cancer patients, carers and people from hard-to-reach groups, including older people, those with long-term conditions and those living in remote areas.
 - A telephone survey of more than 1,000 people across the peninsula.

7.53 John Mills told us:

“I think it was recognised that once the three hospital reports had created the basis for the decision on the single centre, whatever needs to be done to make

that work, the practical arrangements, the financial arrangements, the consultation arrangements - all the stuff you do to make change happen - was, in a sense, not controversial.”

7.54 Peter Davies told us that if the process of September 2008/April 2009 had taken place during his tenure as chair of the board:

“I would have been prepared to stand up in front of 30,000 people and say, ‘Look, here are the facts, this is in your best interest, and this is why we are doing it’, then you could have had that general discussion and people would have listened, they could have heard that they were going to better outcomes from it and there is evidence for that and all of the rest of it”.

Comment

This work was undertaken when the proposals had not finally been decided and could still be altered. It seemed to allow time for response, thus fulfilling the second and third requirements of the advice.

The agreed reconfiguration seemed to take account of many of the concerns raised in the engagement process, for example, continuity of care and problems caused by the distance between Derriford and where some patients lived which suggests that the final legal requirement was also fulfilled by the time the decisions were formally agreed in July 2009.

7.55 The actions of the PCT and PCN in March and April 2009 were described as a public engagement process. Some interviewees have said this is not the same as public consultation, because public engagement takes place after a decision, whereas public consultation takes place before it.

7.56 Mr Lock’s advice expresses the PCT/RCHT’s general duty to consult as “*a duty to consult the public*”; “*involving the public through consultation*”; “*to engage with the public*”; “*the need to consult*”; “*to undertake public consultation*”; “*to engage in prior public consultation*”; “*to go out to formal public consultation*” and “*to carry out a form of public consultation*”. He seems to have used these terms interchangeably, perhaps

because the thrust of his advice was not to define the nature of the consultation or engagement with the public, but to explain that it must take place before a final decision, and must have the qualities described in paragraph 7.49. The advice criticised the public engagement activities of the PCT in 2008, not because they were described as public engagement, but because they were carried out, as the PCT acknowledged, after the reconfiguration plan had been agreed and accepted.

7.57 We were provided with a copy of the legal advice that the PCT obtained in October 2009 from its solicitors, Capsticks, when David Lock’s advice was being put forward as a reason for the OSC to refer the reconfiguration to the Secretary of State. Both advices quoted section 242 of the NHS Act 2006. We noticed that the two versions were slightly, but significantly, different. In the version Mr Lock quoted, consultation with users of services is compulsory in circumstances such as the proposed upper GI reconfiguration. In the advice provided to the PCT by its solicitors, Capsticks, section 242 requires that users of services must be “*involved (whether by being consulted or provided with information, or in other ways)...*”

7.58 Clearly, section 242 had been amended at some point. Counsel advised us that the amended version, quoted by Capsticks, came into force in November 2008, well after Mr Lock’s advice, but well before the engagement plan put into effect by the PCT in March/April 2009.

Comment

If consultation had been required, we consider that the engagement plan carried out in March and April 2009 met the criteria. However, it is clear that by the time of the engagement plan in 2009, section 242 no longer required every change in services to be consulted on and the engagement process certainly fulfilled the requirement that users of services should be “involved”.

7.59 A number of those we spoke to were concerned that if the process had been a consultation, it should have been a full public consultation, taking at least three months.

7.60 We asked the SHA for information about other service changes in the region between 2007 and 2010, and the number of these that had involved formal public

consultation after a decision by an OSC that proposed changes were substantial. The SHA told us that there had been 63, of which three went through formal consultation after discussion with the relevant OSC.

7.61 The PCT told us that when it was established it undertook a strategic review of health services, involving widespread engagement, and applying the methodology it subsequently used for upper GI cancer surgery proposals, including select-committee-style events, chaired by Professor Nick Bosanquet, and public meetings. The engagement was widely endorsed. It engaged with nearly 1,000 people, for services affecting a population of just over half a million. In comparison, more than 1,000 people gave their views across the peninsula in relation to upper GI cancer surgery, for a service affecting about 100 patients a year.

Comment

The information from the SHA shows that formal consultation was the exception rather than the rule. The engagement process on upper GI was a substantial piece of work considering the limited number of people the proposed change would affect. It is not for us to say whether the process undertaken by the PCT in this matter was lawful or not. However, it appears due process was being followed and we can see nothing that would have caused the SHA concern in April 2009.

7.62 The meeting on 27 April was to decide if the proposed reconfiguration was substantial. As the legal advice explains, when changes are proposed, the PCT has to consult the OSC, and this is:

“...an entirely separate duty which leads to the right for the OSC to refer a series of proposed changes to the Secretary of State to prevent the changes taking place...That duty is entirely independent of the general duty to consult the public.”

7.63 If an OSC considers the proposed changes to be substantial, it can require consultation to help it decide next steps. This can include recommending to the Secretary of State that the changes do not take place.

7.64 The OSC decided at an uneventful meeting in November 2007 that the proposed reconfiguration was not substantial.

7.65 In July 2008, having received a petition signed by 18,000 people, it changed its mind and called for more information before deciding what to do next. The Griffin reviews and subsequent public engagement were undertaken with the agreement of the OSC as a satisfactory way of providing it with the information it needed. It approved the engagement plan of the PCT in March. It is set out in paragraph 7.51.

7.66 The situation appears to have been calmer by the time of the meeting in April. The RCHT clinicians and the board were now satisfied with the plan, which would be IOG-compliant and which took account of the particular needs of Cornwall patients. For instance, the RCHT upper GI surgeon, Paul Peyser, would travel to Plymouth to conduct or take part in their surgery to ensure continuity of care, as well as provide follow-up in Cornwall. Some health campaigners still objected, but not to the level of the summer before.

7.67 The purpose of the OSC meeting in April 2009 was to decide if it still considered the proposed change to be substantial. The legal advice did not address this, neither did it suggest that the OSC should decide that the proposed change was substantial so as to ensure that consultation in a particular form took place.

Comment

The legal advice did not relate to the matter before the OSC on 27 April, so it seems unlikely that the SHA would have feared that it would have made any difference to the OSC's decision if it had known about it.

We are perplexed at the suggestion that Mr Watkinson's dismissal prevented him from raising at the meeting on 27 April his belief about the inadequacy of the consultation process.

If the SHA or board had wanted to gag Mr Watkinson, dismissing him 11 days before the meeting would have been an ineffectual way to go about it.

The board and the clinicians supported the proposed reconfiguration by the time of the meeting. Whether Mr Watkinson had been reinstated or remained suspended, it seems unlikely that he would have jeopardised his position by attending the OSC only to oppose the RCHT board.

8. RCHT performance

Introduction

8.1 The Bromley report raised concerns about performance, and the SHA said at the meeting on 25 September that there were problems in performance at RCHT, which added weight to their assertion that a thorough review was necessary. The Hawker review identified similar problems at RCHT. Mr Watkinson, in his witness statement and his rebuttal letters, challenged the accuracy of these concerns. We sought evidence of unjustified action, so we looked at the trust's performance during 2007 and 2008.

8.2 We have limited our review of RCHT performance to matters concerning financial management and the quality of services - two categories routinely assessed by the Care Quality Commission.

8.3 John Watkinson believed that the findings of the SHA and Hawker review team about the trust's financial problems in 2008 were inaccurate and motivated by the SHA's wish to find reasons to suspend and dismiss him.

8.4 In considering the part that the trust's financial performance may have played in Mr Watkinson's dismissal, we have sought to answer the following questions arising out of his claim:

- What was the trust's financial position during Mr Watkinson's tenure?
- What were the circumstances of the letter from Bill Shields, the SHA's director of finance and performance, to Mr Watkinson in September 2008?

8.5 Mr Watkinson said he also believed the SHA persuaded the Healthcare Commission to fail the inspected standards and to bring forward the announcement of these failings as part of the orchestration of events around 25 September 2008.

8.6 We set out the sequence of events and then sought to answer the following questions:

- Why did the HCC carry out an inspection of healthcare standards at RCHT in July 2008?
- Did the SHA persuade the Healthcare Commission to fail RCHT on its standards after the inspection in July 2008?
- Did the SHA persuade the Healthcare Commission to bring forward a meeting with RCHT to discuss the outcome of the inspection from October to September 2008 as part of the SHA's alleged orchestration of events around 25 September 2008?

In relation to finances, patients' services and governance, we then asked:

- What justification did Sir Ian Carruthers have when he told the trust board that RCHT might be heading for corporate failure?

The SHA's approach to performance management

8.7 NHS South West oversees a budget of £9 billion to care for 5.1 million people. It also oversees the performance of 40 NHS organisations including foundation trusts and 14 primary care trusts.

8.8 Sir Ian Carruthers explained in interview that he and others from the SHA had monthly meetings with trust chief executives and quarterly meetings with trust chief executives and chairs to discuss high-level business and performance.

8.9 Sir Ian confirmed that, if necessary, he would meet individual chief executives to discuss how performance problems would be resolved. He also said that he and the SHA chair would see a trust chair and chief executive together over major governance concerns or a strategic matter.

8.10 A number of witnesses commented that Sir Ian took a demanding approach to performance, focusing on the quality and safety of healthcare. Sir Ian said that his style

and that of the SHA⁵ were to set out “*clear expectations*” and “*work with what we have*”. An independent review of all SHAs commissioned by the Department of Health concluded about NHS South West that its approach to managing performance was “*tough, firm, fair, ambitious and consistent*”.

8.11 Sir Ian Carruthers said in interview that SHAs did not have the power to hire and fire trust staff and non-executive directors:

“The 40 organisations and the SHA itself are independent legal entities, and as such they are employers in their own right and they have the only hire-and-fire commitment. The two things that we need to bring out in my opinion in this role is that SHAs cannot dismiss Chief Officers or other officers, it is the function of the Board, and neither through the Appointments Commission can they dismiss the Chairs and non-executives of the Boards because there are due processes for those which have to be followed. Indeed, the decisions for Chairs and non-execs are taken by the Appointments Commission, and with employee matters by the employer, and we are not the employer of the people in the 40 organisations.”

8.12 Sir Ian told us that in 2006 the new SHA was among the most poorly performing regions in the NHS. In 2006, 21 of the 40 organisations in NHS South West had deficits. This included the RCHT. In 2010 NHS South West is one of the highest performing SHAs on the standard performance targets.

8.13 Bill Shields was appointed director of finance and performance at the SHA in January 2007. His job was to ensure that the SHA and its constituent organisations met national and local performance targets and agreed financial outturn positions. His responsibilities for performance included matters such as waiting times and accident and

⁵ Strategic Health Authorities (SHAs) hold NHS trusts to account for their performance against the NHS Operating Framework, existing commitments plus any other locally agreed strategies or plans. SHAs report to the Department of Health for their performance and also for individual organisational performance. SHAs have accountability for performance managing NHS trusts. An SHA will work with a trust whose performance causes concern and involve the relevant primary care trust. SHAs do not have this accountability for foundation trusts.

emergency treatment targets. He worked jointly with the SHA nursing and patient care directorate to “cover MRSA and compliance with Standards for Better Health”.

8.14 The SHA’s routine performance management consisted of monthly meetings with provider trusts that the responsible PCT would lead. The SHA would attend to hold the trust and PCT to account if there were concerns about performance.

8.15 Mr Shields confirmed in his witness statement to the employment tribunal that monthly performance improvement meetings were held with the RCHT and the PCT throughout 2008/2009. Performance meetings focused on finance, MRSA, waiting list management and referral to treatment times among other things.

Department of Health performance review of RCHT

8.16 In November 2007 RCHT was one of four trusts in the country required to account for their poor performance to Sir David Nicholson, NHS chief executive. This followed the Healthcare Commission assessing the trust as “weak, weak” in two consecutive years. Sir David wrote after the meeting to Peter Davies, RCHT interim chair, requesting specific recovery actions and an operational plan for 2008/09 covering all aspects of business.

8.17 In February 2008 the SHA said it was holding frequent meetings with the trust to assess progress. The SHA considered the risk remained of RCHT receiving a further “weak” quality rating for 2007/08 and, possibly, a “fair” rating on use of resources. A written report of a meeting on 4 February 2008 between RCHT, the SHA and the Department of Health said that while “*there are indications of improved performance....the optimism that was presented by the Chief Executive was not always backed up by evidence of improvements*”. (Document emphasis) In March 2008 the Department of Health were still expecting RCHT to be assessed by the Healthcare Commission as “weak, weak”. RCHT was eventually assessed as “weak, fair”. This was the third consecutive year that RCHT was assessed as “weak” for quality of services, unique for an NHS trust

Comment

The SHA had clear and established mechanisms for managing the performance of NHS organisations in NHS South West, which were adapted to local circumstances. These included the SHA chair and chief executive meeting boards where this was warranted.

The Department of Health was concerned about the performance of RCHT in late 2007 and remained so in March 2008. The Department set out clear expectations about the need for improvement to both the trust and the SHA.

Financial performance

What was the trust's financial position during Mr Watkinson's tenure?

8.18 The trust recorded a deficit of £15.7 million and an underlying deficit of £17.1 million in 2005/2006.

8.19 In September 2006 the district auditor published a public interest report pointing out that:

“the trust's financial difficulties have been exacerbated by disagreements with organisations which commission healthcare services from it. This has resulted in delays in agreeing financial and service plans and a lack of alignment between primary and secondary care activity plans”.

Comment

John Watkinson inherited a difficult financial position when he became chief executive of RCHT in January 2007.

8.20 The Healthcare Commission rated RCHT's financial management in 2006/07 as weak.

8.21 In August 2007 the trust reported a deficit of £3.6 million, which was £1.4 million worse than planned.

8.22 At the September 2007 RCHT annual general meeting the final accounts for 2006/2007 recorded an underlying overspend of between £16 and £17 million.

8.23 A medium-term financial plan based on the financial recovery plan forecast a surplus of £6 million at the end of 2007/08, a zero surplus in 2008/09, a £2 million surplus at the end of 2009/10, a £3 million surplus in 2010/11 and a £5 million surplus in 2011/12.

8.24 The trust overspent by £2.89 million by October 2007, compared with a planned surplus of £1.4 million. The board minutes record however, that the trust “*continued to see a steady improvement*”.

8.25 The trust was still forecasting a surplus of £1.3 million at board meetings in December 2007 and January 2008.

8.26 The trust recorded an overspend for February 2008 of £1.1 million but remained “*on track to deliver a year end surplus of £1.282 million*”. The minutes record that the board was “*delighted to note the finance report*”.

8.27 The RCHT finance committee held its first meeting that month. The director of finance said “*the trust must achieve a £1.2 million surplus by the year end and in line with that agreed by the SHA - and that the sale of an asset within the next four weeks is a key part of meeting that target*”.

8.28 The director of finance reported at the RCHT May board meeting that for the 2007/08 financial year “*the trust had achieved its primary duty to break even on the income and expenditure account and had achieved a surplus of £1.28 million as agreed by the trust board and the SHA*”.

8.29 The Healthcare Commission rated RCHT’s financial management as fair for the 2007/08 financial year.

Comment

The trust’s financial position improved a little during John Watkinson’s first full year in post but it remained challenging.

8.30 In April 2008 Joe Teape, director of finance, reported to RCHT's finance committee that a letter had been received from the SHA confirming the extension of the break-even duty to five years. The letter also confirmed that the SHA had agreed to the trust's recovery plan, which was important in the context of the 2007/08 Use of Resources (ALE) assessment.

8.31 In May 2008 the RCHT board learnt that the previous month there had been a £0.137 million deficit against a planned surplus of £0.712 million - a variance of £0.849 million.

8.32 In June 2008 Joe Teape reported to an extraordinary trust board meeting that the trust had achieved all its financial duties in 2007/08 and reported a surplus of £1.285 million.

8.33 Mr Teape told the formal RCHT board meeting at the end of June 2008 that at the end of month two (May) the financial results were *"disappointing and unplanned and mainly resulted from the additional work that had been undertaken to achieve referral to treatment targets"*. The board learnt that the trust was overspent by £1 million at the end of the first two months of the 2008/2009 financial year and that its objective *"was to achieve a £4 million surplus"*.

8.34 Mr Teape presented a report to the trust board on 5 September 2008 suggesting that the trust was in financial trouble:

"...it would be difficult to achieve the £4 million surplus this year based on the current results. Divisional forecasts were optimistic and with risks around the cash releasing efficiency savings (CRES), could result in being between £4 million and £6.9 million off plan, dependent upon discussions with the PCT".

8.35 Jo Perry, former director of human resources at RCHT, told us:

"Finance was still a big problem for us, and we had significant CRES programmes, and those seemed to change ... we divided it into the corporate and the non-corporate, so we all had our own corporate CRES programmes, and a few of us achieved those and over-achieved, which compensated for some corporate ones"

that didn't, etc. But the clinical ones were very difficult, and I don't think very many of those were regularly achieved, and what we suggested or estimated really wasn't coming to fruition."

8.36 Patrick Wilson was chair of the finance committee from its inception in February 2008. He told us that when he took on this role:

"You then have a poorly controlled accounting environment where basics like reconciliations, accruals, etc., aren't being performed adequately, so you don't really know what your financial position is ... It is very difficult to then recover it. What we spent the first six months, in various forms of information of the 2008 financial year, was understanding the degree to which we had the budgets right, we had the structure right and we had ownership locally. It started to become clear from month two's data and month three. From then on it was clear we were on the back foot."

8.37 Bill Shields, director of finance and performance at the SHA, wrote to John Watkinson on 12 September 2008 setting out its concerns "over current performance at Royal Cornwall Hospitals NHS Trust". These concerns included:

- a significant negative variance against the financial plan (see paragraph 8.42)
- "several dips in performance" on accident and emergency four hour waits
- an increasing orthopaedic backlog which was putting the achievement of the 13 weeks referral to treatment target at risk
- the breached MRSA annual target of 24 cases

Comment

Clearly, a number of performance concerns about RCHT troubled the SHA.

8.38 The Audit Commission published its annual audit letter for RCHT the same month, relating to the 2007/08 financial year. It included a number of key messages:

- *“The trust reported a surplus of £1.2 million in 2007/2008, which is a significant improvement on its performance in the previous year when it incurred a deficit of over £36 million. The trust’s overall financial standing does, however, remain a serious cause for concern as it has an accumulated deficit of approximately £45 million.*
- *A challenging recovery plan has been agreed with the strategic health authority which, if achieved, will return the trust to financial balance by 2012/13. However, the timescales of this recovery plan mean that the trust will not be able to achieve its statutory break even duty and I will, therefore, be formally notifying the Secretary of State that the trust is likely to breach this duty in accordance with my responsibilities under section 19 of the Audit Commission Act 1998.*
- *In 2008/09, delivery of the planned CRES programme represents a risk to the achievement of the trust’s financial plan; however, delivery of planned levels of income, activity and expenditure is currently a greater cause for concern as. At the end of June 2008, the trust was reporting that it was approximately £1.8 million behind its planned position.”*

8.39 Joe Teape told us that some of the deficit of £36m in 2006/07 was caused by large one-off payments that would not have been repeated in future years.

Comment

The work of the chief executive and board improved the finances in 2007/08. However, the district auditor confirmed that the improvements did not meet targets.

8.40 We discussed the annual audit letter with its author, the district auditor, Lee Budge. He explained that the trust’s financial targets were set in full knowledge of its problems, that in 2007/08 the trust had met its financial targets but that by the time he wrote his report he was also commenting on the first quarter of 2007/08 (April to July) and the situation had deteriorated:

“What we were saying is ‘Yes, you have achieved the plan in the preceding financial year, but if we were then to take stock in terms of the current financial

year there were some significant challenges there in terms of delivering savings programmes, activity levels and so on'. That is why I drew that specifically out as an area for the board's attention and, obviously, for the public's attention.

Q. When you say significant challenges...anybody would recognise that a trust with the debts that this trust had was going to have significant challenges. Were you saying that there were significant challenges in meeting the plan...that they weren't doing as well as they ought to be doing by that stage?

A. Absolutely...if you look at paragraph 35 specifically, we were reporting the fact that at that stage the trust were getting close to £2 million short of its planned position to the end of July. In the first quarter of the year it fell significantly short of what it was planning to achieve.

Q. Presumably its financial plan for 2008/09 would have been constructed in the full knowledge of all the various difficulties and when it was constructed it would have been thought that it was achievable, even if difficult; is that right?

A. Yes, that is absolutely right.

Q. It wouldn't be a general plan for all trusts that everyone has to achieve this; it would be taking specific circumstances into account?

A. Very much so. There would be different local issues in terms of activity levels, pricing, but specifically with Royal Cornwall was the need to repay debt to the Department of Health and so on and so forth, so yes, it would take account of all those local factors. The savings plans that the trust had to come up with would have been very much its own savings plans in terms of its own assessment of where the opportunities lie.

Q. ...Essentially you are saying that because they haven't stayed on plan for the first four months, they are going to have a heck of a job to catch up in the remaining eight months.

A. ...It is a difficult balance, because it is very difficult to audit aspirations and forecasts, but what we are saying is the evidence at that time when the audit letter was being written, there was enough cause for concern to draw to the attention of the board and the public saying, 'Look, you really need to focus on

this, because the profiling is such that you are falling short of where you expect it to be'. I just wanted to make that clear."

Comment

At the time of John Watkinson's suspension on 3 October 2008, RCHT's financial position had become more serious and was attracting negative comment, including from the SHA and the Audit Commission.

