

Derbyshire Healthcare NHS Foundation Trust

Report to Protecting Vulnerable Adults, Overview and Scrutiny Board –22nd March 2016

Update Report – Governance Concerns Derbyshire Healthcare Foundation Trust

1. Background

In June 2015 the Trust received the formal judgement from the Nottingham Employment Tribunal in relation to the case brought by the ex-Director of Workforce and Organisational Development. The judgement of the case found that the ex-Director of Workforce and Organisational Development had been subject to SexualDiscrimination, Sexual Harassment, Victimisation and was successful in her claim for Constructive Dismissal.

The Trust immediately commissioned an external investigation in association with Monitor which would investigate the governance failings that had led to the employment tribunal along with reviewing the actions and behaviours of senior managers at the time. The investigation was led by a well-respected Chief Executive with no connection to Derbyshire, a solicitor specialising in employment law and a workforce, OD and culture specialist. The Chief Executive of the Trust was suspended at this point pending the investigation

During the summer of 2015 there was a number of whistleblowing concerns raised with the Care Quality Commission and Monitor linked to the Employment Tribunal. Monitor suspended the Trusts green governance rating and commenced an investigation.

In addition the Trust commissioned a further external investigation looking at internal HR related concerns raised through internal processes again linked to the employment tribunal.

The Trust agreed with Monitor that we would commission a 'well led' review to look at current governance arrangements within the Trust. This review was carried out by Deloitte and the Care Quality Commission during December and January.

In December 2015 Mark Todd stood down as Chair of the Trust, this was in order for him to devote more time to caring for a family member with serious health issues. The Trust, with the support of Monitor has been able to secure the services of Richard Gregory as interim Chair for a period of 9 months to support us in making the governance changes required. Richard is a very experienced health services chair and knows Derbyshire very well having lived in the High Peak for many years and most recently being the Chair at Chesterfield Royal Hospital.

In February 2016 the Employment Tribunal sat again in closed session and awarded £530,000 compensation to the ex-Director of Workforce and OD which was 'grossed' up to £832,711.36 to take into account tax liability. The court did not award costs against the Trust.

2. Investigation Outcomes

The external, independent review into governance failings at the Trust reported to the Board of Directors on the 23rd December 2015.

The report highlights a number of key areas that we can learn from as an organisation. The Board has developed a detailed action plan to ensure that the issues raised are promptly addressed and this plan will be monitored closely over the coming weeks and months.

In summary, the key themes were as follows:

- Whilst the governance processes within the Trust are good, there was a lack of observation of these processes, and rules, policies and procedures were not followed correctly.
- The Trust had a general culture of informality in relation to its governance processes, which created different perceptions amongst individuals about action being taken. For example, this related to concerns raised outside of formal HR processes and whether or not they were being acted upon.
- The relationship between the Board of Directors and the Council of Governors has historically been challenging and this has led to a lack of clarity regarding role and purpose, and a sense of marginalisation amongst some governors.
- In some areas working arrangements and practices were organised for reasons other than the plans and purposes of the Trust, which had an influence on the work carried out.

On a positive note, the panel noted that they had seen no evidence that the services of the Trust had suffered as a result of the circumstances surrounding the employment tribunal and commented that they were aware of great efforts made by senior leaders to ensure that did not occur. This is a credit to all our staff and strongly reflects our commitment to and prioritisation of patient care.

The recommendations in the report are:

- To use the 'well led' review to further question the Trust's use of its governance processes, to ensure this is not a wider area of concern
- To ensure the Council of Governors has effective governance processes and operates within them
- To consider development of an organisational development and workforce committee to drive cultural change
- That the Board should improve its approach to being a unitary board and implement a plan for board development
- To re-establish the Board Assurance Framework as one for all risks
- To improve the relationship between the Board and the Council of Governors, ensuring that all members act in the best interests of the public
- To provide mandatory training for governors

- To bring HR and organisational development departments under the management of one director
- To use the 'well led' review to establish the most appropriate management style for the Trust and to develop a plan that implements this culture
- To invest in our capacity and capability to lead cultural change
- To provide appropriate support to all members of staff, including the senior management team
- To make appropriate use of experience within the team, whether amongst the Executive or Non Executive team.

The Well led review was completed in February and both the reports from Deloitte and the CQC have been received by the Trust Board. The Deloitte report will be public once it has been to the Council of Governors on the 15th March 2016. The Care Quality Commission report is already in the public domain. The CQC issued two requirement notices that outline the need to ensure HR policies and procedures are followed and monitored for all staff and to ensure that, in line with national requirements, a fit and proper person review is undertaken for all directors. This highlights a lack of diligence in our record keeping and filing, along with complete checks for some directors not being available or repeated on a regular basis.

Their findings from the CQC's 'well led' review are that:

- The Trust must ensure that HR policies and procedures are followed and monitored
- A fit and proper person review must be undertaken for all directors
- A strong development plan is needed to ensure the board and council of governors worked better together
- The chairman should ensure that leadership creates a culture of unity by focusing on creating positive working relationships between board members and the council of governors
- The Trust should introduce and effectively monitor 360 degree feedback for all senior managers and directors
- Recruitment processes should be transparent, open and they should adhere to relevant trust policies
- The Trust should continue to proactively recruit staff to fill operational vacancies
- The Trust must continue to improve the quality of its engagement and communication with staff.

Following the release of the well led review by the CQC and Deloitte, coupled with our external governance review, Monitor closed their investigation in to the Trust and issued an enforcement action notice. Monitor have outlined requirements to improve the effectiveness of the Board, to address strategy, models and structure within the HR team, to refresh our values, improve relationships with the Council of Governors

and to provide greater clarity in performance management processes during this period of transition.

In February 2016 the Trust Chief Executive, Steve Trenchard resigned from the Trust.

3. Moving Forward

We take the outcomes of these reviews very seriously and have fully committed to the development of a detailed Governance Improvement Action Plan that incorporates all of the recommendations from the various reviews. Many of the actions outlined in the governance action plan have already started to develop and the full Board of Directors are wholly committed to promptly act upon all areas highlighted.

We have already taken a number of key actions including:

- More closely aligning the Board of Directors with the Council of Governors through the implementation of an increased number of Council meetings, joint Board and Council meetings and Council/Non Executive Director meetings
- We have appointed a new Lead Governor and commenced recruitment of all Governor vacancies
- We have appointed a Director of Workforce, OD and Culture to oversee the required developments within our HR and wider functions
- We have appointed a permanent Director of Corporate Affairs and Trust Secretary that is essential for the development of governance plans within the Trust
- We have developed a robust and detailed Governance Improvement Action Plan and have ensured that we have the correct resources available to ensure we deliver
- We are in the process of holding open sessions for our staff to attend to talk to the Acting CEO and Interim Chair about recent events, the media coverage and general issues they wish to raise
- We are currently planning and liaising with the CQC for our 'routine' comprehensive inspection visit that is scheduled for the 6th to 10th June 2016.

We are determined to learn and improve. These recommendations are valuable in putting the Trust back on track, so we can effectively support our staff and governors, and deliver even better care to the communities we serve.

Recommendation

The Overview and Scrutiny Board are requested:

- 1) To note and discuss the paper using its content to inform discussion

Report Prepared by: Ifti Majid
Acting Chief Executive