

05 September 2022

Derek Bell
Chair

Julie Gillon
Chief Executive

North Tees and Hartlepool Hospitals NHS Foundation Trust



North East and Yorkshire
6E54 Quarry House
Leeds
LS2 7UE

Dear Derek and Julie

North Tees and Hartlepool Hospitals NHS Foundation Trust – Regulatory investigation outcome

This letter sets out the outcome of the investigation into the Trust's compliance with its licence.

Firstly, I wanted to thank you for the responsive approach adopted by your organisation in relation to the requirements of the investigation. This engagement was helpful in enabling the process to move forward quickly and effectively in addition to supporting the wider need to readily determine how we move forward collectively and constructively on the issues in focus.

The investigation was opened on 9 February 2022 as a result of information received in relation to:

- i. the proposed appointment of a joint Chief Executive with South Tees Hospitals NHS Foundation Trust ('STH') and the Trust's engagement on the issues in that respect; and
- ii. the actions and behaviours of members of the Trust's Board in relation to the work to move to a single joint Chief Executive with STH.

The objective of the investigation was to ascertain whether the concerns in relation to the Trust amounted to a breach of the Trust's licence, and the level of support that may have been required in response, including whether formal enforcement action might be required.

Further to the investigation concluding the findings were considered at the 12 April 2022 System Oversight Committee (SOC) of NHS England and NHS Improvement.

The SOC determined that the investigation provided sufficient evidence that there were grounds for regulatory intervention. However, the decision taken by the SOC was that at that stage, the actions required in response should be taken forward by the Trust on a voluntary basis, in default of which regulatory action may be required. Whilst progress on the integration was not moving forward at the anticipated pace the decision not to take regulatory action was informed by evidence of the Trust beginning to adopt a more constructive approach including in response to the issues that were the basis for the investigation.

The time that has elapsed since the 12 April 2022 SOC has allowed us to learn of and understand the further progress that the Trust and the system is making and provides confidence that the suspension of any formal regulatory action, and the Trust responding on

a voluntary basis, continues to be a proportionate way to move forward. This position will remain under review subject to this progress being maintained.

The SOC also resolved that the Trust should publish the report in response to the investigation findings, as provided with this letter, through a public Board meeting along with this cover letter. Alongside the presentation of the report the Trust should set out at the Board meeting the actions it plans to take in response further to which the milestones for delivering these will need to be agreed with the regional team of NHS England via myself in the first instance.

Further to this investigation having concluded in the way set out we will work on the basis that there will not be any subsequent internal investigations into the matters.

We trust that this investigation and its outcome provides a constructive basis for the Trust to develop and implement an action plan with STH to strengthen joint leadership in support of the clinical service integration agenda in the Tees Valley health and care system. Alongside preparing to publish the report and this cover letter at a public Board meeting we request that the Trust provides a formal response to confirm acceptance of the recommendations and a statement of commitment to the action plan to take the related actions forward.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Barker', written in a cursive style.

Richard Barker
Regional Director, North East and Yorkshire

Cc:

Sir Liam Donaldson, Chair, North East and North Cumbria ICB

Sam Allen, Chief Executive Officer, North East and North Cumbria ICB



NHS England Regulatory Assessment

North Tees and Hartlepool Hospitals NHS Foundation Trust

05 September 2022

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1. Introduction

- 1.1. NHS Improvement (NHSI) (exercising its Monitor regulatory functions) commissioned an independent investigation in February 2022 in response to concerns about the governance of the North Tees and Hartlepool Hospitals NHS Foundation Trust (“the Trust”).¹
- 1.2. The investigation was asked to ascertain whether the Trust Board had been operating as a 'unitary board', i.e. whether within the Trust Board the Non-Executive Directors and Executive Directors were making decisions as a single group and sharing the same responsibilities and liabilities, in relation to the proposed appointment of a joint Chief Executive with South Tees Hospitals NHS Foundation Trust (STH) and the Trust's engagement on the issues in this respect.
- 1.3. The scope of the investigation also included the actions and behaviours of members of the Trust's Board in relation to the work to move to a single joint Chief Executive with STH.
- 1.4. The investigation also considered how the Trust was balancing its organisational priorities and reputation with wider system requirements to facilitate the sustainable provision of high-quality health and care services for the populations of the Tees Valley. These requirements include the promotion of organisational collaboration where this is needed to deliver strategic ambitions for the system.
- 1.5. NHSI commissioned a third party to gather evidence which has informed the NHS England reflections and recommendations set out in this report. The report outlines the background to the investigation, the reflections of NHS England on the findings and sets out the regulatory considerations and actions recommended in response.
- 1.6. **A headline summary of the investigation and response is that the joint Chair of the Trust and STH determined early into his role a need for increased joint leadership across the two organisations, with a focus on the Chief Executive role in particular. The initial informal approach taken and the pace of the actions did not enable a commensurate leadership consensus to be built. Alongside this, there was evidence that members of the Trust Board had allowed tensions to be played out in the public arena including through the sharing of internal**

¹ The investigation was instigated in February 2022 by NHS Improvement exercising its Monitor regulatory functions. From 1 July 2022 NHS Improvement (including the Monitor regulatory functions) became part of NHS England as part of the legislative changes directed by the Health and Care Act 2022 and which is now the body with the regulatory oversight of NHS Foundation Trusts.

management information which served to disrupt this work and place at risk the wider reputation of the NHS. Since the investigation was commissioned there has been positive evidence of collaboration between the two organisations and therefore it is NHS England's assessment that no formal regulatory action will be taken, but should progress not be evident within a reasonable timescale NHS England may yet consider formal regulatory intervention and enforcement action.

2. Strategic context

- 2.1. The North East region has long had a reputation for poor health, and the Tees Valley contains some of the most deprived areas of the UK in terms of health and disability. Hartlepool and Redcar & Cleveland are in the 10% most deprived areas, and Darlington and Stockton-on-Tees are both in the 20% most deprived.
- 2.2. The health community in the Tees Valley serves 847,000 people, and the health needs of these people vary in different areas. Overall, there is social disadvantage, a trend towards an ageing population with increasingly complex needs, and a higher incidence and prevalence of the health problems associated with this demographic, including increased numbers of people with long term conditions.
- 2.3. Like many, the Tees Valley health and care system has a significant clinical workforce challenge with a dependency upon agency and locum staff, with the attendant risks of clinical variation and cost pressures. This has been the rationale for a range of actions taken to support the integration of services to ensure sustainable health and care provision for the Tees Valley.
- 2.4. Despite some examples of joint working being implemented and taking effect, the wider assessment remains that the pace and scale of the change required has not gained the necessary momentum. This lack of pace and scale was a key issue within the investigation and the emerging resulting findings.
- 2.5. Other context was the Trust's recent regulatory status as determined by the NHS System Oversight Framework (SOF) segmentation. The Trust had been in breach of its provider licence between July 2018 and April 2021, and in a SOF 3 segmentation, for issues pertaining to strategy and financial governance.
- 2.6. The Trust was assessed as compliant with its financial governance regulatory actions, 'enforcement undertakings', in October 2019. In April 2021

the Trust was assessed as compliant with the remaining enforcement undertakings in relation to strategy, and moved into an overall SOF 2 segmentation, at which point the organisation was determined to be no longer in breach of its provider licence. The considerations for NHSI in taking this decision included the need to enable the Trust, without the burden of regulator required actions in relation to governance, to work with partners in particular STH to accelerate the strategic integration required in the system. This was a formal acknowledgement of support for the appointment of a joint chair and a belief that through this appointment there would be progress to secure the sustainable future of key services. The circumstances that played out just a few months after the April 2021 decision therefore appear to have been a missed opportunity to gain real momentum for integration in the Tees Valley.