8.41 The director of finance reported to the RCHT board meeting in April 2009 that the trust had delivered a targeted surplus of £2.009 million for the 2008/09 financial year. However, it had underperformed on its CRES target - achieving £5.348 million against a target of £9.122 million.

8.42 The Healthcare Commission rated RCHT's financial management for 2008/09 as fair.

What were the circumstances of the letter from Bill Shields, the SHA's director of finance and performance, to Mr Watkinson in September 2008?

8.43 Mr Shields' letter of 12 September - referred to in paragraph 8.37 above - is shown in full in the addendum to this report. On the trust's financial performance, Mr Shields noted:

- *"As at month 4, a variance of £1.7 million against plan and a projected outturn of between £1.5 million and £8 million adverse as evidenced in your NHS trust board report*
- *If Royal Cornwall Hospitals NHS Trust does not deliver its planned control total, it will default on the loan agreed with the Department of Health and the Financially Challenged Trust plan."*

He concluded:

“this presents an extremely worrying picture and leads us to think that Royal Cornwall Hospitals NHS Trust is in significant risk of breaching its statutory financial duties, and failing to meet national targets.

It is exceptionally disappointing that I need to write to you, and I believe that you need to brief your chairman; as this discussion will need to be escalated.”

8.44 We asked Sir Ian about the letter. He told us that it was part of their normal business process in response to a perceived problem and that the SHA had alerted the RCHT to the issues in July of that year.

Comment

The evidence is that RCHT’s finances were in trouble by September 2008. Mr Shields was an executive director of the SHA in his own right and responsible for oversight of RCHT and, not unreasonably in our opinion, expressed his concerns accordingly.

The quality of services

8.45 The trust declared in May 2008 that it had complied with 35 of the Standards for better health between April 2007 and March 2008 as compared to 13 the previous year. The HCC carried out an inspection at RCHT in July 2008, looking at four standards that had been reported as fully compliant and one that had been reported as partially compliant. The HCC report in September that RCHT had not been compliant on any of the standards it had checked in July. As a result, the trust scored “weak” again for patients’ services. Mr Watkinson said he believed the SHA persuaded the Healthcare Commission to fail the inspected standards and to bring forward the announcement of these failings so as to give the SHA more leverage when it met the RCHT board on 25 September 2008 and persuaded the board to suspend him.

8.46 We set out the sequence of events below and seek to answer the following questions:

- Why did the HCC carry out an inspection of healthcare standards at RCHT in July 2008?
- Did the SHA persuade the Healthcare Commission to fail RCHT on its standards after the inspection in July 2008?
- Did the SHA persuade the Healthcare Commission to bring forward a meeting with RCHT to discuss the outcome of the inspection from October to September 2008 as part of the SHA's alleged orchestration of events around 25 September 2008?

Finally, in relation to both finances, quality of service and governance, we asked:

- What justification did Sir Ian Carruthers have when he told the trust board that RCHT might be heading for corporate failure?

The Healthcare Commission

8.47 The Healthcare Commission (HCC) was an independent health service regulator between 1 April 2004 and 31 March 2009. It had statutory powers to promote improvement in the quality of the NHS and independent healthcare. It required all NHS bodies to report every year on their compliance with its core Standards for better health. These standards measured a trust's effective use of resources and its provision of patient services. It then ranked trusts as in both categories as weak, fair, good or excellent. The best-performing trusts had a score of excellent/excellent, the worst performing "weak/weak". Trusts declared their compliance or non-compliance with the standards in March/April for the previous year. The HCC reviewed these declarations over the summer and carried out inspections if it thought a declaration was unreliable. It publicised the results in October of the same year, ranking all trusts in the country.

8.48 RCHT had a long history of poor compliance with these standards. In October 2007 it was judged to be weak/weak and among the worst-performing in the country based on its compliance with standards in the year from April 2006.

Comment

Evidence of compliance covered the whole year. Mr Watkinson started at RCHT in January 2007, so any improvements in his first three months could not feature in the 2006/07 HCC health check. Mr Watkinson could not therefore be held responsible for this low level of compliance.

Sequence of events relating to the 2007/8 Standards for better health declaration

8.49 Ian Biggs, regional director of the HCC south west, wrote to John Watkinson on 11 September 2007, copying the letter to Sir Ian Carruthers:

“We have serious concerns in relation to your trust’s performance against the Core Standards for Better Health and in relation to the recent waiting list review...Our specific concerns are as follows:

- that there has been an extremely poor compliance with the core standards, which has deteriorated further in the last two years*
- that the Royal Cornwall Hospitals NHS Trust has the highest number of standards not met when compared with other trusts across England*
- that only one of the nine standards in relation to safety was declared compliant*
- that there may be implications for patient safety arising from the recent waiting list review.”*

8.50 The HCC announced on 18 October 2007 that its investigations team would follow up the concerns at RCHT by examining the trust’s governance systems, especially those relating to the management of risk, and by ensuring that the trust was dealing with the problems it had identified.

8.51 An internal report submitted to the board in November 2007 on the previously identified concerns regarding compliance with the Standards for better health said good progress was being made and that the trust was on track to ensure compliance with all the standards by March 2008.

8.52 The HCC looked at documents, visited clinical areas in November 2007 and January 2008, attended a meeting of the trust board and a meeting of the local authority OSC, and interviewed 43 people from the trust, the PCT and the SHA. They carried out statistical analyses of information from the trust and other relevant organisations so as to provide a detailed report.

8.53 In March 2008 RCHT declared itself compliant with 35 of the HCC's Standards for better health, having complied with only 13 the year before.

8.54 HCC produced their intervention report in April 2008. It set out their findings and made 11 recommendations.

8.55 The introduction to the report set out the trust's poor compliance with *Standards for better health* (25 out of 44 in 2005/06 and 13 out of 44 in 2006/07) and its "weak" score for use of resources in 2006/07 as determined by the Audit Commission, and pointed out that this was the poorest record of any of the country's 394 NHS trusts.

8.56 It went on to say that it was aware that a new management team implementing changes to ways of working, but that it required assurances that the trust was managing its risks.

8.57 The HCC report explained that it had focused on five areas - maternity services, services for older people, infection control, race equality and governance⁶ - in order to check whether the trust's governance systems were appropriate and that it had proper risk management arrangements.

8.58 In the "Context" section of its report the HCC made the point that:

⁶ Integrated governance is defined as:

"Systems, processes and behaviours by which trusts lead, direct and control their functions in order to achieve organisational objectives, safety and quality of service and in which they relate to patients and carers, the wider community and partner organisations".

Department of Health - Integrated Governance Handbook, 2006

“If a trust is to declare compliance against any of the standards it must meet the requirements of that standard consistently for the whole year.

The standards cover areas such as clinical quality, safety, whether patients are treated with dignity and actions to control infection and ensure cleanliness.”

8.59 The HCC found both good and bad practice in each of the areas it scrutinised. Problems identified included:

- lack of clarity as to whether staff had been trained in the trust’s policies for older people
- a rise in the number of Clostridium Difficile infections over previous years
- an above average rate of MRSA infection compared to similar trusts and no demonstration of year-on-year reductions in the rate
- a lack of consistency and clarity in the way information [about infection control] was presented to the board.

8.60 In relation to governance the report commented that:

“An internal report submitted to the board in November 2007 on the previously identified concerns regarding compliance with the Standards for Better Health stated that good progress was being made and that the trust was on track to ensure compliance with all the standards by March 2008. Although the report to the board was detailed about what was being done, there was an absence of information about what was not yet being achieved, the reasons for this and steps taken to address any lack of progress.”

Comment

The problems identified in the report clearly suggest that consistent compliance for the year 2007/08 was unlikely to be achieved in the areas examined. This report came out shortly after RCHT had declared compliance with 35 standards, including standards that had been criticised in the HCC intervention report. The report should have alerted board members that there was a problem with their declaration and in particular with their declaration that they complied with governance standards.

8.61 On 15 May 2008 the trust accepted the HCC report of April 2008 and its recommendations, and therefore its findings.

8.62 The trust produced a press release on 16 June 2008 saying it was the most improved trust in the country because of the rise in Standards for better health compliance from 13 in 2006/07 to 35 in 2007/08.

8.63 An assessor from the HCC wrote to John Watkinson on 24 June 2008 confirming that it would carry out a core standards selective inspection on 8 July because of a perceived risk of non-compliance with five standards: infection control; dignity and respect; privacy and confidentiality; safe use of medical devices and corporate and clinical governance:

“The inspection visit is an opportunity for you to explain to the Commission how you were assured of compliance with the core standards for the period 1 April 2007 to 31 March 2008”.

8.64 Ian Biggs, regional director for HCC south west, had a phone conversation with John Watkinson on 3 July 2008 and then sent an email to colleagues:

“I said we were surprised and concerned about the degree of improvement that the trust had declared in light of the findings and recommendations in the intervention report. I reminded him that declaring compliance was a declaration of full year compliance with standards. I gave some specific examples from the intervention report including infection control concerns about leadership, capacity of the infection control team and the environmental concerns relating to cleaning rates and fabric of the maternity unit”.

8.65 Ian Biggs told Mr Watkinson that if on reflection he had concerns about the position the trust had declared, that he should call him before the inspection.

8.66 Two HCC staff and an observer from the Audit Commission carried out the inspection on 8 July 2008. It lasted all day, and ended with a 30-minute session in which the inspection team provided an overview of the case presented and available evidence, but did not discuss conclusions.

8.67 The HCC emailed Mr Watkinson on 9 July to tell him where he could find information used to check RCHT's final declaration against the core standards.

8.68 The HCC emailed Mr Watkinson on 4 August, inviting him to comment on the factual accuracy of the draft inspection reports, which were attached. A copy of the email and the draft report relating to infection control is in the addendum to this report.

8.69 Ian Gibson, then RCHT director of strategy, presented a report to the board on 5 August about the HCC action plan that had started after the April 2008 intervention report at the meeting on 5 August. No mention was made at the meeting of the draft inspection reports the HCC sent to Mr Watkinson the day before.

8.70 On 15 August the HCC emailed John Watkinson with revised copies of the draft inspection reports, showing RCHT's comments and HCC's response to those comments. The email confirmed:

"I have considered these carefully, and where appropriate, have made amendments. Please find attached a copy of the outcome from the factual accuracy checking process. Each inspection report will be subject to a robust quality assurance process - the final conclusions for each report will not be available to the trust until this activity has been completed."

8.71 The trust's response resulted in a number of corrections and clarifications to the evaluation of evidence and findings in the draft reports, but no changes to their conclusions. A copy of the email of 15 August and the response on infection control is in our addendum. The HCC met Mr Watkinson and Ian Burroughs, director of marketing, on 24 September 2008 to discuss their conclusions and gave him the final reports. A copy of the final report on infection control is in the addendum.

8.72 At some point after 24 September the HCC sent the SHA a briefing document, setting out the history of RCHT's compliance with the Standards for better health since 2005. This briefing appears in our addendum.

Comment

The first two versions of the infection control report in the addendum show that HCC had concerns about non-compliance which were expressed in the draft and which were not altered by the subsequent RCHT comments.

8.73 The HCC emailed Mr Watkinson on 4 August, inviting him to comment on the factual accuracy of the draft inspection reports, which were attached. A copy of the draft report relating to infection control is in the addendum to this report.

8.74 Ian Gibson, then RCHT director of strategy, presented a report to the board, which included Mr Watkinson, on 5 August about the HCC action plan that had started after the April 2008 intervention report at the meeting on 5 August. No mention was made at the meeting of the draft inspection reports the HCC sent to Mr Watkinson the day before.

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8.78 At some point after 24 September the HCC sent the SHA a briefing document, setting out the history of RCHT's compliance with the Standards for better health since 2005. This briefing appears in our addendum.

Why did the HCC carry out an inspection of healthcare standards at RCHT in July 2008?

8.79 This briefing document (referred to 8.61 above) sets out why the inspection visit was carried out, and shows that the HCC was not simply concerned with the possibility of non compliance but also with the fact that the board had apparently misunderstood how the system worked.

8.80 Mr Watkinson accepts in his witness statement that he had overall executive responsibility for the process. He also said the HCC decision to find compliant only 31 not 35 standards was a huge improvement against the 13 standards which were passed in the previous year. Mr Biggs told us that the HCC inspection process never re-examined more than five standards declared compliant, so the fact that only five were declared non-compliant should not be seen as an endorsement of the accuracy of the declarations of compliance for other standards.

8.81 Mr Biggs told us that RCHT had declared compliance in four of the standards the HCC inspected in July. RCHT had said that they were not compliant throughout the year in the remaining standard, but were compliant by the end of March.

8.82 Mr Biggs also told us that the HCC included these standards declared partially compliant in its inspections because of concern that some trusts might incorrectly declare standards compliant at the end of the year to make it easier to assert a full year's compliance the following year.

8.83 The briefing also mentioned the meeting with John Watkinson and Ian Burroughs:

“A meeting took place with the chief executive and director of marketing on 24 September to advise them of the results of the assessment. Understandably the chief executive expressed surprise and some irritation at the judgements. Although the final reports were not made available to the trust until the end of the meeting, they had received copies of the reports as part of the factual accuracy checking process. Therefore the conclusions being given at the meeting should not have been surprising. As part of the discussion in the meeting it became apparent that both trust representatives appeared to have failed to understand the principle of declaring a standard to be compliant. Their view was

that by showing in-year improvement, or that action had been taken in one service, this was sufficient for a declaration of compliance. They did not seem to have fully understood that for the board to declare reasonable assurance of compliance they should be confident that all services were complying with the standard for the full year without any significant lapses. Communications with the trust the previous year also demonstrated a lack of understanding at senior level of the three categories that standards can be declared, compliant, not met, or insufficient assurance.

The chief executive indicated that the trust would appeal against the outcome.”

Comment

The inspections took place in accordance with the HCC’s standard risk assessment process. This was informed by the observations it had made during its intervention at the beginning of 2008, as set out in its April 2008 report.

8.84 An appendix attached to the briefing document listed 10 other standards that might not have been complied with, including ones relating to child protection, waste management and food hygiene.

Did the SHA persuade the Healthcare Commission to fail RCHT on its standards after the inspection in July 2008?

8.85 Mr Watkinson said in his witness statement that the decision to try to get rid of him was made after he presented the legal advice to the RCHT board on 5 August. We therefore needed to understand the whole process of the inspection, from the time it was announced in June to the time the conclusions were reported to Mr Watkinson on 24 September.

8.86 We were curious about Mr Biggs’ phone call of 3 July, particularly as Mr Watkinson told us that the HCC procedure for reporting and reviewing compliance with the Standards of Better Health made no mention of this sort of intervention, and that it was impossible to alter a declaration of compliance after it had been made. Mr Watkinson told us that he took it to be an informal discussion with someone who had publicly stated that the trust

was improving, so he had no reason to be concerned by the call, particularly as the April 2008 intervention report had been so positive.

8.87 We spoke to Ian Biggs about the reason for and significance of his call to John Watkinson on 3 July:

“There was not a formal step for an organisation to reconsider the declaration. Having said that, in the case of Royal Cornwall, that Hospital Trust had been at the wrong end of performance tables in respect of meeting the Standards for Better Health, for some time...”

The trust made its declaration of compliance with Standards for better health in the May 2008...The trust declared significant degrees of improvement and compliance against the Standards for better health compared to the previous year. It raised concerns in my mind, which I discussed with others in the Healthcare Commission, including my line manager and lead director for this piece of work. We decided that it was sensible for me to make contact with John to express my surprise about the declaration and give him an opportunity to revise and resubmit the trust declaration. The historic poor performance in relation to standards and the findings of the intervention report, gave me cause for concern that the declaration could have been over optimistic. This was also in the context of a face to face meeting I had had with John during which he had said to me that the challenges that the trust faced would take more than a year to fix.

I certainly wouldn't have made the call if it wasn't a formal invitation to reconsider a declaration and certainly, as a regulator, I wouldn't be in the business of calling up for a friendly chat...I was calling him to say this was a surprise to us, and “I'm concerned that you may want to reconsider this, bearing in mind the findings that we published in the intervention report and other issues, and I want to give you that opportunity.”

8.88 Peter Davies was still chair of the board at this point. We asked him for his views:

“Ian [Carruthers] had said to me, ‘There are three people you really have to get on side - Ian Biggs, somebody from the Health and Safety Executive and District

Audit’, and we had really positive meetings, we got them on side, and Ian would say that under my chairmanship it was much more open and transparent, etc, etc. I would have expected Ian to have said to John, ‘Look, you know, we have reviewed these. We think you are going to fail on four of them that we have reviewed. You do have a right of appeal. Do you want to have another look at them?’”

8.89 We asked if Mr Davies was surprised by the HCC’s decision to inspect:

“We would have expected that, frankly. I mean, I would have expected that. If I was on the Healthcare Commission and this Trust had gone from there to there, you would say, ‘Hang on a minute; we want to do a check on it’. I would have expected that, and frankly in the spirit of the relationship which we had built up with the Healthcare Commission, which wasn’t there previously, I would have wanted to have worked with them on it, and I think they would have done too.

It is back to what we were saying. The NHS to me is really, really important. Success is really important, improvement for patients is really important, and you all work together. You really do.”

8.90 Mr Biggs made his phone call on the morning of 3 July. Later that morning Mr Watkinson and Mr Davies travelled together from Truro to Taunton for the meeting with the SHA and PCT described in paragraph 7.12. We asked Mr Watkinson if he had mentioned the call to Mr Davies that day, and he said that he had not, because he had not thought it significant. We asked Mr Davies if he would have expected to have been told and he told us that he would.

Comment

We find Mr Biggs’ explanation for the phone call convincing, particularly because it is supported by a contemporaneous note and by the material in the briefing document to the SHA, dating from 2008. It was intended as a friendly warning to give RCHT an opportunity to reconsider its declaration and avert the likelihood of being found by the HCC to have made an inaccurate and over-optimistic declaration.

8.91 Mr Watkinson said in his witness statement that the HCC conclusions arising from the visit on 8 July were subjective and were neither fair nor robust. The documents in our addendum show how the inspection team went about their work. Mr Biggs told us:

“The first question which inspectors would ask would be show us the evidence that the board used to justify its declaration. If the evidence they produced was not adequate the inspector would ask some more in depth questions.

We would take into account additional information that was made available to us on the day of inspection and exceptionally trusts could send us further evidence. We would need to consider that on the basis of how relevant it was.. Evidence would be required to contribute to demonstrating that the trust, across all its services, had been compliant with the whole standard for the whole of the relevant financial year. Inspectors would consider the evidence and make a judgement about whether the trust had assured themselves.”

8.92 He also told us about the quality assurance processes used at HCC. These consisted of eight steps including, for example, a peer review, a factual accuracy check, national standard lead review and approval by the national panel prior to publication.

Comment

The inspection reports seem to us to leave little room for subjectivity and the assurance process the inspectors followed seems to have been robust. We note also that a member of the Audit Commission, who would have provided an added safeguard against improper reporting, accompanied the inspection team in July.

The HCC’s concerns about the reliability of the declaration of compliance were noted in the April 2008 intervention report and in Ian Biggs’ phone call to John Watkinson on 3 July. A detailed description of the areas of concern was then sent to Mr Watkinson in the draft inspection reports on 4 August. All of this pre-dates the board discussion of the legal advice on 5 August, and therefore cannot have been influenced by any action of the SHA allegedly taken as a result of the legal advice.

The response of the HCC to the RCHT comments is dated 15 August but it seems to us vanishingly unlikely that the SHA could, without leaving any trace, have seen the legal advice, decided to neutralise Mr Watkinson, been aware that the HCC inspection process was not complete, decided that failing the standards would be a good way of undermining Mr Watkinson, identified the person or persons who could affect the response, and successfully suborned them into unfairly failing the RCHT. Mr Watkinson's travails have been public knowledge for over two years, and we believe that if any such behaviour had been going on, someone would surely have produced some evidence, however flimsy.

Was the Healthcare Commission persuaded by the SHA to bring forward a meeting with RCHT to discuss the outcome of the inspection from October to September 2008 as part of the SHA's alleged orchestration of events around 25 September 2008?

8.93 The HCC letter on 24 June announcing the inspection said "we expect to be able to inform you of our conclusions as early as week commencing 8 October 2008". The meeting was then arranged, fairly late in the day, for 24 September.

8.94 We asked Mr Biggs about this. He told us:

"...the letter which notified the trusts about the inspection was a standard letter sent to all trusts being inspected, and in all cases it referred to 8 October... I have looked at the records for 4 other trusts that were inspected in 2008. In all cases the standard letter notifying trusts of an inspection quoted the 8 October for feedback."

| <i>Trust</i> | <i>Inspected</i> | <i>Feedback</i> |
|--------------|------------------|-------------------------|
| 1 | 3 June 2008 | 19 Sept 2008 Devon |
| 2 | 1 July 2008 | 19 Sept 2008 Plymouth |
| 3 | 15 July 2008 | 22 Sept 2008 Birmingham |
| 4 | 4 June 2008 | 25 Sept 2008 Portsmouth |

I do not remember the rules about the deadline dates for feedback, but I am clear that at the time of notifying trusts that they would be inspected we would inform

them that we would give them feedback. In fact as we routinely published the national results around the 16 October, the 8 October would have been the last opportunity to give feedback to the trust. We wanted to give all trusts as much time as possible to prepare media briefings if that was required. Re reading the letter of notification, I think that the wording is not entirely helpful and believe that it should have given an indication that 8 October would have been the latest date for feedback.”

8.95 John Watkinson recalled that he and John Mills had an October date in their diaries for this meeting. Mr Mills still has his 2008 diary and can find no entry for such a meeting.