- 2.7. The SOF 2 assessment indicates that the Trust is currently assessed as a relatively operationally sound NHS provider but there remain ongoing concerns about the longer-term clinical sustainability of the organisation and the Tees Valley system it operates within.

3. Organisational context

- 3.1. The Trust is an integrated hospital and community services healthcare organisation serving around 400,000 people in Hartlepool, Stockton, and parts of County Durham. The Trust also provides bowel and breast screening services as well as community dental services and other community-based services to a wider population in Teesside and Durham. Annual turnover is over £350m, and the Trust employs approximately 5,500 medical, nursing, clinical and non-clinical support staff.
- 3.2. The Trust delivers care from two main hospital sites – The University Hospital Hartlepool and the University Hospital of North Tees and various community facilities, including Peterlee Community Hospital, Lawson Street Stockton, and One life Hartlepool; Trust community teams also support and treat people at home.
- 3.3. The current overall CQC rating for the Trust is ‘Good’ and was awarded following an inspection conducted in late 2017 published in March 2018. The Trust had a further inspection by CQC in May 2022 the outcome of which is not currently known. It currently has no significant organisational financial challenges or regulatory notices.
- 3.4. The Trust Chief Executive is Ms Julie Gillon, appointed in 2018. The Chair is Professor Derek Bell OBE; he is the inaugural Joint Chair shared with STH. Professor Bell commenced his post at both Trusts on 1 September 2021.

3.5. The Trust sits within the NHS England North East and Yorkshire Region, part of the North East and North Cumbria Integrated Care System and a member of the South Integrated Care (provider) Partnership along with STH and County Durham and Darlington NHS Foundation Trust.

4. Background

- 4.1. Within the context of the sustainability challenges in the Tees Valley system there has been some progress in increasing collaboration although a number of concerns about the pace of that change remain.
- 4.2. Both the Trust and STH highlight progress in joint clinical working over recent years and have shared examples of joint posts or aligned service areas. Equally, both Trusts acknowledge there is more to do and alignment of some critical clinical services has not progressed despite Getting It Right First Time visits and other similar peer reviews etc.
- 4.3. There remains a marked difference in perception between the Trust and STH in relation to the actions required to progress integration including different views about the robustness of the current clinical strategy as the basis of a wider sustainability plan for the Tees Valley system. Equally there has not been a sustained shared view of the actions required to enable and facilitate organisational integration, including the shared leadership needed to progress change at pace in response to sustainability challenges. The lack of integration in respect of an electronic patient record, as a key practical example, has been a continued frustration for clinicians and creates avoidable friction in the transfer of both patients and their records across the Tees Valley. Equally the submission of two independent bids without local system support in respect of the national hospitals programme further demonstrates the absence of a collaborative strategy.
- 4.4. Another difference in perception between the Trust and STH has been in relation to taking advantage of opportunities to increase the shared leadership across the organisations including around the time of the departure of former leaders. These circumstances could have facilitated the consideration of options to progress the development of the shared leadership to accelerate integration through increased collective ownership and a single view of the way forward.
- 4.5. Despite this backdrop, at a peer level, directors and clinicians, are working together and recognise the need to enhance collaborative working and

accelerate the pace of change, building on progress to date and the learnings from Covid.

- 4.6. The lack of progress to gather real momentum on integration in the Tees Valley health and care system attracted national attention during 2020 when the Chairs and Chief Executives of the Trust and STH met with national leaders of NHS England and NHS Improvement (NHSEI) to consider the need to bring further integration to the leadership of both Boards. Whilst these discussions ultimately resulted in agreement to appoint a joint Chair across the two organisations there remained a sense of reluctance from the Trust in taking this decision evidenced in part by the amount of time it took to reach that position. This was despite agreements made in earlier meetings involving national Directors.
- 4.7. Following agreement for a joint Chair post the organisations agreed to an interim appointment between January 2021 and July 2021 whilst recruitment for a permanent successor took place. The current joint Chair was appointed by both the Trust and STH Boards - formally commencing in post from September 2021 although he did begin to attend meetings in advance of the formal appointment to gain a familiarity with the issues.