Comment

We note Mr Biggs says in the record of his conversation (shown in the addendum) on 3 July that the follow-up was to take place in September, which adds contemporaneous credibility to his later explanation to us. We understand why Mr Watkinson believed that the meeting had been brought forward, because the letter of 29 June clearly said that the meeting would be in October. However, Mr Biggs offers an innocent explanation for this, which we find credible.

8.96 Mr Watkinson drew our attention to the fact that John Mills had known about the problems with HCC from his conversation with Mike Pitt on 19 September, but that apparently he had not shared the information with him or the non executive directors, such that the news about the HCC failing the standards came as a surprise to the board when communicated by the SHA on 25 September.

8.97 When we spoke to John Mills he told us that he had given a note of his conversation with Sir Mike to his colleagues at the meeting on 23 September, but he conceded that it may not have registered in the context of discussing the Bromley report. Certainly his board colleagues seem to have been surprised when the SHA told them the news on 25 September.

8.98 We therefore have to consider whether there was any evidence of manipulation in the fact that the board had so little prior knowledge of the HCC problems.

8.99 Mr Watkinson was sent copies of the draft inspection reports on 4 August, for comment, and copies of the HCC response to those comments on 15 August.

Comment

We considered that, on the face of it, the correspondence with attached draft inspection reports between John Watkinson and the HCC in August showed a real risk of possible problems, which, if shared with the board, would have given plenty of warning of what was announced in September.

8.100 The board members to whom we spoke could not remember having been told about or shown these reports, and knew nothing about them until we mentioned them. We asked Mr Watkinson why he had not mentioned the draft reports at the board meeting on 5 August, when the action plan responding to the April 2008 HCC report was being discussed and he said that he could not remember them at all. We then sent him copies of the reports and emails that the HCC had sent to us. He wrote to us to explain that he would not have thought it appropriate to raise the documents at 5 August board meeting as he had only received them the day before, and an assessment of their content would have been under way.

8.101 We suggested to Mr Watkinson that the two draft inspection reports seemed to show clear evidence that the HCC was not satisfied that compliance had been achieved or could be evidenced to the necessary standard.

8.102 He responded that, having read what we had sent him, his view is that these documents were part of the routine verification process that the HCC operated for all trusts and, when taken together with RCHT's submissions and responses, did not, in his view, show clear indications of the possibility of failure as we had suggested.

8.103 He went on to explain why he thought the assessments did not "*give adequate weight to the methodology we utilised to identify and risk assess lapses in compliance*", and he expressed concern that many of the trust's responses to the draft review assessment were either only partially accepted or simply dismissed, some without any explanation.

8.104 He told us that his overall view was, and is, that he believed that the trust's systematic and balanced approach to this matter would be successful and that there were ample grounds to appeal if it was not.

8.105 We asked him whether he had mentioned the reports to the chair or non-executive directors at any other time. He told us he could not remember how that was handled.

8.106 We discussed the matter with John Mills, who told us that he thought he and the board should have been made aware of the email exchanges with the HCC, and also should have been informed about the phone conversation with Ian Biggs.

“In the first instance, the phone call that you refer to is probably something that John should have told Peter, because that is just what chief executives do. Then I would have expected some kind of dialogue about it - not on every detail - but some reportage to the board to at least alert the board that there was an ongoing issue or an ongoing dialogue to get it sorted. But I do not recall that”.

8.107 He went on to say that he had expressed concern about this to the Hawker team.

Comment

We consider that the SHA had good reason to assume that Mr Watkinson would have kept the board informed of his dealings with the HCC in August and September, and could have expected Mr Watkinson to have communicated the outcome of the meeting on 24 September by email to the board on the same day. We do not, therefore, find anything untoward in the SHA's handling of the HCC information.

What justification did Sir Ian Carruthers have when he told the trust board that RCHT might be heading for corporate failure?

8.108 , Sir Ian Carruthers said at the SHA's meeting with the RCHT board on 25 September 2008 that the trust was heading towards corporate failure. Mr Watkinson subsequently contested this claim.

8.109 We asked Sir Ian Carruthers why he had made this statement. He told us that when he said this RCHT was the second worst-performing trust in the country:

“Their financial position was putting them in ‘weak’ and we had been told that they would be ‘weak’ now on quality of services. They would have been the only organisation to have as many weak/weak in the country in the history of the assessments in the NHS, and what would have been more disappointing was that it would have been seen to have been going backwards. They were the only organisation, and my concern was quality of services, and that the quality of services was a really important issue because they still are the only organisation up until then that is registered ‘weak’ on all the assessments. That is how I would justify that, because even Bromley was not ‘weak/ weak’ on everything...the ‘delivered’ improvement never met their plan, and their rate of improvement was less than it ought to have been. I am not disputing that there was no improvement at all, but actually the improvement was not enough. The real issue was that whilst we could support on the money - because what happened was that when they failed their plan we found a way to give them money to keep them out of being ‘weak’ again, but we could not do that with the quality of services, the one that was our main concern. We could not do that with the quality of services, and our main concern was that one that was clearly not making progress; even though they said it was fantastic, it was not...”

Their self-assessments kept on saying it was better than it was... During the year they started off by saying that they had the most improved organisation, but then it was shown that on the Healthcare Commission stuff all that had failed. Their money was going wrong...

It was corporate failure but improvement...their overall performance improved...but only with significant help. The quality of services assessments were ‘weak’ all the time, although in 2008 they suggested that they had become better...All we could get ‘We are better than last time’, but that is like saying ‘I failed my exam, the pass mark was 50, I got 14 out of 50 this year which is better than 10’. We never got past that discussion. His organisation was continuing to not meet the required standards, and the rate of improvement was less than any other in the South West”

8.110 Sir Ian told us that when he took over at the SHA the region contained eight trusts that were “weak, weak” out of the national total of 25 but that the other seven trusts had improved by the 25 September meeting, leaving RCHT as the only trust that looked as if it would be “weak, weak” the next time the Healthcare Commission audited it.

8.111 The academic literature identifies six symptoms of corporate failure, including:

- Difficulty in implementing core targets or not regarding them as a priority
- History of major financial problems
- Organisational insularity, exhibiting poor external relationships and media image
- Operating in a difficult context with incomplete or unresolved plans or strategies
- Management distracted by major developments or projects, for example, mergers, major capital investments, foundation trust applications or major change
- Examples of poor staff management, for example, low staff morale, staff turnover and recruitment problems

Comment

We think the trust showed some of the symptoms of corporate failure as set out above. For example, it was not compliant with HCC standards, had continuing financial and other performance problems. It had become embroiled in a public debate about the reconfiguration of upper GI services. Furthermore, the board seemed insufficiently aware of problems that were obvious to the SHA. Whether these symptoms amount to corporate failure is arguable but it does not seem to have been unreasonable for the SHA to express concern about the way things were going, particularly given the earlier intervention and expectations of the Department of Health.

9. Bromley report and the Hawker review

Introduction

9.1 John Watkinson was chief executive at Bromley Hospitals NHS Trust from May 2003 to December 2006. In December 2007 the board commissioned a review of the trust's financial management and governance. Michael Taylor undertook the review and his report was published on 25 September 2008, the day the RCHT board asked Mr Watkinson to go on special leave. The trust announced in a press release that it and the SHA were to commission a review at RCHT to check that the situation identified at Bromley was not being repeated at RCHT. Mr Watkinson was suspended for the duration of the Hawker review.

9.2 The Hawker review team intended to finish work by 28 November 2008 but the review was not finalised until 25 February 2009. Its report, published on 20 March 2009, was highly critical of the RCHT board, including the chief executive. The board accepted the conclusions and recommendations. The medical director accepted the recommendations, but not the conclusions and therefore resigned from the board.

9.3 Mr Watkinson contends that Sir Ian Carruthers, SHA chief executive knew about the criticisms of him in the draft Bromley report in April 2008. He says that Sir Ian was unconcerned by the review but subsequently used it as an excuse to pressure RCHT into suspending him, because he had put his head above the parapet on the legal duty to consult before transferring upper GI cancer services. He says that in June 2008 Peter Davies and the SHA agreed a supportive press release in anticipation of the publication of the report. He also says that:

- the terms of reference for the Hawker review were wider than necessary if the purpose of the review was to see if the situation in Bromley was being repeated in Cornwall
- there was no need to suspend him during the review
- the Hawker report was flawed and unfair
- the Hawker team ignored his detailed challenges to many of the facts and findings in the draft report

- the board should not have accepted the report without first considering his detailed written rebuttal, which his solicitors had asked the Hawker team solicitors to send to the SHA and RCHT board at the end of February 2008.

9.4 In this section we look at the SHA's knowledge of and attitude to the Bromley review and report before they received the final report on 19 September 2008; the RCHT board's decision to carry out a review in response to the Bromley report; its decision to suspend Mr Watkinson during the review; the terms of reference of the review; how the review team dealt with Mr Watkinson's detailed challenges to their draft report; and how the board came to accept the final Hawker report in its entirety. At each stage we examine the role of the SHA in the decisions of the RCHT board and seek to answer the following questions:

- When did the SHA first see the Bromley report?
- Did the SHA agree a supportive press release with RCHT in June 2008?
- Why was the report not discussed with John Mills until 19 September 2008?
- Did the Bromley Hospitals NHS Trust and NHS London agree to the publication date of the Bromley report to fit in with the SHA's alleged "hidden agenda"?
- Did the Bromley report justify RCHT holding a review?
- Did the RCHT board make a decision on 23 September that was reversed on 25 September? If so, why?
- Was it necessary to suspend John Watkinson during the Hawker review?
- Why did the Hawker review take as long as it did?
- Were the authors of the independent review engaged in a fishing expedition?
- What role did the SHA play in the writing of the Hawker report?
- Did the Hawker team ignore Mr Watkinson's rebuttal points on the draft report?
- Was the Hawker review process flawed and unfair?
- Why did the RCHT board meet to discuss the Hawker report on 5 March 2009 without taking into account John Watkinson's rebuttal letters?
- Why did the RCHT board accept the Hawker report?
- Did the SHA play any role in Mr Watkinson's dismissal?

When did the SHA first see the Bromley report?

9.5 The SHA was sent copies of the draft Bromley report at the end of July 2008 by Malcolm Stamp, chief executive of the NHS London Provider Agency. This was the first time Sir Ian Carruthers had seen any version of it. However, on 10 April 2008 John Watkinson had copied to him and to Peter Davies the rebuttal letter he had sent in response to a draft of the report the author Michael Taylor had sent him so that he could check its accuracy.

9.6 Mr Watkinson's five-page letter in April identifies what he considered deficiencies in the Bromley review process, that the conclusions are "largely unjustified", and provides information under the headings of "*recognition of positives*", "*financial strategy*", "*financial performance*", "*the cash issue*" and "*my overall performance as chief executive*".

9.7 Mr Watkinson's letter provides little information about the aspects of the draft report he challenges. He refers to the report suggesting that a focus on performance and service delivery and clinical governance was at the expense of a concern for financial performance; to repeated assertions in the draft that the trust did not have a financial strategy; to the draft alleging that in some way he brought about the misreporting of the trust's cash position; to allegations that in certain areas his performance amounted to a breach of the Code of Conduct for NHS managers. Mr Watkinson rejects all the criticisms to which he refers. Any ensuing correspondence with Mr Taylor was not copied to Sir Ian, so he had no way of knowing if Mr Taylor accepted Mr Watkinson's points.

9.8 Sir Ian Carruthers told us:

"No one spoke to me from London until about July when the grapevine was beginning to whisper that Bromley was difficult, but I wasn't going to operate on the basis of whispers, because as far as I am concerned, my duty was to get the best for Cornwall, and at that time we couldn't afford to be distracted by Bromley, which might or might not be the case. That's all I knew about Bromley. I never sought to find out about it because I believed someone would come and tell me when we needed to know, and so they did..."

Comment

Mr Watkinson received the draft Bromley report for checking before it was finalised. The rebuttal letter of 10 April shows that he thought the report contained many factual inaccuracies. However, Mr Watkinson's letter - copied to Sir Ian - gave no details of what the draft Bromley report had found, other than in the headline terms set out above. Mr Watkinson makes the point in his statement that he did not get any response from Sir Ian or the SHA after he sent them a copy of the rebuttal letter. We consider that the evidence shows that the first Sir Ian Carruthers knew of the detailed findings of the Bromley report was when the SHA received a copy of the final draft report which was sent by NHS London at the end of July.

Did the SHA agree a supportive press release with RCHT in June 2008?

9.9 Mr Davies said in his witness statement that he had agreed a press release with Andrew Millward at the SHA. We told him that Mr Millward could not remember this, and did not think he would have been party to agreeing a press release without having seen the report. Mr Davies said the trust's communications officer, Greg Moulds, had said that the SHA were worried about the Bromley report and wanted to have a robust response ready to whatever might come out, so could they be thinking about it.

"Greg and I drafted something - which is what you have - and that would have gone back to the SHA. I did not do it directly, it would have gone back to Andrew Millward."

9.10 He could not remember whether Greg Moulds had confirmed that the SHA was happy with what he had drafted.

Comment

We find nothing to support the suggestion that Sir Ian agreed the supportive press release or knew anything about it. Andrew Millward may have received a draft press release, but we have no direct evidence that he agreed it. He says it would not have been his practice to do so before publication.

Why was the report not discussed with John Mills until 19 September 2008?

9.11 Sir Ian Carruthers explained that the final draft was sent to the SHA in July on the understanding that it would not be shared with others until the Bromley board had considered it, and either accepted it or not. We put this to John Mills, interim RCHT chair, who did not accept this as a good reason. He pointed out that he was a senior public servant, and that at that level it was normal for information of this kind to be shared informally so as to give those who have to take action time to think about it.

9.12 We put this point to Sir Ian, who explained that he had not felt that he could take any action on the report, however informal, until he knew whether the Bromley board had accepted it. He also told us he had been told to keep the report confidential because he supposed lawyers, including, Mr Watkinson's, were checking it.

Comment

It would have been unfair to Mr Watkinson for Sir Ian to have discussed the draft with Mr Mills until the Bromley board had accepted the Bromley report. If he had, Mr Mills would have learned of serious criticisms of Mr Watkinson that the Bromley board might have gone on to reject. There was no guarantee that the Bromley board would accept the report, which criticised them and Mr Watkinson. Furthermore, lawyers were checking it, so there was a possibility that parts would be changed. In that case, findings about John Watkinson in the draft might not appear in the final report.

The SHA had no way of knowing until they received the final report if it would be the same as the draft they had been sent at the end of July, and so no way of knowing if all the draft's findings relating to Mr Watkinson would appear in the final version.

We consider that Sir Ian behaved correctly towards Mr Watkinson.

We appreciate that Mr Mills had reason to feel let down that he had not been kept abreast of developments with regard to the Bromley review but we consider that this was the responsibility of his chief executive, not of the SHA. Mr Mills confirmed to us that he knew that John Watkinson was aware that publication was imminent because Greg Moulds had been in contact with him to draft a press release about it. No doubt

Mr Watkinson had been asked to keep the report private until publication but nonetheless he would have been entitled to let Mr Mills know what was coming, particularly as he himself felt the report was damning.

Did the Bromley Hospitals NHS Trust and NHS London agree to the publication date of the Bromley report to fit in with the SHA's alleged "hidden agenda"?

9.13 Mr Watkinson suggests that the long-arranged SHA meeting near Truro on 25 September was the fixed point about which other events were orchestrated. Sir Ian Carruthers told us that the SHA had had nothing to do with the publication date of the Bromley report and that he would have preferred that it had not been published when it was because he had important issues to discuss with the RCHT board already. They included: the worsening financial position, the high MRSA infection rate and the outcome of the HCC review of quality of service standards.

Comment

Nothing we have seen in the papers suggests that the timing of the publication of the report was designed to suit the plans of the SHA. Furthermore, even if it wanted to orchestrate dates, we cannot see why it would wish to do so around its meeting on 25 September. Sir Ian and Sir Mike Pitt, the SHA chairman, were to be in the vicinity of RCHT headquarters on that day but the date did not suit many of the RCHT board, and only five members were able to attend the emergency meeting with the SHA on 25 September.

Did the Bromley report justify RCHT holding a review?

9.14 We asked witnesses why they thought the Bromley report justified a review at RCHT.

9.15 Ben Bradshaw MP was a Minister in the Department of Health, responsible for ensuring that the NHS was performing properly, and with special responsibility for the south west and London regions. He told us that Ruth Carnall, NHS London chief executive, had alerted him about the imminent publication of the Bromley report because he was responsible for the London region. He recalled that the report had been "devastating." We

asked him what he thought should have happened in Cornwall as a result, and what the response of the SHA should have been:

“...an investigation was then commissioned and I said, ‘Yes, you’ve got to do that. Of course, you have to satisfy yourself that it’s all okay...’ I would have thought that any self-respecting SHA chief executive or chair - and I know Mike Pitt was also very concerned about this - in the light of such a damning report as the one on Bromley, and given the fact that this guy was now running one of the most challenged trusts in the country that had a history of failure, and where there was constant spotlight because the negative Healthcare Commission reports, the bad performance on MRSA, all of that stuff, that you would want to absolutely satisfy yourself that this person had turned over a new leaf and was not managing things in the way that had been so clearly wrong in Bromley. That should not require ministerial or departmental pressure, and as I say, I was a bystander in the decision to commission that investigation; I was just kept informed.

I do not know whether it was different before we came along, but I do not think that the SHA chief executives and chairs were under any illusion that we did not feel that it was acceptable that the NHS tolerated such wide variations in performance between hospitals.”

9.16 Mr Bradshaw also described the changed political environment after the events at Maidstone and Tunbridge Wells NHS Trust⁷. He said that Maidstone had been:

“...a real wake-up call to Alan (Johnson) and to me as to how was it possible that somebody who had overseen failure that had led to people dying in quite large

⁷ In October 2007 the Healthcare Commission published its report *Investigation into outbreaks of Clostridium difficile at Maidstone and Tunbridge Wells NHS Trust*. The investigation assessed the care provided to patients with this infection. It also considered whether the trust’s systems and processes for the identification, prevention and control of infection were adequate. The Healthcare Commission estimated that there were about 90 deaths at the trust where *Clostridium difficile* was definitely or probably the main cause of death. The HCC report attracted considerable national media attention. The chief executive of the trust left with a financial settlement before the report was published. The non-executive directors resigned shortly thereafter.

numbers would not only receive a massive pay-off, but would then probably go off into some other job. There was real concern.”

9.17 Sir Mike Pitt told us:

“I remember hearing about this report, having a conversation in London with the London SHA chair who sort of said, ‘Mike, watch out. This thing is about’. Then becoming concerned that what clearly was a very difficult state of affairs at Bromley would spill over into the South West and that this was going to cause people to ask all sorts of challenging questions about why was a chief executive and three other people from what was clearly a challenged trust in London with what turned out to be a very critical report of the performance of individuals, spilling out into the South West and then lots of people asking us questions about, ‘Well, why did you appoint this man in the first place?’, and secondly, ‘Are these things now happening in the South West which happened in London?’ So the focus of my attention was...What are we going to do about Bromley?”

9.18 Sir Ian Carruthers told us:

“I thought it was one of the most damning reports I have ever seen. It was totally at odds with the references and the account given by John Watkinson and his chairman, and they were poles apart. However, when I read it I saw a number of issues that struck a chord. First of all there was a deteriorating financial position, and the report said that they could not obtain a formal recovery plan out of John; there were always promises but it never quite came and there was no attention to the detail. Also there was a big issue with relationships between John and the PCT which struck a chord, relationships between John and the SHA which took similar bits, but that was not really significant.

Also there was a sort of ‘team within a team’, and when I matched that with what I was seeing in Cornwall there were a number of similarities in behaviour that were very apparent, because by that time we were having feedback on the grapevine that in Cornwall there was John’s team from Bromley that were nearly a caucus and the other people who he had appointed from outside, and they were not given their rightful positions. I have often reflected on whether we could have

done nothing, and given the circumstances I do not see how we could have done nothing. I cannot see how I could have explained to anyone ‘This was just a rogue report and it happened up the road, it just was not a tenable explanation.’

9.19 Andrew Millward told us that having read the report Sir Mike Pitt said:

“This is serious; we need to take this seriously”

9.20 We asked Penny Bennett, from the Appointments Commission, if she thought the SHA’s response to the Bromley report was appropriate. She said:

“I would have said appropriate because of the context of what had been a troubled organisation for some time...I think there was a sense of, well, how is it we’ve now come to have a chief executive and these executive directors who have had problems elsewhere? How did that happen? Why do we now have these people? There was a sense of: Can we just get this right? Can we just sort it out for the people of Cornwall, because that’s what’s really important.

I come back to the point I made before, which was around that very real sense in the air, on the basis of Tunbridge Wells, that actually the Government and the people are not prepared to put up with poor performance by managers, by anybody, and they don’t need to. They have a right to something better. If that means getting on with it and having to cut through and examine things clearly and quickly, and maybe at a pace faster than others are comfortable with - change is never comfortable but it’s really important it was done...That would be my sense of feeling that things needed to happen...There was Bromley, which was one factor; there was what was happening actually in Cornwall itself around service delivery, around financial performance, around Healthcare Commission. It was a number of strands coming together for me, and Bromley was a very big issue but it wasn’t the only issue...If you have clinical and financial matters within the organisation as another management strand, and the other one was the Healthcare Commission, how that was all panning out...”