5. NHS England reflections on findings from the investigation

- 5.1. Following his appointment in 2021 the Chair made an early assessment of the need to secure a single Chief Executive post across the Trust and STH and mooted this view from the outset of his tenure. The Chair based his assessment on conversations with internal stakeholders, other experienced senior NHS leaders within and outside the North East and knowledge from other reviews in the UK and internationally.
- 5.2. The Chair was also aware of previous discussions between Trusts in the Tees Valley about the potential to move to a Group Structure (2019). It seems, however, that those discussions had not progressed to implementation because of the Covid Pandemic.
- 5.3. From his discussions and observations, the Chair identified at a very early stage that it was likely to be challenging to get both Boards to work in a more joined-up manner around contentious issues without a single Chief Executive alongside him. Both the Trust and STH vice-Chairs agreed that the Trusts should move to appoint a single Chief Executive at some point. The two vice-Chairs did however express different views about the pace and approach that might be taken to develop the proposals: the Trust's vice-Chair was more reticent about timing and approach whilst the STH vice-Chair was of the view the developments should happen sooner rather than later.

- 5.4. As noted in paragraph 4.3 above, a particular issue that influenced the Chair's assessment about the need for a joint Chief Executive was the submission of independent bids by each Trust for capital funds during 2021 with no apparent underpinning joint working to support those bids despite the collective acknowledgement of the need to move forward together on such strategic developments in the interests of the populations served.
- 5.5. In order to potentially move towards a single Chief Executive post, the Chair undertook a range of engagement actions with the Boards of the Trust and STH to test the thinking behind the proposal.
- 5.6. Evidence from the investigation indicated that the structure and approach to this engagement did not enable a shared consensus to be built to move the proposal forward in the way and at the pace the Chair envisaged. Evidence informing this assessment includes the sequencing and timing through which the Boards of the Trust and STH were initially consulted on the proposals and the tensions this created during what should have been a period for creating a shared view of such strategic issues.
- 5.7. From the engagement the Chair undertook there was evidence that assumptions were made about organisational and individual positions which were not all accurate. This informed the messaging about the proposals which led to suspicions about the motives and created tensions in the Trust Board not conducive to agreeing a constructive way forward on these matters.
- 5.8. Given the inability to find a mutually agreeable path, as tensions rose, evidence suggests that the level of conduct by some individuals within the Trust NED group was not consistent with accepted standards of professional business conduct.
- 5.9. The investigation determined that although the need to achieve better joint working across both Trusts at a strategic level had resulted in the Chair's appointment, there was no external pressure on the Chair to bring forward the proposal for a joint Chief Executive as early as October 2021.
- 5.10. On balance, it seems the Chair could reasonably have deferred plans in order to allow time to establish improved working relationships internally and externally and develop a supporting communication and engagement plan.
- 5.11. The Chair could have expected internal support with the planning of this work and there is evidence he was left isolated at times by the Trusts' executive functions. The investigation also determined that the Trust Chair

could have reasonably expected more proactive support from NHSEI and local system leaders to transition into his new appointment as Joint Chair given what was expected to be challenging circumstances.