Comment

The SHA's view that the Bromley report necessitated a review at RCHT was shared at the highest level in the NHS and Department of Health. In light of the concerns expressed, it is impossible to imagine such a review taking place while Mr Watkinson remained at work.

The events at Maidstone and Tunbridge Wells NHS Trust changed how ministers, senior managers and NHS organisations dealt with concerns about serious failure. In such an environment, NHS London and NHS South West were bound to liaise over the publication of the Bromley report and would have been subject to serious criticism if they had not. Similarly, NHS South West was bound to take action when it knew about the failings in Bromley.

9.21 On 23 September the RCHT board decided that the Bromley report did not justify taking action against John Watkinson and on 25 September they agreed to arrange a formal meeting to suspend him.

Did the RCHT board make a decision on 23 September which was reversed on 25 September? If so, why?

Was it necessary to suspend John Watkinson during the Hawker review?

9.22 These matters are inextricably linked in the evidence, so we deal with them together.

9.23 After his telephone conversation with John Mills on 19 September, Sir Mike Pitt was concerned that Mr Mills might advise the RCHT non-executive directors that they did not need to do anything in response to the Bromley report. He asked Sir Ian Carruthers what they might do in such a situation. They decided that they would prefer a joint review but they would carry out one themselves if the RCHT board did not agree. However, they felt they also needed to know what action could be taken against the board if it behaved in a way the SHA thought was in breach its obligations.

9.24 The Appointments Commission had for some time had power to dismiss board members in certain circumstances. The SHA knew that a new power had been given to the Appointments Commission a few months earlier and they wanted to find out about this in case a referral to the Appointments Commission was needed. Penny Bennett, Appointments Commissioner for the south west, explained to us that in May 2008 the Appointments Commission had been given the power to suspend board members and chairs. Until then they had power only to terminate appointments, but the pressure and concern around what happened at Maidstone and Tunbridge Wells had led to their being given new powers:

“The SHA were familiar with our termination procedure...this was their first discussion, how do we go about, what would we need to do, if we were moving to a suspension. They weren’t saying they were moving to a suspension, they were investigating what they would do if there was a suspension...their concerns were to understand better the new process that we had, because we had operated our termination procedure historically, we hadn’t operated a suspension procedure before, and I think what Sir Mike wanted to know what would they be needing to do?”

9.25 Penny Bennett sent us a copy of the handling strategy that the Appointments Commission had developed for RCHT on the publication of the Bromley report. We asked her why the Commission had developed such a plan:

“Our focus is on governance, behaviour of chairmen and non-executive directors...At the Commission we rely heavily on our links through the SHA in our regions to better understand whether there are concerns being raised around whether it’s financial matters, behaviours on the board, whether they are taking appropriate steps to performance manage and look at the accountability of the directors on the board...on this occasion it looked as though it was boiling up into something more significant, and also the wider context of the huge level of public interest in relation to Tunbridge Wells. Very high profile, right up to the top of the shop, constant news coverage, and for us it’s about can we maintain confidence in the NHS locally to deliver the services for the people on the ground, and if there is a concern running we need to know how we help the board manage that, how we help the SHA.”

9.26 Mr Mills provided us with an account of what took place in September. He said that he had received an email from Greg Moulds on 16 September, mentioning the impending publication of the Bromley report and suggesting that the supportive press release Mr Davies had drafted in April might be prepared for this event. Mr Mills responded on 18 September with some minor but still supportive amendments. On the same day a phone call with Sir Mike Pitt was booked for 19 September.

9.27 Sir Mike Pitt rang John Mills on 19 September and warned him it might be an uncomfortable conversation. Mr Mills made a note of what he said:

- “*The Healthcare Commission's latest report on RCHT (re the Standards declaration for 2007-8), to be published the following week, would be "not so positive."*
- The Bromley report was to be published at 1.45 pm the following Thursday, 25 September. It was “*one of the most damning*” he had ever seen.
- The suspension of Mr Watkinson and [one of the other former executives from Bromley] was “*inevitable*”; and there were doubts over [the other two former executives from Bromley] . A properly constituted meeting of RCHT non-executive directors was needed to pursue this.
- The SHA was worried about RCHT and particularly about Mr Watkinson’s behaviour. As an apparent illustration of this Sir Mike said he [John Watkinson] had been in touch with the SHA about me [John Mills] being removed from the acting chairmanship.
- An SHA-initiated review of ‘*the whole Trust*’ was required.
- All non-executives were to meet with the SHA near Truro at 9am the following Thursday, just before the publication of the Bromley report later the same day and before the SHA’s board meeting at RCHT that day.
- Sir Mike would refer the non-executive directors to the Appointments Commission with a view to their being suspended from office if he sensed that the board was not going to take decisive action.”

9.28 Mr Mills asked for copies of the report to be made available on 22 September so that the board could at least see it before the meeting on the Thursday morning.

9.29 John Mills briefed non-executive colleagues by phone over the weekend of 20/21 September and arranged for them to meet on Tuesday 23 September so that they could review matters before the Thursday meeting. He also reported Sir Mike's request to Jo Perry, RCHT director of human resources, to seek immediate legal advice on the issues, on possible suspension of Mr Watkinson, on the possible suspension of the non-executive directors and on whether individual non-executive directors were appropriately indemnified in the event of legal proceedings.

9.30 He emailed Mr Moulds about the press release to say that no statement should be issued about Mr Watkinson and the Bromley report without further reference to him. He wanted to be prepared for all contingencies and to protect his and the board's position pending the meeting with the SHA on 25 September.

9.31 On Monday 22 Sept Mr Mills emailed Greg Moulds again, making clear that the earlier draft press release was not to be used: Mr Watkinson could say what he wanted as an individual but there should be no RCHT "badge".

9.32 He discussed the issue briefly with Mr Watkinson at the hospital later that day; he did not demur from Mr Mills' concern to avoid an RCHT "badge" on whatever he might choose to say.

"I did not tell him that I was just about to receive copies of the report; nor did I ask, or he say, whether he had received one."

9.33 John Mills had not received written legal advice on the questions posed by the time of the non-executive meeting on Tuesday 23 September, though there had been phone conversations with the trust's solicitors. The non-executive directors had had little time to assimilate the Bromley report but realised that it portrayed a complex tale that was clearly open to dispute and argument. Their collective view, subject to any legal advice, was that they disapproved of what they considered to be undue pressure by the SHA on them and on Mr Watkinson. They felt they had no grounds to criticise him over his performance in their employment. They knew that he would defend his position strenuously once the Bromley report was out. This stance would be the starting point for the Thursday meeting with the SHA.

9.34 The legal advice the board received on 23 and 24 September together with phone exchanges at lunchtime on 25 September set out what were the necessary steps for suspension, confirmed the Appointments Commission's powers on behalf of the Secretary of State to suspend non-executives and confirmed that non-executive directors had indemnity under an earlier board resolution.

9.35 The employment tribunal described the difference between the position of the board on 23 September and on 25 September as a "volte-face". We discussed this with Mr Mills. He said this did not reflect the nuances of the board's discussions. On 23 September they were focusing on whether they could suspend Mr Watkinson under disciplinary procedures on the basis of his alleged behaviour at Bromley and if so whether they should consider doing so. This formed a large part of their discussions with their lawyers on 23 and 24 September. They concluded they should not, and perhaps could not, take disciplinary action against an employee for something he did before they employed him. However, a different scenario emerged in the discussion with the SHA on 25 September, where suspension would not be disciplinary but in the context of a review.

Comment

We do not think that this was a "volte-face". The board considered one scenario on the 23 September and a different one on 25 September.

9.36 Roger Gazzard told us about the meetings on 23 and 25 September:

"The mood was dour I would say. I likened John Mills' email, which I received the previous week - as 'Houston, we've got a problem'...I had not heard of Bromley, any issues at Bromley had not come to us at all so this was completely new. John Mills had delivered the Bromley Report to me by hand and I had read it. I didn't know how the NHS would respond and that was my view on the 23rd and other people were the same a little bit. Everybody was very concerned. Bromley was obviously very serious...I read the accountability NHS requirements and it said that had been breached. It had said the non-executive directors had said they were kept in the dark, they didn't have information. There were accusations that returns had been submitted incorrectly, the financial position wasn't revealed in a number of areas, which, in governance terms were unacceptable. I was concerned

about it and we all were but we had to match that with the fact that, to our knowledge, things were going okay here at that point. We had demonstrably improved over the previous 12 months. I was obviously chair of audit. That had demonstrably improved in the eyes of the external auditor and by the internal auditor. So we were looking at various things which we thought we were getting better, and all of a sudden this came along and said “hang on, do you believe what you’re being told”, basically. It was a big hit for us. Certainly I felt it was.

Q. Even on the 23rd?

A. On the 23rd yes. Our overriding view was support for John because we felt that, well I was confident, particularly, that the Bromley issue, one of them was the finance. I was very confident that our financial position was as stated. It wasn’t right, it wasn’t good but I was confident. I was happy with that but there were so many issues in the Bromley Report. It was so big that obviously it was of concern. I was looking for the views of the SHA as to how they would respond so I didn’t quite understand how the NHS would respond to that...We were invited to a meeting, after breakfast, a meeting with the chief executive and the chairman at a hotel at Mithian and it was only non-executives. It was whoever on the non-exec board could attend because it was quite short notice. One or two couldn’t get there.

Q. So you were actually quite keen to hear what the SHA had to say?

A. I thought it was essential...My recollection of the meeting was the SHA chairman said ‘look Bromley is serious, we think you need to take some action, we’ll support you, we think there should be a review and basically we think it should be a joint review’. That’s the way I took it.

I’ve seen various descriptions of this meeting. Obviously I had heard, from reputation, like the chief executive of the SHA being quite aggressive I felt it was quite tame. I was expecting far more aggression and far more you will do this and the only time it got a little bit tetchy, in my view, was when having described the Bromley report as serious and the problems in that, we weren’t responding. We weren’t jumping up and saying we need to do this, we need to do that. There was, basically, no response from the table and they got a little bit worried that we were understanding the seriousness of it. Of course it was the first time I had met

them and they had met me and the other directors were the same. So it was a case of we didn't know each other and my view is it was not the time to have a debate.

The debate was amongst the directors and I was there to get the views of the SHA and then to take them away so we could discuss it with the other directors. That was my reason for being there.'

9.37 Mr Gazzard told us he had been “knocked flat” by the SHA’s information about the HCC problem:

“I was completely shocked...The process wasn't right. We obviously hadn't got it right...The process that was being used was a new process and isn't right. I was disappointed because the people involved with the process - John Watkinson, had obviously been involved, man and boy, in the NHS and knew the system. Although the system had only been in place about five years, he'd grown up with the system and we were coming in relying on his knowledge and other people's knowledge of the system. They knew we were new non-execs, we had no knowledge of the system...John Mills... said it was impossible for any non-exec to actually go into the detail. Even if they have the knowledge required they don't have the time to go into the detail to actually check it or audit it...We took it as far as we believed we had, so although we felt quite innocent we knew that it was a wrong declaration and that was quite harsh for us... There was that, and in fact later the day of the meeting on the 25th we had a finance committee meeting at which the director of finance, Joe Teape, produced a report, saying, basically, how bad the figures were for the year. It had been slightly under all the way through and now this was the one which said we're under and we look as though we're going to stay under. That issue was raised as well with the SHA in the morning meeting, in the breakfast meeting. There was also a comment, which was quite a mysterious comment, 'we know more about what's happening in the Trust than you do and things aren't good...'"

9.38 We asked Mr Gazzard if he had felt threatened or bullied by the SHA. He said he had not and did not think that the other board members at the meeting - John Mills, Rik

Evans, Patrick Wilson and Douglas Webb - had felt this either. He explained that the RCHT board members told them before the SHA left the meeting,:

“We’re not taking any action, we’re going to seek legal advice, we’re going to do it properly, we have the standing orders, the requirements and we are going to meet them. John Mills was a stickler for that. He wouldn’t move outside of that. We’re going to do this properly, debate it properly”

9.39 He told us he thought the SHA acted:

“Totally appropriately...I expect there have been people who said there was inappropriate pressure applied and I would say it was probably the opposite. I was expecting more pressure. Totally, exactly what I wanted. I wanted their view and I was told what their view was...no one, in the meeting we had afterwards said ‘I don’t think we’re free to make a choice’. Everybody was there debating what we should do...we had the Bromley report, we had our position, and we now had had the meeting with the SHA, which had given us their view. Also given us some more information about our own performance in terms of the HCC, etc., and we were, in my view, free to make a choice.”

9.40 We asked Mr Gazzard about the decision to suspend John Watkinson:

“We had a reasonable debate about what we were going to do and came up with a solution. Again a few days later we had a Regulation 17 meeting. I’m not sure what the Minutes say but that was a very long meeting. It was Douglas Webb, Rik Evans and myself. That meeting started, my recollection is about half past 8 and we had to leave it at 12 o’clock. We finished at 12. It was a very, very long meeting and we were trying to find a way. We didn’t think it was right for John to be in the office during the course of the investigation. We thought that was fair enough and we didn’t have many doubts, but we were trying to find a way of softening that, softening suspension...We were trying to find a way round it believing of course at that stage that the review would only take a few weeks. We were looking for a way of softening the blow and trying to make it a properly neutral impact, but at the end of the day we had the lawyer on the phone and he said “with the contract John has with you, you don’t have a lot of choice.

Suspension is the route and you have to take it”, and we had to take that advice. Again with some sadness I have to say...this is now having a profound effect. Obviously...losing John...was going to have a serious effect. We weren't taking things lightly. We were trying to find a way around it but having accepted that we had to do something. That was our decision and we'd taken some time to reach that.'

9.41 We asked him if he thought the SHA had had a “hidden agenda” connected to upper GI reconfiguration:

“If there had been a “hidden agenda” around cancer treatment, which is what has been suggested, the two of them would have sacked the non-execs. Their problems would have gone away completely. There was no doubt about it. We knew that. It was the non-execs on the board. They knew who were causing the issue as far as RCHT was concerned. Had they done that the problem would have gone away. John Watkinson would have said ‘yes’ as he'd always done, and the issue would have gone away...”

9.42 By contrast, John Mills told us:

“John came as a man with a reputation for turning stuff around and so on and all this whizzo stuff about Bromley. Then for some reason it went sour. So they fell out of love with John and this was not helped by the enormous management and financial challenge at the hospital, to be honest about that. That was really hard and there were these issues around the health standards, though we were not the only hospital to have all this. But it was an issue. I make no bones about it. Ian would have been right to have been worried about the performance of RCHT. He always said, out of his 14 Trusts there were three or four - there was us and an ambulance one and - were the ones that were on his radar the whole time.

We were in a dreadful situation. We were short-staffed, we were all over the shop. We were doing our best and there was some turnaround, there was some improvement and it had not fully happened at that point. I am under no illusions about that and you sat there around the board...and Mike said, “What lever do I pull to make this go better?” I could see that they were concerned and they felt

then that the upper GI thing was taking our eye off the ball, which might have been a correct judgement. The upper GI thing and all this palaver about consultation was kind of dominating things in a way which was probably a bit unhelpful. I accept that. So I think they resolved that they needed to get rid of the guy, and the Bromley thing was the way of doing it”.

9.43 We wanted to get a sense of the time and energy the board was spending on upper GI reconfiguration. RCHT told us that 58 items on various subjects appeared on the agendas of part-two board meetings between January and September 2008. The minutes recording the discussions on these items consisted of 36 pages, eight of which were devoted to upper GI. This suggests that upper GI took up about a quarter of the time devoted to part 2 agenda items in this period.

Comment

We consider that the time the board spent on upper GI supports Mr Mills’ perception that the SHA felt it was causing them to neglect other, probably more important, matters.

9.44 He also said:

“I do not personally think that upper GI was the cause. It was a cause. It was an irritant and if upper GI had not happened, these factors...around performance and 18 months or so, would still have been there. Because they were there; they were there in spades”

9.45 We asked Patrick Wilson, RCHT non-executive director about the mood of the meeting on 23 September:

“Very concerned...the first we saw of it was when we literally walked into the Council chambers and we skim read it...it was fairly damning and we were very concerned. It was lucky for us that we had John (Mills)...because he had a grasp of procedure in the public sector which the rest of us would not have the first idea about. He guided us through what we did next. We came to the conclusion that we were going to have to act...I made the link straightaway to the financial, where a

lot of the words were my concerns about a lack of control. I think we talked about forecasting and so on as well. All the things which I had seen. It gelled with me in that respect. In the other areas I didn't feel that we had those issues at that time...I remember that John Mills felt that we would have no choice but to have some sort of investigation because of the nature of how the public sector works. It wasn't in our minds at that point in time that we were talking about suspension, but there would need to be some sort of investigation."

9.46 We discussed with Mr Wilson the meeting on 25 September. He told us he already knew there was a problem with the HCC standards but had not known how bad, nor that the HCC had invited RCHT to resubmit. He said it would have been helpful to have notice of the full extent of the HCC issues, but that this would have made no difference to his decisions that day.

Comment

As shown in section eight, Mr Watkinson had been kept informed of the HCC findings after its inspection in August. The SHA would have known this because they understood the process of finalising the inspection reports. It was reasonable of them to assume that Mr Watkinson had kept the board informed of the correspondence with the HCC, so the information provided on 25 September would not have been a surprise.

9.47 We asked Mr Wilson what he thought once he knew of the HCC's new position. Did he accept not only the need for a review but also that Mr Watkinson should be suspended?

"Yes, there is no doubt about that..."

Q. You were all very concerned that due process should be followed?

A. Yes, because if the outcome was adverse, we were talking about potentially firing a chief executive of a hospital, which was a fundamentally important role in Cornwall and that is a very, very big step. We were very concerned about that..."

9.48 We asked him what he felt about the decision to suspend John Watkinson:

"I felt pretty awful because I liked John, but I thought that was the right thing, that it was the right thing to do for the hospital.

Q. At the point at which he was suspended, did you think "This is the inevitable beginning of the inevitable end", or did you follow what was being said, which was this was a neutral act?

A. ...I didn't think it was inevitable that he would go. I expected this to be done properly; it was done properly...It became clearer to me as the weeks went on how not just serious for John, but how hugely visible this was and how fundamentally challenging this was going to be in Cornwall...

Q. It was John Mills who had to tell John Watkinson, 'Please go on special leave', then there was the meeting on 1 October where he was suspended. Do you get a sense that John Mills was as convinced as you were of the need to suspend John Watkinson?

A. I can't say at that stage. I know that John wavered a lot through the process; he found it very challenging personally - not procedurally, just personally...because he liked John and this was a very hard thing for him to be doing."

9.49 We asked Mr Wilson what he thought had motivated the SHA at the meeting on 25 September:

"It was Bromley. The conversation was led off with 'How can you have assurance that you don't have a Bromley?' We were going in that room, gung ho: 'Yes, we can have assurance other than financials', and then they say that and you say, 'No, we can't have any assurance, can we?'"

9.50 We asked Mr Wilson if he thought the SHA had behaved properly at the meeting:

"I think it was absolutely the right thing to do and I think they handled a very difficult situation well. If I had been on their side of the table I would have been much more bullish and demanding action a lot more aggressively than they did. I was horrified, but on reflection I was comfortable that they did what they were supposed to do."

Comment

Once again, the trust board took legal advice on what they could do, took advice from the SHA on what they should do, and then decided for themselves that, in the interests of the hospital and the people it served, they should agree to the review and to the suspension.

9.51 Sir Ian Carruthers told us the Bromley review was “a very serious report”; the facts belied the claims about improvement at RCHT; a jointly commissioned independent review was needed and that for reasons of fairness it was best to suspend John Watkinson.

9.52 He went on to say about the trust’s decision to suspend John Watkinson:

“At the end of the day John [Mills] came and said to us ‘We think that is the right thing to do. We have difficulty suspending John Watkinson’ because they had received some legal advice which I could not quite understand, but ‘Is it okay if we send him on gardening leave?’, to which we said ‘As you wish, but I think it is important to protect John’, because even then whilst there were big difficulties I thought this was about more than one individual. We had a board there who had agreed all these assessments, we had Bromley that related to John, and it was the right thing for me to do.”

9.53 Andrew Millward told us that it was a “very business-like meeting” where “everyone present realised the seriousness of it”. Sir Mike Pitt chaired the discussion and took the RCHT chair and non-executive directors though the findings of the Bromley report including corporate failure, the level of debt and the matter of poor relationships with the local PCT. Sir Mike also outlined the SHA concerns about performance at RCHT. Mr Millward said he thought there was “a slow realisation” by the RCHT board that the matter was serious. Sir Mike invited the board to consider it in private but made clear that the SHA would want to commission a review of RCHT, preferably jointly with the trust board.

9.54 At interview John Mills said “the board was put in an impossible position by the SHA” and “that if we did not play ball we were out”. He said the non-executive directors felt at the end of the meeting that they should comply “with great reluctance” with the

wishes of the SHA. He believed the non-executive directors “*would be out*” if they did not and that the “*hospital would be the sufferer because it would be completely rudderless...where, quite apart from that, we were in a really difficult financial position*”.

9.55 Peter Davies, who had been interim chair of the RCHT board for over a year with John Watkinson until he resigned in July 2008, said:

“It was a pretty scathing report right across a whole range of things, and I think I would have had to have said, ‘John, we are going to suspend you’, because I would have wanted to make sure that what was happening in Bromley was not being replicated here at RCHT.

I totally understand Ian’s concern about the number of Bromley people in here. They were here when I came and one of the things I was determined to do was to go through due process advertisement and selection so that these temporary interim people were either there on merit following a national advertisement or their secondments, or whatever they were, came to an end.”

Comment

The events of 19 to 25 September were fast-moving, unexpected and demanding. It is not surprising that different people had different views on what was happening at the time and now have different recollections.

The areas of agreement are:

- ***the SHA wanted the board to commission the review jointly with them***
- ***the SHA made it clear that they thought John Watkinson should be suspended during the review***
- ***the decision on 25 September was not a volte-face from the decision on 23 September, but a development of it***
- ***the board considered that the Bromley report justified a review and Mr Watkinson’s suspension***

- *the board made its decision on suspension in the interests of the hospital and the people it serves.*

The areas of disagreement are:

- *the motivation of the SHA in pressurising the board to suspend Mr Watkinson*
- *the legitimacy of the pressure that the SHA placed on the board to suspend Mr Watkinson.*

We accept the areas of agreement, which fit with the documentary evidence and also with the evidence of people not directly involved, such as the Appointments Commission, the minister and the previous chair of the board.

As for the motivation of the SHA, we note that Mr Mills believes that the SHA wanted to get rid of John Watkinson, that his failure to keep the board on message on upper GI was at least partly the reason, and that suspension was seen as the way to achieve this. The other board members, however, believe that the SHA was motivated by the Bromley report, together with the evidence of impending failure emerging from the SHA's own monitoring, the HCC and the district auditor, and a belief that suspension was necessary in the circumstances.

As far as the legitimacy of the pressure is concerned, Mr Mills feels that the threat of suspension of the board amounted to bullying and improper pressure; other board members did not.

We accept that these differences of perception and opinion are all genuinely held and within the range of reasonable responses to the situation. Sir Ian has a reputation for plain speaking and assertive management in pursuit of high performance and we are aware that some people find this uncomfortable. However, where two witnesses say that his behaviour was acceptable and only one does not, we consider that on the balance of probabilities, the SHA did not behave improperly. Furthermore, we are satisfied that the board members we spoke to acted honourably, taking account of the matters they thought were relevant and ignoring others, including any perception

of bullying or improper pressure. It is also our opinion that the actions of the SHA can be explained by the Bromley report without having to bring in the “hidden agenda”.

9.56 The current chair of the RCHT board, Martin Watts, gave us his view of the members of the board in September 2008 who still sit on it:

“They are their own men, they devote huge amounts of time and energy to the people of Cornwall and this trust and in no way would any of them individually, let alone collectively in any way be bullied or harassed into compromising their own integrity and that is one of the reasons I have asked them to remain as non-executive directors and have just sought and succeeded to get their reappointment for another four years”.

Why did the Hawker review take as long as it did?

9.57 John Watkinson said in his witness statement the action taken over the review led him to presume that given the widening of the review and terms of reference, the process was a fishing expedition to seek grounds to dismiss him summarily. He said the report contained factual inaccuracies, was selective and biased, the review team ignored most of the points he raised and there were many procedural defects. He also said the district auditor could have completed the review within a few weeks.

9.58 We asked Professor Hawker about that:

“We wanted to try and get it done quickly and there were all sorts of delays that happened. Looking back it was unrealistic to imagine that it could be finished by that time. Both the SHA and the board wanted it as soon as possible; I went along with that because you don’t want people suspended for longer than you need to have...but it became quite obvious that we weren’t going to be able to complete it in that time.”

9.59 She explained that it was some weeks before the review team could meet, and then there were delays in seeing busy witnesses. She pointed out that they saw 70 witnesses, which was in itself time-consuming. She told us many of the people she had interviewed believed the review was caused by the SHA’s alleged “hidden agenda”:

“...the people who are Health Watch and the community... kept telling me this was nothing to do with Bromley. The movement of patients for cancer care, we weren't looking at that - that wasn't our brief, but everybody kept wanting to tell me that that was the reason for it. I spent the first part of every interview saying, 'This is because of Bromley and because of Bromley it is good governance to carry out a due diligence review'. I had to keep repeating that, but I don't think that was a message people wanted to hear.”

9.60 We asked Jo Perry, then RCHT director of human resources, the contact person at the trust for the Hawker review, why it had taken so long. She said the review was high profile with widespread press interest and it was necessary to communicate with everybody involved.

9.61 We asked Lee Budge, the district auditor, whether he thought it would be possible to conduct in a couple of weeks a review of the sort Professor Hawker and her team were asked to undertake. He said:

“First of all, for us to do that kind of investigation it might have been inappropriate given the other parties involved. Secondly, given the nature of some of the areas that you are mentioning, for example around relationships, quality of relationships and so on, it is the type of thing that you can't go to a single, or even a dozen pieces of paper and form a view on; it requires fairly extensive investigations and discussions with a fairly wide-ranging number of people. If those were the kind of things that were trying to be ousted, it certainly wouldn't be feasible within the period of two weeks.”

9.62 On 23 October 2008, before he gave evidence to the Hawker team, Mr Watkinson wrote to Professor Hawker to explain that he was seeking to pursue his legal rights in respect to the damage to his reputation caused by the “*inaccuracies*” and “*unfounded criticism*” contained in the Bromley report, and putting her on notice that “*any repetition of defamatory material concerning me and contained in the Bromley report will render you or those under your control liable to defamation proceedings*”.

Comment

Professor Hawker's evidence to us shows that the review team spent much time interviewing people who wished to talk about the upper GI controversy, rather than matters within their terms of reference. This alone must have slowed down the production of the report.

The threat of defamation proceedings was to be taken seriously and since the Hawker review was specifically commissioned to see if any of the concerns identified at Bromley were evident in Cornwall, the Hawker team lawyers must have taken great care to make sure that the draft report contained nothing that might trigger the threatened defamation proceedings.

We are aware that difficulties in getting agreement about how Mr Watkinson was to have access to the draft report so as to be able to make meaningful comment also caused delay. We do not criticise Mr Watkinson or his representatives, but neither do we consider that the Hawker team deserve criticism.

The district auditor, Lee Budge, did not consider that a review to look at all the issues raised by Bromley could be done in the way Mr Watkinson suggested.

Were the authors of the independent review engaged in a fishing expedition?

9.63 Andrew Millward says in his witness statement:

"The people selected to undertake the review were recommended by the Department of Health and the Appointments Commission. Professor Ruth Hawker OBE was an experienced chair in the south west region of the NHS; Dr Neil Goodwin CBE was a former chief executive of a strategic health authority and had worked in the NHS nationally; David Stout was a finance expert from outside of the south west region and David Fielding MBE was an HR and governance expert. The panel was agreed by both the RCHT and the SHA board."

9.64 We asked Professor Hawker about these matters. She told us she understood that the review was to be a due diligence review arising from the Bromley report:

“That seemed perfectly appropriate and I felt quite comfortable with going in, doing a report without any preconception of what the findings might be”.

9.65 We asked her whether the Bromley report justified a due diligence review of the type she undertook. She thought it did:

“There are obviously areas around financial management which needed to be looked at to see - I chose not to meet with the author of the Bromley report, I chose not to meet the current chair because I felt very much Bromley was Bromley; that had precipitated this. What happened at Bromley was sufficient to precipitate this report, but again, it was to be put in the background. I was only focussing on Cornwall”.

Comment

We accept Professor Hawker’s evidence that she was carrying out a review, in accordance with the terms of reference and did not concern herself with matters outside these terms, such as the possible disciplinary actions that might follow the publication of the report. In our view, the fact that the whole board was criticised in the Hawker report militates against the likelihood of the review being a fishing expedition.

What role did the SHA play in the writing of the Hawker report?

9.66 We asked Professor Hawker if she had had any unusual contact from her commissioners, she said not. We asked if she had any sense of a “hidden agenda” operating. Again, she said not.

9.67 Mr Watkinson told us that perhaps the Hawker team had been duped into helping the SHA’s “hidden agenda” through working with terms of reference wider than a review of the problems identified in Bromley would justify.

9.68 Andrew Millward said in his witness statement:

“I worked on behalf of Sir Mike and Sir Ian in drafting the terms of reference for the Joint Independent Review of the Management and Governance at RCHT. These were prepared with reference to the matters which had been considered at Bromley and were agreed with RCHT”.

9.69 We asked Ruth Hawker whether she thought with hindsight that the SHA had manipulated her and her colleagues. She said:

“No, four experienced people on the team; we have all done this sort of job before in different ways, in different places and in whatever. It is standard, to some extent, NHS practice: if you have something, bring in somebody from outside to have a look and report on it. For me it seemed very much like a go in, do the job and come out again. I never felt part of anything else.”

9.70 She also told us that she was familiar with the process of due diligence reviews, having commissioned them as well as participated in them.

9.71 We looked at the areas covered by each report. The Bromley report covered:

- the trust’s financial position - overarching issues
- the trust’s financial position - scrutiny by the trust board
- major contentious issues within the trust
- governance within the trust - the machinery of governance
- governance within the trust - specific capital schemes
- management issues within the trust
- the trust’s relationship with other organisations, including its PCT and SHA.

9.72 The Hawker report covered:

- financial management and performance
- strategy and business planning
- trust management and leadership; and
- trust, PCT and SHA relationships.

Comment

We find no evidence that the scope of the Hawker review went beyond the matters raised in the Bromley report. We are confident that Professor Hawker and her colleagues conducted their review in good faith.

Did the Hawker team ignore Mr Watkinson’s rebuttal points on the draft report?

9.73 Professor Hawker agreed that most of Mr Watkinson’s rebuttal points had been rejected, and told us that by the time they had finished drafting their report the interim RCHT chief executive, Tony Parr:

“...had gone in and found the situation as we had described it...They were working so that some of the issues that we had found that prevailed in September, which was what we were looking at, had and were already being dealt with, so that, to some extent, that validated our findings.”

9.74 She also told us that despite this other evidence Mr Watkinson’s rebuttal points were carefully considered:

“We went step-by-step through as a team.”

Comment

The fact that rebuttal points are not accepted does not mean they have been ignored. Professor Hawker’s team appear to have dealt with the rebuttal points in accordance with good practice in the conduct of reviews of this sort.

Was the Hawker review process flawed and unfair?

9.75 John Watkinson said in his witness statement to the employment tribunal that the Hawker report “contained factual inaccuracies and was selective and biased”. He also said the review had “*many procedural defects*”:

“I was requested to attend a meeting on 7 November 2008. I attended that meeting accompanied by Ian Gibson. Despite the terms of our agreement, I never received a transcript of the note of that meeting and therefore have no notes”.

9.76 , Mr Watkinson made a number of requests in a letter to Professor Hawker on 23 October 2008 in relation to his meeting with the review team. However, he made no mention of wanting copies of meeting notes or a transcript in the correspondence.

9.77 We told Professor Hawker that some of the people we spoke to had complained that they had been promised copies of the notes of their interviews so that they could check them for accuracy, but that they had not received them, nor been given the opportunity, as promised, to comment on the draft report. Professor Hawker told us there had been no agreement to send copies of notes. She also said:

“I have never known a chief executive who had so many people in the community battling for him...they really felt they wanted him back, they wanted him as quickly as possible doing what they felt he was doing extremely well. That was consistent.

Q. Which is representing the interest of the community...As in protecting services from degradation and movement out of the county?

A. Yes, and there are a large number of very powerful community groups in Cornwall. They have been functioning for quite a long time and, as it were, they fought many battles...”

Comment

Professor Hawker is sure that witnesses were not routinely told they would be provided with copies of their notes of interview. We note that Mr Watkinson did not ask for this when setting the terms of his involvement with the review. Some of the people we spoke to were sure they were given this assurance. The purpose of giving interviewees copies of their interview records is usually to give them an opportunity to check the notes for accuracy, in case a report refers to their evidence and

identifies them as the source. The Hawker report does not quote directly from interviews, nor does it attribute any evidence received from witnesses.

It is not usual to make the whole of a draft report available to everyone who has given evidence and it is difficult to see what the point would be: the purpose of making a draft available is not to start debate that will properly take place when the final report is published. Those who give evidence to reviews and investigations must be treated fairly in respect of anything said about them, but this does not include having privileged access to the draft report.

Why did the RCHT board meet to discuss the Hawker report on 5 March 2009 without taking into account John Watkinson's rebuttal letters?

9.78 Roger Gazzard told us:

"There were obviously a lot of people involved in providing information for that report, if we bring on one person to give their views you're going to get to a stage where you're going to get a bias on it, because you're going to receive one side of it. The four people had taken a balanced view, with views from all sides, and an awful lot of people. This is what we felt later on in the process - to try and say, well, this evidence was provided by one person, we don't know if there was counter evidence from somebody else, because we wouldn't have seen that, and the only way we could actually form a judgement would be to see everybody's submissions to that report team, and in fact, repeat the work of the report team. So our view was we had to accept the report, and accept that the four people writing it were independent experts"

9.79 He also made the point that they knew John Watkinson had had an opportunity to comment on the report before it was finalised. John Mills agreed.

9.80 Jo Perry confirmed that her recollection was that the board knew that Mr Watkinson had commented on the draft report, and therefore assumed that the review team had taken those comments into account in its final report.

Comment

As a matter of good practice, we think the board's approach in not considering Mr Watkinson's rebuttal letters was right. The Hawker report was not just about John Watkinson, neither, as Professor Hawker explained, was it intended to support disciplinary proceedings against him. In the next section we comment on the rebuttal letters, but suffice it to say here that we agree with Mr Gazzard, RCHT non-executive director, that if the board had taken the letters into account before deciding whether or not to accept the report, they would have had to redo much of the review and would have had to reject, for instance, their own experience in relation to the HCC standards.

Why did the RCHT board accept the Hawker report?

9.81 We asked Professor Hawker about the occasion in February 2009 when she and her team presented the draft report to members of the RCHT and SHA boards. She told us:

“Interestingly enough, the most concerning thing was one of the recommendations about the board we felt needed further development. Given that they were relatively new, it would have been surprising if they hadn't needed it, but they were quite prickly about that. That seemed to be of more concern, because they felt personally criticised. Of course, they had by that time, five months on dealt with quite a lot of the issues. We were talking about a point in time from which they had moved on. I could understand why they felt it was quite difficult for them to take. Again, the due diligence was up to that moment in time, but the report recognised that things had changed.”

9.82 We asked her if she thought the findings in her report would have justified John Watkinson's dismissal. She told us:

“I don't think that was a decision for me to make. We were asked to do a due diligence report; that was what it was. It was not saying, ‘This is now what should happen’, it would have been at fault if it had been that. It was not intended to be that; it was a due diligence report, the outcome of which could have been anything. It was then entirely up to the board and it was at that point I stepped

away totally and had absolutely no contact. Job done, as far as I was concerned; the board had it, with the knowledge they also had about the organisation, which was, by that time, much more than the report.”

Comment

Professionals carrying out reviews and investigations of this type are trying to establish facts, not whether those facts should result in consequences for the individuals concerned. Such reviews are not disciplinary investigations, and it is for others to determine whether the facts uncovered in a report, if accepted, justify disciplinary action.

The board accepted the report as an indictment against them, as well as against John Watkinson, and intended to go forward with recommendations.

9.83 We discussed the report with Patrick Wilson:

“There was a huge amount of discomfort with the report - but we felt that the conclusion, although challenging, was probably right...We had a board meeting where we required everyone to agree that they supported that and that we would act as a unified board on that. In that process one of the execs couldn’t and resigned...This was fundamental; the board was basically taking it fairly full on the chin and saying, “We will take this on board now; we will work with this to go forward. When we have the meeting with John this is a paramount requirement. That is the feeling of the board, we are not going to resist this, we are going to take this as learning and solve the problem. It is an absolute requirement.”

9.84 Roger Gazzard said that the threat of legal action for defamation appeared to have made the Hawker report “*generalised*” in its nature. He said he could not fault the recommendations and conclusions, although he had doubts about some of the findings that led to them. As an accountant, he had a technical definition of corporate failure and he accepted that the trust was in danger of failing in this way. He agreed that while the clinical care the trust provided was good, the organisation was heading for “*managerial failure*”.

9.85 John Mills sent a letter to the Hawker team solicitors expressing concerns about details of the Hawker report as it relates to the non-executive directors. Essentially, their concern was that the existing board might be held responsible for failings identified by the Hawker team relating to decisions and activities made by earlier boards with quite different memberships.

Comment

The board clearly felt severely criticised by Hawker and wanted to make sure that the criticism was fair.

9.86 John Mills took a different view of why the board accepted the report. He felt the board was under pressure from the SHA and also knew that the review had taken longer to complete than intended. He said:

“...we could not do anything. Least of all, we could not do anything about John’s position until the report was out. So I think the view round the table was, with a degree of reluctance, that we just had to accept it.”

9.87 He felt that the trust non-executives were in a weak position to debate the matter with the review team or the SHA. He took issue with some of the content and wording but *“the point had come where we knew we had to move on”*.

9.88 Mr Mills also told us that Mr Watkinson’s situation was not discussed at the meeting on 5 March because executive as well as non-executive board members were present and it would have been inappropriate to do so with his subordinates.

9.89 Jo Perry told us:

“As an individual, it wasn’t a report that I would like my name to be associated with. As a professional, the same would apply. As a corporate member of a team, I have to accept all of the failings that it’s suggesting - I signed up to a board to be a corporate member, and there were failings in the organisation, and a number of areas where it seemed we were heading towards corporate failure. Actually, on reflection, if I was the chief executive, I’d be having a weekly meeting: where is

the CRES target, when is it going to be achieved, what's your deadline? It's not working, what else do we need to achieve this? We're not achieving our Healthcare Commission - that should have been the core, for us in the business every day."

Comment

The board accepted the report as an indictment against them, as well as against John Watkinson, and intended to go forward with recommendations.

Did the SHA play any role in Mr Watkinson's dismissal?

9.90 Jo Perry told us:

"We needed to get John in, we needed to give him the opportunity to talk us through the issues around the report, and for him to respond".

9.91 We asked her if the SHA had played any part in this decision or subsequent ones:

"No, absolutely not!- no debates around the meeting that happened in April, which was the hearing to consider if there was a breach of trust and confidence to go through with him, no discussion around the appeal hearing which happened in -

Q. No phone calls to you saying, have you got rid of that chief executive yet?

A. No. A phone call to say have you got an outcome, what's the outcome? But that was it. To be fair, we had agreed that because there had been so much press and media, and I was leading on Comms at the time, because Greg had been sick all of this time, I was very clear, we made them aware of any press statements we were going to put out."

9.92 The SHA and non-executive directors of RCHT had meetings between the date of Mr Watkinson's suspension and the publication of the Hawker report. The SHA and RCHT had a common interest as joint commissioners of the Hawker review. Furthermore, Mr Watkinson had instructed solicitors with a view to issuing proceedings in defamation against the SHA, RCHT, John Mills and Sir Michael Pitt, and meetings took place to work out a joint strategy for handling these matters. Mr Watkinson's situation was discussed

informally, and views were expressed about how matters might turn out. No one suggests that the SHA put any pressure on RCHT to dismiss Mr Watkinson, and Sir Ian confirmed to us that the SHA played no part in the dismissal process or the decision to dismiss Mr Watkinson.

Comment

The evidence provided to us shows that the SHA complied with its duty to assist and support RCHT in managing these difficult issues. There is no evidence of impropriety or of pressure to dismiss Mr Watkinson.

10. Other matters investigated

10.1 John Watkinson said in his witness statement to the employment tribunal that:

- Sir Ian Carruthers had asked him to apply for the job of chief executive at RCHT.
- Sir Mike Pitt suggested in a telephone conversation to John Mills on 19 September that John Watkinson had sought his removal but this was not true.
- He believed there was an orchestrated plan for a number of important events; the Bromley report, the publication of the Griffin report and the reporting of the outcome of the HCC inspections to take place on or about 25 September 2008 when the SHA had a long-standing meeting arranged in Truro.
- The fact that Mr Gazzard and Mr Wilson were not willing to look in detail at John Watkinson's points of rebuttal showed that they did not want to conduct a fair investigation into the matters for which they were considering dismissing him.
- He believed that the board members were not removed from their posts as a result of the finding in the Hawker report that they failed to follow the spirit of the Code of Conduct because they had bowed to the pressure from the SHA.
- The appointment of Martin Watts as chair of the trust in March 2008, when the SHA knew he had complained that John Watkinson's appointment was a "very serious mistake" was intended to make it more difficult for John Watkinson to return as chief executive.
- The independent appeal panel was forced to change the scope of the enquiry to look at whether events after his suspension had led to a breakdown in trust and confidence.

10.2 We have therefore sought to answer the following questions:

- Did Sir Ian Carruthers ask John Watkinson to apply for the RCHT job?

- Did Sir Mike Pitt tell John Mills that John Watkinson had sought to get him removed? If so, was this true?
- Was Martin Watts appointed to make it more difficult for John Watkinson to keep his job?
- Why did the RCHT non-executives not look at the rebuttal letters in detail before the hearing on 15 April?
- Why were the RCHT non-executives allowed to keep their jobs after the criticism of them in the Hawker report?
- Was the independent appeal panel forced to change the scope of the enquiry to look at whether events after his suspension had led to a breakdown in trust and confidence, and, if so, by whom?

Did Sir Ian Carruthers ask John Watkinson to apply for the RCHT job?

10.3 Sir Ian Carruthers told us that John Watkinson may have rung him up to discuss the possibility of applying for the post; this was normal but he would never have advised him to apply because he would never do so with any applicant. He had known John Watkinson for many years, as he had known many other people in the NHS, but he knew of his track record, leadership and management style only through his references on the application and through what others had told him.