- 5.12. The lack of support on these matters meant there was an absence of personnel advice for the Trust Chair to factor into the planning for moving to a single Chief Executive post.
- 5.13. Another factor in this finding was that the Chair did not have established working relationships with all the Board members as a result of the relatively short amount of time he had been in post. Engagement more generally is therefore viewed as something that could have been handled better given the need for the collective understanding of, and buy in to, a proposed way forward.
- 5.14. If the handling of the engagement by the Chair had been more structured it is still not certain that the proposal for a joint Chief Executive post would have moved forward in the time period in focus given the strength of opposition that subsequently emerged.
- 5.15. The investigation determined that there had been a breach of confidential internal Board discussions that led to the media commentary on moving to a joint Chief Executive in November 2021. The evidence indicated that the breaches of confidential internal Board discussions were done with the knowledge that the related information would be used to discredit partners at STH. This formed part of a narrative that the move to a joint Chief Executive was a pre-cursor to a formal merger between the Trust and STH and that this could undermine the Trust's current relatively stable operational profile. This narrative did not however reflect the strategic interdependencies between the Trust and STH including in relation to the tertiary services provided at STH for populations across the Tees Valley.
- 5.16. Following the media commentary in November 2021, NHSEI wrote to the Trust asking the Chair and Chief Executive and other Board members to attend a meeting with regional and national NHSEI Directors indicating the regional and national profile of the actions taken by the Trust and the wider implications they could have. The agreements from this meeting provided the basis for the Trust and partner organisations, in particular STH, to move forward on a constructive basis using learning from previous events to support a positive way forward.
- 5.17. However, the agreement to share a draft proposal for the way forward with NHSEI by the end of January 2022 was not delivered by the Trust which,

together with the surrounding circumstances led to the decision to instigate the formal investigation in February 2022.

5.18. Within the governance framework for NHS Foundation Trusts the Trust's Council of Governors (CoG) has the responsibility for holding to account the non-Executive Directors collectively and individually for the performance of the Trust Board.

5.19. The investigation determined that the CoG's conduct and approach was exemplary and despite the leadership tensions they maintained objectivity and used their best endeavours formally and informally to seek to resolve matters between parties. Progress was however hampered as the NEDs and Chair took different approaches to discussions with the CoG, the former focussing on the specific conversations and actions that had taken place and the latter on the case for change and the opportunities that further integration could bring.

5.20. The efforts of the CoG have ultimately been unsuccessful up to now and, and had NHSI not intervened, they would have initiated an investigation along similar lines. The CoG has deferred finalising its position on an investigation pending the outcome of the investigation reported here.

6. Regulatory assessment

6.1. Taking into account the findings from the investigation NHS England has considered what course of action would be the most constructive.

6.2. Central to this assessment has been the conviction that moves towards shared leadership for the Trust and STH, as part of wider integration for the Tees Valley health and care system, is still the right way forward. A considered and well developed plan should be put in place to progress this work in a manner, and at a pace, that works for all stakeholders.

6.3. A key finding is that there have been lessons learnt for all parties involved, including for system and regional oversight of the issues, and the way forward needs to factor this in. So whilst the investigation has been explicitly focussed on the Trust the way forward needs to reflect on the influence of all parties on the circumstances that have arisen.

6.4. The investigation has determined that the Trust Board has not acted consistently in a unitary way in relation to moving to a single Chief Executive appointment with STH. This provides the evidence base to suspect a breach of the provider licence by the organisation which would normally lead to formal regulatory action being taken.

6.5. However, given the evidence of a more constructive approach having been adopted by both Boards since the investigation was initiated, the regulatory assessment made by NHS England is that a voluntary response (building on these recent actions) from the Trust is preferred.

6.6. This would include the Trust presenting this report at a public Board meeting and setting out the actions it will take in response including in relation to progressing plans for shared leadership with STH. This will be key to ensuring energy and focus of the Trust and partners is focussed on progressing the strategic actions needed to ensure sustainable high-quality health and care services are in place for the patients and populations served.

6.7. Finally should progress not be evident within a reasonable timescale NHS England may yet consider formal regulatory intervention and enforcement action.

7. Next steps

7.1. The Trust is asked to make all reasonable efforts to present this report at the next practicable Public Trust Board meeting and to set out its action plan in response to this.

7.2. Subsequent to this the Trust is asked to present a joint action plan with STH at an upcoming public Board meeting.