“When we made the appointment we had a panel which was properly constituted, an external assessor, we had two candidates, we had exemplary references from his chair in Bromley, and I took due diligence by speaking to colleagues all of whom said that he had ‘maverick behaviour tendencies’, which was the way they put it, but somehow he achieved the results although they never knew how. In the situation that we were in, what happened was that I spoke to my colleagues, phoned back the chairman of the trust, and my assumption was that he would sleep on it overnight.

Q. Is this Professor Roberts?

A. Professor Roberts, yes. My assumption was that he would sleep on it overnight and speak to me the next day. He did not do that; the next thing I knew Mr Watkinson phoned me to say that he had got the job, but I made it absolutely clear that I think that was a perfectly sound decision on the basis of the information which was given, and at that point it was very clear whoever we appointed, and John Watkinson was no exception and I was not opposed to his appointment, we would give them every support we could.”

10.4 Mr Watkinson told us that he had contacted Sir Ian to discuss the job and that Sir Ian had told him that he would be a strong candidate. Mr Watkinson told us that this positive message meant that Sir Ian wanted him to apply, and that therefore his contention that Sir Ian had asked him to apply was true.

Comment

Mr Watkinson and Sir Ian do not disagree significantly as to what happened. We do not consider that the conversation each of them describes amounts to Sir Ian’s asking Mr Watkinson to apply for the job of chief executive of RCHT.

Did Sir Mike Pitt tell John Mills that John Watkinson had sought to get him removed? If so, was this true?

10.5 Andrew Millward says in his witness statement:

“On Peter’s resignation John Mills automatically took on the role of acting chair. I was present when (shortly after Mr Mills’ appointment) John Bewick, who was acting chief executive in Sir Ian’s absence, took a call from the claimant, who was complaining about Mr Mills’ appointment and asking for his removal. I learnt from Sir Ian that he repeated this request subsequently.”

10.6 Mr Millward told us this was accurate. He also told us he believed that there was a record of the conversation he had heard, so we asked him to send it to us.

10.7 John Watkinson told us he had spoken to Mr Bewick, director of strategic development at the SHA, but that the reports of the conversation were inaccurate. He

told us this had also been raised in the employment tribunal, and he had told them what he was now telling us:

“Yes, there was a conversation, but I didn’t say that. Mills asked for a note to be produced of that conversation and it was never produced because that was never said. This is nonsense really.

The correct context was it was just before the OSC and I was very concerned that Mills would go publicly against the PCT, and I was informing the SHA - I thought that was my duty - that that was a possibility, and asking for their support and advice. I didn’t realise there was somebody secretly listening to the conversation in the room, by the way; they didn’t tell me that. It didn’t matter anyway.

What I actually said was, it wasn’t to get him replaced. I was asked the question, ‘Would he be a good chairman substantively to be appointed?’, and I said that I thought that was questionable. That’s what I actually said.

I didn’t say, ‘He should be removed as acting chairman’, I didn’t make any comment about that. It wasn’t my view. I was asked, ‘Would he make a good chairman substantively’, and I said, ‘No, I don’t think - no, I didn’t say, “No”, I said, ‘I think it would be questionable’. That is what I actually said, and I admitted that in the Tribunal.

But again, this is another part of the smearing that goes on. So they said that to Mills just at a time when Mills was at his most vulnerable to try and persuade Mills and then threaten Mills to suspend me, ‘Oh, he wants to get rid of you’. They never produced any evidence at all that that was the case.”

10.8 Shortly after our conversation with Mr Watkinson, Andrew Millward sent us a copy of Mr Bewick’s note of the conversation with John Watkinson on 11 July. It reads:

“11 July 2008. 9.10. JW calls (AM/JB): Peter did not discuss resignation or vice chair. JB: JW must manage position of Trust. Not an acceptable statement from JM (see it as personal not Trust) undermining public confidence and reputation. John Watkinson: will not move away from agreed statement. JB: Sir MP did not

“approve” but said would not stop it: disappointed. JB will not move to produce new chair: need to behave. Clear John Watkinson needs to generate internal discipline.”

10.9 We later asked Mr Bewick to decode this note. He told us it said:

- He (John Bewick) was not prepared to “parachute” in a new chair as it was not the SHA’s role to make such an appointment and, in any event, there was no case for doing so.
- He (John Bewick) advised Mr Watkinson to work on promoting the right kind of behaviour i.e. internal discipline at board level and “do the right thing for patients”.
- In view of his greater NHS experience, Mr Watkinson should help the new chair in respect of *“good standards and good behaviour”*.

10.10 Mr Bewick told us that Mr Watkinson rang him again on 14 July, the day before the OSC meeting, and he sent us a copy of his note of the conversation:

“14 July 2008. 13.40 John Watkinson (on RCHT board discussion). Lack of politeness to Gabriel [Scally]. After GS left - JW advised should not move away from statement. Not politicians - job to run organisation recorded as advice to board. JM met P Davies at weekend - use OSC as platform. JW has not seen 7 page email to MP. Afternoon trying to minimise damage. Possible downside of both going to OSC - an RCHT downside. Non Exec booted out exec’s for discussion on own. JW: progress on removing chair? JB: absolutely not. Integrity/give trust opp to do right thing at OSC.”

10.11 Mr Watkinson told us that the possibility of removing Mr Mills was not discussed in the conversations and that Mr Bewick’s note did not bear the construction Mr Bewick gave us. Mr Watkinson also denied that he had raised the possibility in the conversation of 14 July of Mr Mills being removed.

Comment

Documentary evidence supports Mr Bewick's recollection of this matter.

Was Martin Watts appointed to make it more difficult for John Watkinson to keep his job?

10.12 The Appointments Commission appoints chairs and non-executive directors with the involvement of the SHA and under the supervision of the Office for the Commissioner for Public Appointments (OCPA). We asked Penny Bennett, the Appointments Commissioner for the south west, how Martin Watts came to be appointed. She explained that when Professor Colin Roberts resigned as chair in June 2007 it was necessary to appoint an interim chair until a substantive appointment could be made. Peter Davies was a non-executive director on the SHA board and agreed to act as interim chair until 13 March 2008. Special permission had to be obtained from OCPA because open competition for the interim appointment had not taken place. The Appointments Commission then conducted a recruitment campaign, including the use of head-hunters, but without success, as Ms Bennett reported to her committee at its January 2008 meeting. The commission wrote to OCPA asking for permission to extend Mr Davies' term, because it would not be sensible to mount another recruitment campaign so soon after one had failed. OCPA agreed that Mr Davies' appointment could be extended until the end of August 2008. Mr Davies was asked if he would continue until the end of the financial year if OCPA agreed but he did not want to do so.

10.13 In the event, Mr Davies resigned on 10 July, seven-and-a half-weeks before his term of office came to an end, and John Mills, the vice-chair of the board, automatically took over as interim chair.

10.14 Ms Bennett told us that appointments of this kind were not usually advertised during the summer in case potential applicants miss the advertisements, so they appeared in November. She explained that they had not started the recruitment process before Mr Davies had been due to finish at the end of August because they had already had an unsuccessful campaign in March 2008 and another so soon would have been unlikely to be succeed. She added that the Appointments Commission had a programme of work, and

that this piece of work took its place in the queue to have its person specification and other preparatory work done before the advertisements were published.

10.15 We reminded Ms Bennett that one of the shortlisted candidates, and the eventual appointee, was Martin Watts, who had been strongly critical of John Watkinson in early 2007. We asked whether any thought had been given to delaying the process until after Mr Watkinson's position had been resolved. She told us:

“Once we'd advertised a campaign, I come back to this OCPA situation. In terms of fairness to the candidates who have applied, we carry on through the process and it would only be in the most unusual circumstances that an appointable candidate or a public appointment would not then be appointed or would be held back for some reason...

I knew not who we might get out of the end of our process but my sight was clearly fixed on this organisation needs a new chairman, we must get on with it, and what's happening and spinning around outside will continue to happen and spin around outside, and what question marks would we be raising because I think it would have been very difficult for us to have argued that we should have in some way delayed...From my recollection, it was just another campaign...It wouldn't have been high on the work list in terms of preparatory work, future planning”.

10.16 Penny Bennett explained that the interviews for the post were advertised to take place in early January 2009 but did not in fact take place until mid February. She said the initial advertisement produced a low response, so they decided to re-advertise and extend the deadline for applicants in the hope that more people would respond. This pushed the date for interviewing shortlisted candidates back by about five weeks.

10.17 As was standard practice, she, someone from OCPA and the chair of the SHA Sir Mike Pitt conducted the interviews under equal opportunity guidelines, with all interviewees asked the same questions. She told us:

“We have standard interview questions. We have to rate individuals against their core competencies and expertise criteria. It's all laid down. The marking scheme is

all laid down. We have to find evidence against criteria by which to assess the individuals, so it's a very open process...One of the factors, as we know, is that these organisations are moving forward towards Foundation Trust status, so we have to build into our thinking the sorts of skill sets that are going to be required by monitor in order to raise the bar and raise the performance of the organisation. So there are certain competencies and expertise that we're looking in for a chair which are above and beyond those that we look for a non-executive director...What we do is as a panel we meet ahead of the interview slot and we have time together as a panel and we agree questions, we agree who is going to ask which question, it's all very formulaic, it's all very set out and prescribed, and that is the way it plays out for each interview, and it is all written down and recorded immediately after you've seen each candidate..."

10.18 When the appeal panel interviewed Mr Watts in July 2009, he said he would not be able to work with John Watkinson as chief executive. We asked him why he had applied for the chair's job when it was still possible that Mr Watkinson would return to work in due course. He told us that he had applied because he wanted the job, but that if he had been asked during the interview whether he could work with John Watkinson, he would have said no, and would have expected to be ruled out on that basis. However, he was not asked, and the issue did not arise until the appeal panel asked the question. As far as he was concerned, a chief executive would always take precedence over a chair if a personality clash meant they could not work together. We asked Sir Mike why he had not raised the matter during Mr Watts' interview. He said it had not occurred to him. His aim was to appoint the best person for the job, and Mr Watts was the most suitable for the RCHT job. He would expect that senior people whose personalities clashed would nonetheless find a way of working together.

Comment

We found the accounts of Penny Bennett and Sir Mike Pitt believable.

Why did the RCHT non-executives not look at the rebuttal letters in detail before the hearing on 15 April?

10.19 John Watkinson said in his statement that the fact that Mr Gazzard and Mr Wilson were not willing to look in detail at John Watkinson's points of rebuttal showed that they did not want to conduct a fair investigation into the matters for which they were considering dismissing him.

10.20 Mr Gazzard told us:

"...I spent quite a lot of time reading it before the trust and confidence hearing, and...I had the general view that, even if you accepted certain areas that were in that letter, they would not have changed the recommendations or conclusions in the final report. It might change the odd word in the findings, but it wouldn't change the overall conclusions and recommendations. That is where we got to when I went into the trust and confidence hearing, and this is where we were saying to John Watkinson in that hearing, please elaborate, and help us, and basically tell us why changing that finding would change the recommendations. Of course, he didn't help us in that at all."

He explained that he assumed the review team had taken into account other people's submissions in deciding how to deal with Mr Watkinson's rebuttal points.

10.21 We considered how useful the rebuttal letters would have been for the purposes of the hearing on 15 April and how far the decision not to consider them supported a belief that the Mr Gazzard and Mr Wilson were acting under pressure.

10.22 Mr Watkinson produced two rebuttal letters, totalling 15 pages. Each is set out in the same way; with some initial comments and then specific comments linked to numbered paragraphs in the draft report. These comments do not quote the passage in the draft that is being commented on. No one had access to a further copy of the draft report after making their comments to the Hawker team, so it is impossible to establish whether the comments led to any changes in it, and if they did, what those changes were. An added difficulty is that the paragraph numbering of the final version of the report differs from the numbering in the draft.

10.23 The first rebuttal letter comments specifically on 37 paragraphs, asking for amendments, further research, other information and retractions.

10.24 The second rebuttal letter consists almost entirely of specific comments on the background, the conclusions and the recommendations of the final draft of the report.

10.25 The body of the final report, excluding the introduction, executive summary, background and recommendations, consists of 58 paragraphs. We know that some changes were made, because the second rebuttal letter acknowledges this, and we are also aware of at least one word being deleted at the request of the board after it had had an opportunity to correct factual inaccuracies.

Comment

It is difficult to see what use the panel could have made of the rebuttal letters, except to understand how profoundly John Watkinson rejected the Hawker report, which he had made clear when he attended the trust and confidence hearing.

Even if the panel had been able to match a comment with the relevant content in the Hawker report, it would then have had to:

- *examine the documents referred to in the comment to see if John Watkinson's quotes reflected the overall picture;*
- *examine the rest of the Hawker report to see if any of these issues were dealt with elsewhere;*
- *speak to the witnesses who gave evidence to the Hawker review on any disputed point.*

In effect, it would have had to go back on the board's decision to accept the Hawker report in its entirety.

The rebuttal letters would not have allowed detailed checking against the report.

The reason given to us for not going through the rebuttal letters in detail is convincing, and we have seen no evidence that this decision was a result of direct or indirect pressure from the SHA.

Why were the RCHT non-executives allowed to keep their jobs after the criticism of them in the Hawker report?

10.26 Mr Watkinson said in his statement in relation to the trust and confidence hearing on 15 April 2008 that the entire process was predetermined and a means to get rid of him because of his stance on public consultation.

10.27 He said that the previous chair had left because of PCT/SHA pressure on this issue and the board had been pressured with the threats of removal from the SHA; he was the last person left who had objected to the SHA/PCT's position and he had done so on grounds of a legal obligation that could not be easily swept away; he believed that the unfairness of the process showed that it was a blatant attempt to get rid of him under pressure from the SHA.

10.28 Two non-executive directors, Roger Gazzard and Patrick Wilson, undertook the trust and confidence hearing on 15 April.

10.29 We discussed this with Patrick Wilson, who told us:

"It would have been very difficult to maintain any relationship going forward given that no question would be answered without reference to his lawyer's advice or to documents prepared in conjunction with his lawyer. There was an absolute breakdown in the relationship as far as I was concerned and we still go back to the fundamental point that we have an agreed report and you have to get our message; if you want to be part of this board you have to get our message on the way forward.

Q. Which was? We will accept this report -

A. ...and we will act on the recommendations...the recommendations were right.

Q. If he had come in and said, 'That was a bit of a facer, wasn't it? I feel very unhappy about some of the things that have been said, but this is where we are and I can see how we can work together to do something'; might that have led to a different outcome?

A. I think so. It would have required quite a few restaurant meals with bottles of drink involved to relax to get us to work together again, because there was a lot of tension between the team. Yes.

Q. It was redeemable?

A. I think so; in my view."

10.30 We discussed the meeting with Roger Gazzard:

"Is it correct that when you had that meeting you and Patrick Wilson still thought that the situation was retrievable?

Yes...the point is the easy solution would have been to reappoint John because the clinical staff wanted him reappointed and public opinion was behind him..Obviously the whole report was serious in what it said and that was worrying us completely. Having said that it didn't point the finger at John...

Q. Can I come back to this; you and Patrick went into that meeting with John Watkinson and one of the outcomes was possibly going to be that his suspension would be lifted and he would carry on?..Even though there'd been letters flying around saying the whole thing's a sham and he only got suspended because of upper GI and you gave in to bullying?

A. That's common. Around all these things, a lot of things are happening and flying about.

Q. You didn't take it personally?

A. Not at all, no. One of the issues I had was the fact it was so long. It was six months and, if you like, we'd moved on in some ways and we could see that would cause an issue coming back because basically everybody had moved on because of the length of time it had taken.

Q. Yes. Okay, so you went into that meeting and that was a possibility. It was a possibility that didn't occur because of what happened during the meeting?

A...You've seen the meeting notes. There were issues over acceptance of the position, and John didn't accept the Hawker report at all. He didn't accept the Bromley Report at all and if I'd been a person that had two critical reports written independently for organisations about the organisation I was managing I would have begun to be thinking "am I right or are all these other people right?", but there was none of that.

There was no recognition of any problem. There was no recognition of the failings; that was all contrived. The money was fine. There was just a complete lack of understanding of where the organisation was in my view and that weighed heavily. John didn't cooperate with the process...he kept on saying "the answer's in my letter..."

Q. It's a pity, isn't it, because what you're saying is that even at that late stage it was a retrievable situation?

A. Had John come to us...and had he said that we've had this report, this would be my action plan if I came back, this is what I would do. There were also other issues that were raised and obviously the relationship with the SHA was raised as an issue, and this is what I would do to retrieve that. Interestingly because John was quoting the fact, particularly Sir Ian Carruthers and their relationship problem, we were quoting on the 25th September back at Sir Ian Carruthers and he was given the press release he had given when John was appointed only in January 2007 in which he was saying John's wonderful. So that relationship was probably mendable. It would have been difficult but it was obviously a short-term issue.

Q. Yes, it would be difficult, but it would also be very popular?

A. It would be popular and I thought had John come to me with a positive attitude and said, 'okay this is what we'll do if I come back, this is my action plan, this, that and the other', then the report to the board - I can't say the decision would have been different because it wasn't our decision to make - would have been different. However, the report, which you've probably read, really reflected what we found on the day. You found a person in John that I don't believe any board, NHS or otherwise, could have had back. I don't think it was possible...

The one question I had coming towards the end was should we have suspended John, but in a way, perversely, Peter Davies, who came to the hearing as John's witness said he would have and he's a professional personnel officer, a chief personnel officer, and that put my mind at ease that we had acted properly at that stage in his view and he was obviously supporting John.

Q. Yes, the trouble is though even if suspension is right...if somebody has been suspended for a period of time then that in itself affects whether something is retrievable, but you still think it was retrievable?

A. Yes, it was retrievable because of how he was perceived before when he was in post. Obviously the clinicians are a major group, and they would have supported him. There would have been issues. The major issue would have been his management team because there was certainly an issue there which came out during that Hawker report...there were accusations of improper behaviour towards other members of the team so there would have clearly been issues, but I didn't see anything that wasn't completely retrievable. There was nothing saying he can't come back. I've been involved in these things over the years. The person we met on 15 April, or whatever it was, you could not have put him back into post. That would have been a mistake even though the public at the time might have liked it. It would have been a huge mistake..."

Comment

The contemporaneous notes and the evidence above suggest that the focus of Mr Gazzard and Mr Wilson was on how to take the Hawker report forward, whereas Mr Watkinson's focus was on its accuracy and the legitimacy of the hearing.

10.31 Mr Gazzard and Mr Wilson produced a report of the hearing on 15 April to be considered by the board on 16 April. It concluded:

- Mr Watkinson had not and did not accept the joint independent review report (the Hawker review)
- He failed to acknowledge or accept any personal failings

- This was contrary to the receipt and acceptance of the full report by the RCHT board and SHA
- The board could have no confidence that Mr Watkinson would drive forward the recommendations
- The panel doubted the understanding of Mr Watkinson of the severity of the issues raised
- Mr Watkinson’s approach to the hearing panel was clearly and overtly designed to achieve a “*breach in process*” and not to achieve a resolved employment relationship outcome
- The employment relationship had broken down and that Mr Watkinson’s employment should be terminated.

Comment

We have read the notes of the hearing, the report prepared by Mr Gazzard and Mr Wilson for the board meeting on 16 April, and the minutes of the meeting on 16 April. We consider that the report accurately reflects the contemporaneous notes of the meeting on 15 April. Our impression on reading these documents was that Mr Watkinson was dismissed not because of the criticisms of him in the Hawker report but because he did not accept the report, nor the board’s acceptance of it and its decision to take action on its conclusions and recommendations, and gave little indication that he would willingly work with the board to this end if his suspension were lifted.

10.32 As many of the non-executive board as could and should attend on 16 April considered the hearing and the report. Mr Mills did not attend nor take any part in the decision to dismiss John Watkinson because Mr Watkinson had accused him of defamation and he took no part in decisions about Mr Watkinson on legal advice.

10.33 We asked Mr Gazzard about the meeting on 16 April:

“The board meeting...was a very solemn affair. It was a difficult meeting. The executive directors weren’t going to be involved, and it was left to the non-execs. The decision at that meeting wasn’t going to be turned around but everybody

wasn't comfortable. It was with sadness if you like...Everybody was resigned to the fact, by the end of the meeting, we had to make it. They were making it, if you like, sadly, but it had to be made. The people on the board are very caring people from the hospital. We are doing it because we care..."

10.34 We discussed with Peter Davies the possibility of John Watkinson's return:

"Q. Do you accept that it couldn't have worked with John unless he did accept the Hawker Report?

A. Yes, John would have had to have given ground. Yes, absolutely.

...Had I been around, I would have sat down with John, and my guess is with Ian Carruthers, and we could have said, 'Okay, John you accept this. You will be here for another six to 12 months and then you move on somewhere else'. That's the way to manage it."

10.35 We asked what the board did after accepting the Bromley report conclusions and recommendations. We were provided with a detailed action plan, which appears in the addendum.

10.36 Dominic Byrne, who resigned from the board, told us he had no difficulty in accepting the recommendations of the Hawker report but could not accept all its conclusions. In particular, he could not accept the conclusion that RCHT had been heading for corporate failure. He explained the discussions that he had with others to see if he could adopt this position and stay on the board. He accepted that this was not procedurally possible. However, there was no breach between him and fellow board members, so in the interests of the trust he continued to carry out the duties of medical director until his replacements were familiar with their duties.

Comment

Most of the board had decided to accept the Bromley report in its entirety and developed a robust action plan to tackle the problems it identified and to take forward its recommendations. Mr Watkinson did not accept the report and gave no commitment to comply with the board's intended response.

Board members clearly felt personally criticised by Hawker. They accepted the criticisms and adopted an action plan to improve their performance. By contrast, Mr Watkinson did not accept any criticism in the Hawker report or in the Bromley report before it.

The board's decision to accept the report and its criticisms showed a willingness to take a difficult decision in the interests of the trust and the people it served. Tony Parr took over as temporary chief executive after John Watkinson's suspension and improvements had already taken place. In the absence of evidence that board members were incapable of, or unlikely to, fulfil their functions satisfactorily, there was no legitimate reason to remove them.

We find no evidence that the actions of the board or the panel on 15 or 16 April were motivated by any "hidden agenda" of their own or of the SHA, or were carried out as a result of pressure from the SHA.

10.37 We asked a number of interviewees whether they thought the relationship with Mr Watkinson was irretrievably lost after such a lengthy suspension. John Mills said in correspondence to us that in January 2009 he thought Mr Watkinson "couldn't come back" to the trust and that this was the agreed view of the non-executive directors. Roger Gazzard and Patrick Wilson thought that this was not the case and approached the trust and confidence hearing in the belief that the relationship was retrievable.

10.38 Ray Rowden, an experienced NHS manager, told us he provided occasional informal advice to Mr Watkinson during his tenure as chief executive at RCHT. This had included conversations with Sir Ian Carruthers on two occasions. Sir Ian confirmed this to us. The first conversation took place in the first six months of Mr Watkinson's appointment and Mr Rowden found Sir Ian to be supportive of Mr Watkinson. The second conversation took place in May 2009 after Mr Watkinson's dismissal from the trust but before his appeal had been heard. Mr Rowden asked Sir Ian if he would be willing to have a private meeting with Mr Watkinson to see if anything could be done to help him. Sir Ian agreed to the meeting because he did not want Mr Watkinson's career destroyed. Mr Rowden passed this information to his colleague who has handling discussions with Mr Watkinson. However, it appears that the information was not conveyed to Mr Watkinson. He told us he had not heard about this offer.

Was the independent appeal panel forced to change the scope of the enquiry to look at whether events after his suspension had led to a breakdown in trust and confidence, and, if so, by whom?

10.39 We spoke to one member of the panel, Linda Nash. She said the SHA made no attempt to influence their decision, neither did the panel seek to reach a decision that they hoped the SHA would want.

10.40 They considered that their task was to decide if there really had been a breakdown of trust and confidence by the board in John Watkinson. They found that there had been.

Comment

No evidence was offered to us that the independent panel had been forced by the SHA or anybody else to reach a decision to uphold the RCHT board's decision to dismiss John Watkinson. Furthermore, when we looked for such evidence, we found none.

PART TWO - ANALYSIS AND CONCLUSIONS

11. Analysis and conclusions

11.1 The first of our terms of reference required us to determine the chronology of events and decisions made in the run-up to the dismissal of John Watkinson. Sections six to 10 of our report contain that chronology and our exploration of various events and suspected events taking place in the two years before Mr Watkinson's dismissal.

11.2 The second of our terms of reference require us to determine what involvement the SHA had in John Watkinson's dismissal and whether or not this was motivated by the reconfiguration of upper GI services or otherwise.

11.3 When we looked at the SHA's involvement, we were presented with two scenarios; the official version put forward by RCHT and the SHA, in which the SHA did not interfere in Mr Watkinson's dismissal, and the version involving an alleged "hidden agenda" put forward by Mr Watkinson and others in Cornwall and accepted by the employment tribunal.

11.4 We consider that there are five key questions:

- what part the SHA played in Mr Watkinson's suspension
- what part, if any, the SHA played in the conclusions and recommendations of the Hawker review, and if it played any part, how and why it did so
- what part, if any, the SHA played in the decision by the RCHT to accept the Hawker report, and if it played any part, how and why it did so (We also considered what significance should be given to the decision of the RCHT board to accept the report without taking into account John Watkinson's rebuttal letters)
- what part, if any, the SHA played in the decision by the RCHT to dismiss John Watkinson, and if it played any part, how and why it did so

- What part, if any did the SHA play in the decision by the independent appeal panel to uphold John Watkinson's dismissal and if it played any part, how and why did it do so?

11.5 All the questions we have asked in sections seven to 10 of this report are intended to help us answer these questions and allow us to go on and determine the third of our terms of reference; whether the SHA acted appropriately, in keeping with its role and within its statutory responsibilities.

What part did the SHA play in Mr Watkinson's suspension, how did it do so, and why?

11.6 The SHA told us that:

- it willingly accepts that it put pressure on the RCHT board to suspend Mr Watkinson while a review was carried out into the trust's financial management and governance
- it was motivated by its knowledge of the contents of the Bromley report, set in the context of an unforgiving mood among politicians and the public towards senior and well paid hospital managers not being held to account when serious failings occur on their watch
- it had noticed features of what was alleged in Bromley occurring at RCHT, which increased its concern
- it believed that it had a duty to make sure that the RCHT board understood its duty to act, and understood the consequences of not complying with its duty.

11.7 Two non-executive directors on the RCHT board told us:

- they recognised and valued the SHA's experience in dealing with difficult situations in the NHS
- they accepted the validity of the SHA's concerns
- they were themselves concerned by what the SHA told them
- they voluntarily, if regretfully, accepted the SHA's advice on what steps to take
- they did not feel bullied or threatened by the SHA, nor did they feel the SHA was trying to bully or threaten them

- they did not feel that the SHA was operating a “hidden agenda”.

11.8 John Mills, chair of the board at the time Mr Watkinson was suspended, agreed with the first four bullet points above, but was doubtful about the final two. He had considerable experience of public service at senior level and he felt that the SHA handled the matter badly. In particular, he could not understand why no one in the SHA contacted him before 19 September to tell him Bromley was turning into a big problem that he would have to handle. This made him wonder if there might be a “hidden agenda” to get rid of Mr Watkinson. He was clear with us that if he had been forewarned of the looming problem, he would not have been concerned that there might be a “hidden agenda”.

11.9 John Watkinson said :

- The Bromley report was not the real reason for his suspension; that earlier in the year Sir Ian had been unconcerned about it and that subsequently it was used as an excuse when the real reason was his stance on upper GI.
- That the SHA wanted to get rid of him because of his stance on upper GI reconfiguration, which it wanted to force through without consultation.
- That the HCC had been put under pressure to fail the standards it inspected in July.
- That the Griffin report was to be used to force through reconfiguration without consultation.
- That the concerns about governance expressed by the SHA at and before the meeting on 25 September were unjustified.
- That the publication of the Griffin and Bromley reports, and the meeting to announce the HCC conclusions was orchestrated with the SHA’s meeting on 25 September in Truro.
- Sir Mike Pitt had untruthfully told John Mills that John Watkinson had sought to get him removed.
- That the RCHT succumbed to pressure from the SHA to suspend him and that this pressure arose because of John Watkinson’s stance on upper GI.

11.10 If Mr Watkinson's concerns proved to have any substance, the SHA would have a difficult job to convince us of its integrity. We therefore looked at each of these concerns in our report, and found that:

11.11 In relation to Mr Watkinson's belief that the Bromley report was not the real reason for his suspension, and that the SHA used it as an excuse, we found that the SHA's position that the Bromley report required a review at RCHT was widely shared at the highest levels in the NHS and the Department of Health. In view of the concerns expressed, we found it impossible to imagine that such a review could take place while Mr Watkinson remained at work. Mr Watkinson's contention that the SHA used the report as an excuse to suspend him rests on two assertions:

- That Sir Ian had known about the report for many months and had taken no action until after he became aware of the legal advice discussed at RCHT on 5 August; and
- That Sir Ian had agreed a supportive press release in June 2008, in the knowledge of the draft Bromley report findings against him.

11.12 We found that the first time Sir Ian Carruthers was aware of the detailed findings of the Bromley report was when the SHA was sent a copy of the final draft report in July 2008.

11.13 We found nothing to support the suggestion that Sir Ian agreed the supportive press release, or knew anything about it.

11.14 We considered that Sir Ian Carruthers behaved with scrupulous correctness in this matter.

11.15 In relation to Mr Watkinson's concern that the SHA wanted to get rid of him because of his stance on upper GI reconfiguration, which it wanted to force through without consultation, we found that opposition to the PCT's 2007 plans to move upper GI services from RCHT to Derriford was sponsored and supported by the entire RCHT board including the non-executive directors. Peter Davies and then John Mills both opposed plans to move the service without consultation.

11.16 We found it understandable that Sir Ian's speech at St Mellion might be seen as suggesting that he was prepared to force through the reconfiguration regardless of any legal requirement for consultation. However, there is no evidence that this is what he said.

11.17 At least until 14 July John Watkinson was trying to prevent the dispute from becoming public and was also making clear to the SHA that he was not being troublesome about the reconfiguration.

11.18 John Mills, in his capacity as interim chair of the trust, supported the need for legal advice. The actions of the PCT after 15 July conformed to the legal advice obtained by RCHT, and the RCHT board's position reflected this. In our view, the board's position remained consistent from January 2008 until the reconfiguration was formally agreed by the PCT in July 2009.

11.19 We did not find that the SHA wanted Mr Watkinson suspended because of his position on upper GI.

11.20 In relation to Mr Watkinson's concern that the HCC had been put under pressure to fail the standards it inspected in July 2008, we noted that when HCC wrote its April 2008 intervention report, it drew attention to the fact that that the board had declared full or partial compliance in March 2008 for the 12 months since March 2007, with standards that the HCC had criticised during the same period. We found it surprising that this did not alarm the RCHT board.

11.21 The inspections in July took place in accordance with the HCC's standard risk assessment process. This was informed by the observations it had made during its intervention at the beginning of 2008, as set out in its April 2008 report.

11.22 We accepted that Ian Biggs from the HCC phoned Mr Watkinson on 3 July to give RCHT a friendly warning and an opportunity to reconsider its declaration and avert the likelihood of being found by the HCC to have made an inaccurate and over-optimistic declaration.

11.23 The inspection reports seem to us to leave little room for subjectivity, and the assurance process that they went through seems robust. We note also that a member of the Audit Commission, who would have provided an added safeguard against improper reporting, accompanied the inspection team in July.

11.24 The HCC concerns about the reliability of the declaration of compliance were raised in the April 2008 intervention report and in Ian Biggs' phone call to John Watkinson on 3 July. A detailed description of the areas of concern was then sent to Mr Watkinson in the draft inspection reports on 4 August. All of this pre-dates the board discussion of the legal advice on 5 August, and therefore cannot have been influenced by anything the SHA allegedly did as a result of the legal advice.

11.25 We found that the chronology of the HCC inspection meant that it was vanishingly unlikely that the SHA would or could have influenced the outcome of the inspections.

11.26 As shown in section eight, Mr Watkinson was aware of the problems regarding the inspection of the HCC standards in August, and the SHA would have known this, because they understood the process of finalising the inspection reports. It was reasonable of them to assume that Mr Watkinson had kept the board informed of the correspondence with the HCC, and that therefore the information provided on 25 September would not have been a surprise to the board.

11.27 In relation to Mr Watkinson's concern that Sir Ian had instigated the Griffin review and that report was to be used to force through reconfiguration without consultation, we found that Professor Richards and Teresa Moss triggered the commissioning of the review in the spring of 2008. Professor Richards' letter to Sir Ian Carruthers appears to have prompted a piece of work that was already planned.

11.28 This request was made on the day the RCHT board discussed the legal advice and there can be no causal link between these events. We also found that a review by eminent, independent clinicians was exactly the approach that RCHT had been seeking, so it was difficult to put a sinister interpretation on Professor Richards' letter or Sir Ian Carruthers response to it.

11.29 The PCT shared the Griffin report with the trust in advance of publication and told it about their plans. The trust responded in writing and did not object to what they were proposing. The report did exactly what the board and Mr Watkinson had hoped for, which was to recommend a complete review of the decision about where the centralised service should be, and to make suggestions to meet the concerns of those who were worried about the consequences of the service possibly moving to another hospital.

11.30 There is no evidence that the PCT commissioned the work to force through reconfiguration without consultation or that the Griffin report was intended to be used to force through reconfiguration without consultation.

11.31 In relation to Mr Watkinson's claim that the concerns about governance expressed by the SHA at and before the meeting on 25 September were unjustified, we found that John Watkinson inherited a difficult financial position when he became chief executive of RCHT in January 2007.

11.32 The trust's financial position had improved a little during John Watkinson's first full year in post, but remained challenging.

11.33 At the time of John Watkinson's formal suspension on 3 October 2008, the financial position in RCHT had become more serious and was attracting negative comment, including from the SHA and the Audit Commission.

11.34 The evidence shows that by September 2008 RCHT's finances were in trouble, and that the district auditor felt it necessary to draw the attention of the board and the public to this. Bill Shields was also concerned and as an executive director of the SHA in his own right expressed his concerns accordingly, which we consider to be reasonable and legitimate. In relation to the justification for Sir Ian Carruthers telling the trust board on 25 September that RCHT might be heading for corporate failure, we found that the trust exhibited some symptoms of corporate failure in that it was not compliant with HCC standards, had continuing financial problems and had become embroiled in a public debate about the reconfiguration of upper GI services. It was also struggling to deliver its CRES programme and the board seemed insufficiently aware of problems that were obvious to the SHA. We found it not unreasonable for the SHA to express concern about the way things were going.

11.35 In relation to Mr Watkinson's complaint that Sir Mike Pitt untruthfully told John Mills that John Watkinson had sought to get him removed, we commented that there was a direct conflict between Mr Watkinson and Mr Bewick, with whom he had the conversations in which he allegedly suggested that Mr Mills should be removed. We found that Mr Bewick's account was more compelling than that of Mr Watkinson, not least because he had a note of the conversations.

11.36 In relation to Mr Watkinson's concern that that the publication of the Griffin and Bromley reports, and the meeting to announce the HCC conclusions was orchestrated with the SHA's meeting on 25 September in Truro, we found no reason to believe that the PCT were publishing the Griffin report as part of any orchestration of events. We understood why Mr Watkinson believed that the meeting to announce the HCC inspection conclusions had been brought forward, because the letter of 29 June clearly said that the meeting would be in October. However, Mr Biggs offers an innocent explanation for this, which we find credible, and we do not think it was part of any orchestration. We also found that the SHA had reason to assume that Mr Watkinson would have kept the board informed of his dealings with the HCC in August and September, and could have expected Mr Watkinson to have communicated the outcome of the meeting on 24 September by email to the board the same day. We do not therefore find evidence of orchestration with regard to the Griffin or HCC reports.

11.37 We found no evidence that the publication of the Bromley report was coordinated with the SHA board meeting on 25 September.

11.38 Nothing in the papers we have seen suggests that the publication of the report was to suit the plans of the SHA. Furthermore, we cannot see why, even if it wanted to orchestrate dates, it would wish to do so around its meeting on 25 September. Sir Ian Carruthers and Sir Mike Pitt would be in the vicinity of RCHT headquarters on that day, but the date did not suit many of the RCHT board, and only five of them were able to attend the emergency meeting with the SHA on 25 September.

11.39 In relation to Mr Watkinson's concern that the board succumbed to pressure, we found that the people involved had different views on what was happening and now have

different recollections. There were matters of agreement and disagreement among those to whom we spoke.

11.40 The areas of agreement are:

- The SHA wanted the board to commission the review jointly with them.
- The SHA put strong pressure on the board to suspend John Watkinson.
- The decision on 25 September was not a volte-face from the decision on 23 September, but a development of it.
- The board considered that the Bromley report justified a review and John Watkinson's suspension; and
- The board made its decision on suspension in the interests of the hospital and the people it serves.

11.41 The areas of disagreement are:

- the motivation of the SHA in pressurising the board to suspend John Watkinson; and
- the legitimacy of the pressure that the SHA placed on the board to suspend John Watkinson.

11.42 We accept the areas of agreement, which fit with the documentary evidence and also with the evidence of people not directly involved, such as the Appointments Commission, the minister and the previous chair of the board.

11.43 As far as the motivation of the SHA is concerned, we note that Mr Mills believes that the SHA wanted to get rid of John Watkinson, that his failure to keep the board on message on upper GI was at least partly the reason, and that suspension was seen as the way to achieve this. The other board members, however, believe that the Bromley report, together with the evidence of impending failure emerging from the HCC and the district auditor, and a belief that suspension was necessary in the circumstances, motivated the SHA.

11.44 As far as the legitimacy of the pressure is concerned, Mr Mills feels that the threat of suspension of the board amounted to bullying and improper pressure, whereas the other board members did not.

11.45 We accept that these differences of perception and opinion are all genuinely held and within the range of reasonable responses to the situation. Sir Ian has a reputation for blunt speaking and assertive management in pursuit of high performance and we are aware that some people find this uncomfortable. However, where two witnesses say that his behaviour was acceptable and only one does not, we consider that on the balance of probabilities, the SHA did not behave improperly. Furthermore, we are satisfied that the board members we spoke to acted honourably, taking account of the matters they thought were relevant and ignoring others, including any perception of bullying or improper pressure. We consider that the actions of the SHA can be explained by the Bromley report without having to bring in the “hidden agenda”.

Conclusion

11.46 Overall, we did not find Mr Watkinson’s concerns about his suspension to be substantiated. The highest levels of the NHS and Department of Health believed that the Bromley report justified a review in Cornwall, so we consider that the SHA was justified in putting pressure on the RCHT board to act as it did. In light of the views expressed, we find it impossible to imagine that the review could have taken place while Mr Watkinson remained at work. We do not consider that the SHA had a “hidden agenda”.

11.47 The RCHT chair and non-executive directors were relatively inexperienced in the NHS, and it was good practice for them to take advice from the more experienced SHA before deciding what to do. We consider that they made the decision to suspend Mr Watkinson in good faith and for good reason.

What part, if any, did the SHA play in the conclusions and recommendations of the Hawker review, and if it played any part, how and why did it do so?

11.48 Professor Hawker told us that the SHA made no attempt to influence her and her colleagues in the conduct of the review or in the conclusions they reached or recommendations they made.

11.49 The SHA told us that they did not seek to influence the Hawker team in what they did, how they did it or what they decided.

11.50 Mr Watkinson was concerned that:

- the terms of reference were too wide
- the review took much longer than expected
- in any event a proper review to deal with the issues brought up by Bromley could have been done in a couple of weeks
- the Bromley team was engaged in a fishing expedition
- the Hawker report was biased and unfair, as evidenced by the fact that the team did not keep its promise to let him and other interviewees have a copies of their notes of interview
- the review team ignored his challenges to their draft report.

11.51 The only concerns that seem directly to relate to the SHA are those regarding the terms of reference and the decision to commission the Hawker review, rather than a two-week review by an auditor. However, Mr Watkinson has also said that the review was a fishing expedition, intended to find reasons for dismissing him, so we have to look at all the activities of the Hawker team for evidence of improper conduct that could be attributed to the influence of the SHA.

11.52 In relation to Mr Watkinson's concerns that the terms of reference were too wide, we found no evidence that the scope of the Hawker review went beyond the matters raised in the Bromley report.

11.53 In relation to Mr Watkinson's concerns that the review took longer than expected, we noted that the review team spent a good deal of time interviewing people who wished to talk about the upper GI controversy, rather than matters within their terms of reference. This must have slowed down the production of the report. We also noted that Mr Watkinson's letter to Professor Hawker warned her of the possibility of defamation proceedings if she repeated anything in the Bromley report that he believed defamed him. This was to be taken seriously. The Hawker review was commissioned specifically to see if any of the behaviours identified at Bromley had been repeated in Cornwall, so the Hawker

team lawyers must have taken a great deal of care to make sure that the draft report contained nothing that might trigger defamation proceedings. We are aware that delay was also caused through difficulties in getting agreement about how Mr Watkinson was to have access to the draft report so as to be able to make meaningful comment. We do not criticise Mr Watkinson or his representatives, but neither do we consider that the Hawker team should be criticised.

11.54 In relation to the concern that in any event a proper review to deal with the issues brought up by Bromley could have been done in a couple of weeks, we noted that the district auditor, Lee Budge, did not consider that a review to look at all these issues could be done in this way.

11.55 In relation to Mr Watkinson's concerns that the Bromley team was engaged in a fishing expedition, we accepted Professor Hawker's evidence that she was carrying out a review in accordance with the terms of reference and did not concern herself with matters outside her terms, such as the possible disciplinary actions that might follow the publication of the report.

11.56 We noted that those carrying out reviews and investigations are trying to establish the facts of a situation, not whether those facts should result in consequences for the individuals concerned. These reviews are not disciplinary investigations, and it is for others to determine whether the facts uncovered in a report, if accepted, justify disciplinary action. We commented that Professor Hawker and her colleagues conducted their review in good faith. We noted that the whole board was criticised in the Hawker report. This militates against the likelihood of the whole review being a fishing expedition.

11.57 In relation to the concern that the report was biased and unfair, as suggested by the claim that interviewees were promised copies of their notes of interview and an opportunity to see the draft report, we noted that Professor Hawker is sure that witnesses were not told that they would be provided with copies of their notes of interview. Mr Watkinson says this promise was made to him, but we note he did not request this when he wrote to Professor Hawker on 23 October setting the terms of his involvement with the review. We commented that the purpose of giving interviewees copies of their interview records is usually to give them an opportunity to check the notes for accuracy, in case the report refers to their evidence and perhaps identifies them as the source. The Hawker

report does not quote directly from interviews, nor does it attribute any evidence received from witnesses.

11.58 In relation to seeing the draft report, we understand that everyone who should have had access to the draft did so. The purpose of this procedure is to allow checks for factual accuracy. Usually reports, or extracts from them, are sent to people best placed to comment on the factual accuracy of the report or extract. For instance, if someone is criticised in a report, he or she should be sent those parts of the report that contain the criticisms and the reasons for them in the interests of fairness, to give an opportunity to correct factual inaccuracies and to provide further relevant evidence to rebut the criticism. If a report contains a lot of technical or background information, it is usual to send the report to those who are able to check the information for factual accuracy. It is not usual to make the whole of a draft report available to all who have given evidence to it, and it is difficult to see what the point would be, because it is not the purpose of making a draft available to open the debate that will properly take place when the final report is published. Those who give evidence to reviews and investigations must be treated fairly in respect of anything that may be said about them, but we can see no reason why giving evidence should give them privileges not available to many others who might be interested but who did not feel that they could provide evidence relevant to the terms of reference of the review.

11.59 In relation to the concern that the Hawker team ignored the challenges Mr Watkinson made to the draft report, we commented that the fact that rebuttal points are not accepted does not mean they have been ignored. Professor Hawker's team appear to have dealt with the rebuttal points in accordance with good practice in the conduct of reviews of this sort.

Conclusion

11.60 The SHA's involvement was that of a commissioner. It did not seek to influence the manner in which the review was carried out nor the conclusions it reached or the recommendations it made. Its involvement in the appointment and drafting of the terms of reference were in accordance with established good practice for public bodies commissioning independent reports.

What part, if any did the SHA play in the decision by the RCHT to accept the Hawker report, and if it played any part, how and why did it do so? What significance should be given to the decision of the RCHT board to accept the report without taking into account John Watkinson's rebuttal letters?

11.61 RCHT said the SHA played no part in its decision to accept the report.

11.62 John Mills said that the SHA, as co-commissioners of the report, helped the board with fact-checking the draft.

11.63 We commented that as a matter of good practice, we think the board's approach in not considering Mr Watkinson's rebuttal letters was right. If the RCHT board had taken the letters into account before deciding whether or not to accept the report, they would have had to redo much of the review and would have had to reject, for instance, their own experience in relation to the HCC standards.

11.64 The board accepted the report as an indictment against them, as well as against John Watkinson and intended to go forward with recommendations.

11.65 The board was under pressure to accept the report so that RCHT could move on, but this pressure came mainly from trust staff.

11.66 We found no evidence that the SHA applied particular pressure on the board to accept the draft.

What part did the SHA play in the decision by the RCHT to dismiss John Watkinson and if it played any part, how and why did it do so?

11.67 RCHT said that the SHA played no part in the decision to dismiss John Watkinson.

11.68 John Watkinson said:

- The fact that Mr Gazzard and Mr Wilson were not willing to look in detail at his points of rebuttal showed that they did not want to conduct a fair investigation into the matters for which they were considering dismissing him.

- his dismissal was to prevent him attending the OSC meeting on 27 April
- He believes that the board members were not removed as a result of the finding in the Hawker report that they failed to follow the spirit of the Code of Conduct because they had bowed to the pressure from the SHA.
- The appointment of Martin Watts as chair of the trust in March 2008, when the SHA knew he had complained that John Watkinson's appointment was a "*very serious mistake*", was intended to make it more difficult for John Watkinson to return as chief executive.

11.69 The SHA said it had taken no part in the decision to dismiss John Watkinson.

11.70 Mr Watkinson was concerned that the fact that Mr Gazzard and Mr Wilson were not willing to look in detail at his points of rebuttal showed that they did not want to conduct a fair investigation into the matters for which they were considering dismissing him.

11.71 We found that the rebuttal letters would not have allowed detailed checking against the report. The contemporaneous notes and the evidence given above suggest that the focus of Mr Gazzard and Mr Wilson was on how to take the Hawker report forward, whereas Mr Watkinson's focus was on the accuracy of the Hawker report and the legitimacy of the hearing.

11.72 Mr Watkinson was concerned that the board members were not removed as a result of the finding in the Hawker report that they failed to follow the spirit of the Code of Conduct because they had bowed to the pressure from the SHA.

11.73 We also found that most of the board had decided to accept the Bromley report in its entirety, developed a robust plan to tackle the problems it identified and to take forward its recommendations. Mr Watkinson did not accept the report, and gave no commitment to comply with the board's intended response.

11.74 The board felt personally criticised by Hawker but accepted the criticisms and adopted an action plan to improve their performance. Equally, Mr Watkinson did not accept the validity of any criticism in the Hawker report or, indeed, in the Bromley report before it.

11.75 The board's decision to accept the report, including its criticisms showed a willingness to take a difficult decision in the interests of the trust and the people it serves. Improvements had already taken place since Tony Parr had come in as a temporary chief executive after John Watkinson's suspension. In the absence of evidence that board members were incapable of, or unlikely to, fulfil their functions satisfactorily, there was no legitimate reason to remove them.

11.76 Mr Watkinson was concerned that his dismissal was to stop him from attending the OSC meeting on 27 April.

11.77 We found that the legal advice the board obtained was not relevant to the matter the OSC considered on 27 April, that the consultation process undertaken in 2009 was with the agreement of the OSC, that the legal advice did not say that RCHT had to carry out its own consultation, and that the SHA had no reason to be concerned that the OSC would be dissatisfied with the process undertaken. In addition, in November 2008 the law changed making consultation no longer a legal requirement.

11.78 Furthermore, we are perplexed at the suggestion that Mr Watkinson's dismissal prevented him from raising his belief about the inadequacy of the consultation process at the meeting on 27 April.

11.79 Mr Watkinson was concerned that the appointment of Martin Watts as chair of the trust in March 2008, when the SHA knew he had complained that John Watkinson's appointment was a "*very serious mistake*", was intended to make it more difficult for him to return as chief executive.

11.80 We found the evidence of Sir Mike Pitt and Penny Bennett to be convincing, and we found no evidence to support Mr Watkinson's contention.

Conclusion

11.81 We find no evidence that the actions of the board in dismissing Mr Watkinson were motivated by any "hidden agenda" of their own or of the SHA, or were carried out as a result of pressure from the SHA.

What part did the SHA play in the decision by the independent appeal panel to uphold John Watkinson's dismissal and if it played any part, how and why did it do so?

11.82 We asked Linda Nash, one of the independent panel, if the SHA had tried to influence her in any way. She said not. We asked if she and her colleagues had felt obliged to support the RCHT board's decision to dismiss Mr Watkinson. She said they had not.

11.83 She told us that she considered the appeal hearing to be about one thing only: had the board lost trust and confidence in Mr Watkinson?

Conclusion

11.84 Nothing suggests to us that the SHA tried to influence the appeal panel, neither can we see evidence to suggest that the appeal panel was, or thought it was, acting in accordance with the SHA's wishes.

11.85 Our final term of reference requires us to consider whether the SHA acted appropriately, in keeping with its role and within its statutory responsibilities. For the reasons given above, we believe that it did.

Secretary of State's announcement - written Ministerial Statement

Department of Health, NHS South West

Thursday 17 June 2010

The secretary of state for health (Mr Andrew Lansley CBE): I have asked Sir David Nicholson, Chief Executive of the NHS in England, to initiate a review into the approach and behaviour of the NHS South West in relation to Royal Cornwall Hospitals Trust, in particular, to the dismissal of John Watkinson and, by association, the Trust's position in relation to the provision of upper GI services in Cornwall.

John Watkinson was dismissed from his role as Chief Executive of the Royal Cornwall NHS Trust in April 2009. He took his case to employment tribunal, which has recently published its judgement that he was unfairly dismissed.

In the opinion of the employment tribunal, John Watkinson was unfairly dismissed because he made a "protected disclosure" covered by the Public Interest Disclosure Act. The disclosure was linked to the reconfiguration of upper gastro-intestinal services in Cornwall. The employment tribunal also found that Royal Cornwall NHS Trust acted as it did as a result of pressure from the South West Strategic Health Authority (NHS South West).

Verita, a specialist company that conducts independent investigations, reviews and inquiries have been commissioned to undertake this review.

The Terms of Reference for this review will be;

To examine all the SHA's interactions with the Royal Cornwall Hospitals NHS Trust in relation the dismissal of John Watkinson and, by association, the trust's position in relation to the provision of the upper GI services in Cornwall. In particular, to determine:

- The chronology of events and decisions made in the running up to the dismissal of John Watkinson;
- What involvement NHS South West had in his dismissal and whether or not this was motivated by the reconfiguration of upper Gastro-Intestinal services or otherwise;
- Whether the SHA acted appropriately, proportionately, in keeping with its role and within its statutory responsibilities.

The review should not duplicate the review of the proposals to reconfigure upper GI services in the southwest which was recently carried out by the Independent Reconfiguration Panel, nor any subsequent appeal of the employment tribunal's decision. However, it may consider these and any other relevant background evidence to make its determinations.

The findings of the review will be published later this year and I will update the House on the outcome of the review and my response.

List of interviewees

Penny Bennett
John Bewick
Ian Biggs
Ben Bradshaw MP
Lee Budge
Dominic Byrne
Ruth Carnall
Sir Ian Carruthers
Peter Davies
Roger Gazzard
Andrew George MP
Ian Gibson
Professor Mike Griffin
Ruth Hawker
Linda Nash
Sarah Newton MP
John Mills
Andrew Millward
Jo Perry
Rob Pitcher
Sir Mike Pitt
Professor Mike Richards
Mary Spinks
John Watkinson
Martin Watts
Graham Webster
Andrew Williamson
Patrick Wilson
Rose Woodward

Information also received from:

Ray Rowden
Stephen Webb

Documents reviewed

- Bromley report including all appendices
- Appointments Commission documents
 - Overview of office holders on Royal Cornwall Hospitals NHS Trust Board between 2007 and 2010
 - Royal Cornwall Hospitals NHS Trust Investigation Briefing Note
 - RCH Handling Strategy
 - Policy on removing or suspending chairs and non-executives of Primary Care Trusts and NHS trusts from office May 2008
 - Royal Cornwall Hospitals NHS Trust Current Non-executive Board Membership
 - RCHT chair
- Documents from Department of Health
 - Forecast outturn - organisations in existence at month 12 2005/06 (excluding foundation trusts)
 - Letter to Sir Michael Pitt from David Nicholson dated 31 July 2007
 - Letter to Thelma Holland from Duncan Selbie dated 14 August 2006
 - Note to David Nicholson from David Flory re: Healthcare Commission - Annual Health Check Trusts Assessed as Serial Weak/Weak (in 2005/06 and 2006/07)
 - Letter to Bill Shields from Alan Hall dated 4 January 2008
 - RCHT auditors' local evaluation (ALE) improvement plan part of the Healthcare Commission annual health check - use of resources
 - Reconciliation of turnaround plan savings to 7 July Financial Plan Resubmission
 - NHS South West Local Delivery Plans for 2007/08
 - Finance: The overall financial plan position for 2007/08
 - Mapping LDPs to new organisations (Draft 19 July 2006)
 - RCHT clinical governance development plan/Standards for Better Health progress update on the corporate action plan 2007/08
 - Royal Cornwall Hospitals NHS Trust, trust/SHA briefing for visit of Department of Health
 - Letter to Sir Ian Carruthers from David Flory re: operational plans for 2008-09 - undated
 - RCHT letter to David Flory from John Watkinson dated 4 January 2008
 - NHS South West letter to David Flory from Bill Shields dated 4 January 2008
 - Royal Cornwall Hospitals NHS Trust local delivery plan 2008/09 finance planning guidance
 - RCHT letter to Alan Hall from John Watkinson dated 22 February 2008
 - Agenda: performance review of trusts assessed by Healthcare Commission as "weak, weak" in two consecutive years - 2005/06 and 2006/07 Royal Cornwall Hospitals NHS Trust - 4th February 2008
 - NHS South West 2006/07 financial plan resubmission dated 7 July
 - Draft and final DH letter to Sir Ian Carruthers from David Flory re: signing off plans for 2010/11 dated 6 May 2010

- Letter from Alan Hall to David Nicholson re: Healthcare Commission - annual health check trusts assessed as serial weak/weak (in 05/06 and 06/07) and weak/weak in 06/07 dated 4 March 2008
- Documents from the Healthcare Commission (now the Care Quality Commission)
 - HCC letter to John Watkinson from Christine Braithwaite re: healthcare acquired infection (HCAI) programme of inspections dated 22 May 2008
 - RCHT letter to Nigel Ellis from John Watkinson dated 12 May 2008
 - RCHT trust board - summary report 5 August 2008
 - HCC letter to John Watkinson from Ian Biggs dated 11 September 2007
 - HCC letter to Lisa Manson from Geraldine Lavery dated 19 September 2008
 - HCC letter to John Watkinson from Paul Fredericks re: ionising radiation (medical exposure) regulations IR(ME)R 2000 IRMER notification number 123005 dated August 2008
 - HCC letter to John Watkinson from Paul Fredericks re: ionising radiation (medical exposure) regulations IR(ME)R 2000 IRMER notification number 123113 dated September 2008
 - HCC agenda core standards assessment selective inspection to the Royal Cornwall Hospitals NHS Trust 8 July 2008
 - HCC document key points for trusts in preparing for a core standard visit
 - HCC inspection guide 2007/08 core standard: C4a infection control in region South West/Cornwall, Devon, Dorset and Somerset
 - HCC inspection guide 2007/08 core standard: C4b safe use of medical devices in region South West/Cornwall, Devon, Dorset and Somerset
 - HCC inspection guide 2007/08 core standard: C7a&c corporate and clinical governance in region South West/Cornwall, Devon, Dorset and Somerset
 - HCC inspection guide 2007/08 core standard: C13a dignity and respect in region South West/Cornwall, Devon, Dorset and Somerset
 - HCC inspection guide 2007/08 core standard: C20b privacy and confidentiality in region South West/Cornwall, Devon, Dorset and Somerset
 - HCC letter to John Watkinson from Elizabeth Seale dated 24 June 2008
 - Extract from email to JW dated 4 August 2008
 - Extract of email to JW (date saved on HC system 9 July 2008)
 - HCC letter to John Watkinson from Elizabeth Seale dated 15 August 2008
 - HCC standards based assessment - response to factual accuracy of draft core standards C04a inspection reports 3.0
 - HCC standards based assessment - response to factual accuracy of draft core standards C04b inspection reports 3.0
 - HCC standards based assessment - response to factual accuracy of draft core standards C7a&c inspection reports 3.0
 - HCC standards based assessment - response to factual accuracy of draft core standards C13a inspection reports 3.0
 - HCC standards based assessment - response to factual accuracy of draft core standards C20b inspection reports 3.0
 - HCC letter to John Watkinson from Elizabeth Seale dated 15 August 2008
 - HCC letter to John Watkinson from Elizabeth Seale dated 29 September 2008
 - HCC standards based assessment declaration checking form v6.0
 - RCHT letter to Ian Biggs from Peter Davies dated 14 August 2007
 - SHA briefing appendix potential impact on other standards
 - SHA briefing document - Royal Cornwall Hospitals NHS Trust

- Documents from Cornwall and Isles of Scilly PCT
 - Email to Pat Bartholomew from Peter Stokes re: request for assistance dated 10 March 2009
 - Email to Chris Iremonger; Lisa Duckham from Peter Stokes re: upper GI Patient Letters dated 23 March 2009
 - Email to Ruth Card from Peter Stokes re: upper GI Patient Letters dated 23 March 2009
 - Email to Ruth Card from Peter Stokes re: upper GI letter surgery patients and carers letter dated 24 March 2009
 - Email to Ruth Card from Shirley McIntyre re: upper GI Patient Letters dated 23 March 2009
 - Email to Pat Bartholomew from Peter Stokes re: upper GI Patient Letters dated 23 March 2009
 - Email to Peter Stokes to from Ruth Card re: upper GI Patient Letters dated 23 March 2009
 - Email to Peter Stokes to from Ruth Card re: upper GI Patient Letters dated 24 March 2009
 - Email to Peter Stokes from Neal Chambers re: upper GI Letters dated 24 March 2009
 - Cornwall and Isles of Scilly PCT document update on next steps engagement for oesophago-gastric cancer services
 - Cornwall and Isles of Scilly PCT letter to patients dated 24 March 2009
 - Cornwall and Isles of Scilly PCT letter to family members/carers dated 24 March 2009
 - Email to John Mills from Andrew Williamson re: review of upper GI at RCHT dated 22 August 2008
 - Cornwall and Isles of Scilly PCT letter to John Mills and John Watkinson from Ann James re: independent clinical review of upper GI services, Royal Cornwall Hospitals NHS Trust dated 22 September 2008
 - RCHT letter to Ann James from John Mills and John Watkinson re: independent clinical review of upper GI services, Royal Cornwall Hospitals NHS Trust dated 23 September 2008
 - Emails between John Mills and Andrew Williamson re: review of upper GI at RCHT dated 22 August 2008
 - Cornwall and Isles of Scilly PCT report to Cornwall health and adult social care overview and scrutiny committee from Ann James dated 15 July 2008
 - Email to John Watkinson from Ann James re: review of upper GI at RCHT dated 22 August 2008
 - Cornwall and Isles of Scilly PCT letter to Tony Parr from Ann James re: upper GI and RCHT's governance framework
 - RCHT letter to Eric Parkin from John Mills re: upper GI cancer services in Cornwall dated 8 October 2008
 - Ipsos MORI report on cancer services reconfiguration: public concerns and views on how these can be mitigated for Peninsula Cancer Network dated 22 May 2009
 - Email to Tracey Lee (née Sweet) from John Watkinson dated 4 July 2008
 - Email to Tracey Lee from Greg Moulds re: OSC board paper dated 1 August 2008
 - Email to John Watkinson from Ann James re: review of upper GI at RCHT dated 22 August 2008
 - RCHT trust board summary report following 5 August 2008 meeting

- Cornwall and Isles of Scilly PCT document responding to the issues raised during public engagement on the proposal to centralise the surgical treatment of patients with upper gastro-intestinal cancer to improve outcomes
- RCHT finance committee minutes
- Exeter Employment Tribunal witness statements
- Other documents
 - Independent Reconfiguration Panel advice on the reconfiguration of the upper gastro-intestinal cancer surgical service in the south west peninsula submitted to the Secretary of State for Health dated 4 June 2010
 - NHS South West report into the events leading to the commissioning of the independent review of governance at Royal Cornwall Hospitals Trust and the subsequent dismissal of the chief executive dated 15 June 2010
 - Corporate governance in the NHS: Code of Conduct Code of Accountability
 - Independent review of management and governance at the Royal Cornwall Hospitals NHS Trust report - the 'Hawker' report
 - Researching the role and function of strategic health authorities detailed feedback for Dorset and Somerset Health Authority
 - High Quality Care for All - NHS next stage review final report for all ten SHAs
 - NHS Code of Conduct for NHS Managers dated October 2002
 - DH letter to Charles Howeson from Sir David Nicholson re: SHA Assurance - South West Panel Report dated 23 March 2010
 - NHS SHA Assurance South West Panel Report
 - Centre for Public Policy and Management - the developing role of strategic health authorities: summary report dated April 2005
 - Employment Appeal Tribunal document: notice of appeal
 - Advice from David Lock, No5 Chambers dated 29 July 2008
 - Various press cuttings
 - Employment tribunal claimant's closing submission
 - Employment tribunal respondent's closing submission
 - Written Ministerial statement Department of Health dated 17 June 2010
 - Letter from Peter Davies to Eric Parkin dated 3 December 2007
 - Employment tribunal reserved judgement
 - Appointments Commission policy on removing or suspending chairs and non-executives of primary care trusts and NHS trusts from office dated May 2008
 - Upper GI timeline: history and role of South West Strategic Health Authority
 - Employment tribunal judgement

Review team biographies

Lucy Scott-Moncrieff

Lucy, 2012 president-elect of the Law Society, qualified as a solicitor in 1978, and has worked in the fields of mental health and human rights law ever since. She won the Mental Health Legal Aid Lawyer of the Year award in 2005 and is rated as a leader in her field in professional directories. Lucy is a member of the QC Appointments Panel, and a commissioner with the Royal Mail regulator Postcomm. Lucy has written and broadcast regularly on legal issues over the years and is on the editorial boards of a number of professional journals specialising in community care and mental health law. She was awarded an honorary doctorate by the University of Kent in 2009. The firm of which she was the founder and is the managing partner, Scott-Moncrieff Harbour and Sinclair, was shortlisted for an inaugural Excellence Award for Innovation by the Law Society in 2007. For Verita, Lucy has carried out a range of complex and sensitive investigations that have successfully withstood intense media and political scrutiny. These include the death of a young woman during routine day surgery in Jersey, and the care and treatment of Daniel Gonzales who killed four strangers and seriously injured two others over three days.

Ed Marsden

Ed has a clinical background in general and psychiatric nursing and NHS management. He has worked for the National Audit Office, the Department of Health and the West Kent Health Authority where he was director of performance management. He combines his responsibilities as Verita's managing director with an active role in leading complex investigations and advising clients on the political repercussions of high-profile investigations. He is an expert in investigative techniques and procedures, and facilitated the introduction of a joint protocol for investigating serious patient safety incidents by the police, Health and Safety Executive and the NHS. Ed co-wrote with Derek Mechen the review of the board leadership of Maidstone and Tunbridge Wells NHS Trust after the Healthcare Commission (now the Care Quality Commission) reported on the deaths of 90 patients as a result of *Clostridium difficile* infection. He has recently reviewed the death of a young woman during a routine gynaecological operation at a hospital in a Crown

Dependency. Ed is an associate of the Prime Minister's Delivery Unit where he has carried out three assignments on immigration.