

## Minutes of a meeting of the Health and Social Care Overview and Scrutiny Committee held on Thursday, 22 March 2018 in Ernest Saville Room - City Hall, Bradford

Commenced 4.45 pm  
Concluded 7.25 pm

### Present – Councillors

CONSERVATIVE	LABOUR	LIBERAL DEMOCRAT AND INDEPENDENT
Gibbons Rickard	Greenwood Akhtar Johnson Shabbir Berry	N Pollard

### NON VOTING CO-OPTED MEMBERS

Susan Crowe  
Trevor Ramsay  
Jenny Scott

Strategic Disability Partnership  
Strategic Disability Partnership  
Older People's Partnership

Observers: Councillor Val Slater (Portfolio Holder, Health and Wellbeing)

Apologies: Councillor Aneela Ahmed and G Sam Samociuk

### Councillor Greenwood in the Chair

#### 75. DISCLOSURES OF INTEREST

- (i) Councillor Gibbons disclosed, in the interest of transparency, that he had been appointed by the Council as a Governor of Bradford District Care NHS Foundation Trust.
- (ii) Trevor Ramsay disclosed, in the interest of transparency, that he was standing to be a Governor of Bradford District Care NHS Foundation Trust.

**ACTION:** *City Solicitor*

**76. MINUTES**

**Resolved –**

**That the minutes of the meeting held on 8 February 2018 be signed as a correct record.**

**77. INSPECTION OF REPORTS AND BACKGROUND PAPERS**

There were no appeals submitted by the public to review decisions to restrict documents.

**78. REFERRALS TO THE OVERVIEW AND SCRUTINY COMMITTEE**

No referrals had been submitted to the Committee.

**79. CARE QUALITY COMMISSION INSPECTION REPORT ON BRADFORD DISTRICT CARE NHS FOUNDATION TRUST**

The Inspection Manager, Care Quality Commission, introduced **Document “AE”** which reported that the Care Quality Commission (CQC) had undertaken an inspection of Bradford District Care NHS Foundation Trust in October and November 2017. Members were informed that a new approach had been undertaken, however, the same five key questions were asked and these were used as the key lines of enquiry. It was noted that the Trust had been very helpful prior to and during the inspection. In October 2017 nine out of the fourteen core services had been examined. In relation to good practice, the Trust was rated as good, however, there were areas that required further work. The Inspection Manager reported that overall the Trust had been rated as ‘requires improvement’ and would have to submit an Action Plan. To ensure that the necessary action was undertaken, monthly engagements via the telephone and quarterly meetings were available to the Trust.

Members then made the following comments:

- With regard to the organisation being well-led, it appeared that leadership and continuing improvement were being measured. Where had the balance been found in well-led?
- Surely it was a management matter if staff did not carry out procedures.
- The recruitment, retention and development of staff was a major issue. Were there any problems?
- Mental Health services in Bradford had been transformed. Just because the overall rating was ‘requires improvement’ did not mean that it was a bad Trust.
- What was the difference between ‘requires improvement’ and ‘inadequate’?
- The Trust used to be classed as very good in relation to its different approaches. Was it responsive?
- Were policies in place but not leadership?

- Was the Trust effective in some areas?
- Governance was an issue for the Trust's Board.
- Was the oversight in relation to the operational side?
- Were there governance and practice issues?

In response Members were informed that:

- It was a training oversight and process issue.
- There were some areas where staff were not following set procedures and others where management was not in place.
- There were areas where robust procedures were not being followed by staff.
- Well supported and trained staff usually stayed. People had also come back to work for the Trust, due to a previous good experience. Management training was in place and it just needed to be made clearer that staff training was too.
- The inspection of core services had been chosen in order to look at the pathway of the Trust and how it was moving forward.
- It could be a minor issue that made the overall rating to be 'requires improvement'. A breach of legislation would entail a 'requires improvement' rating.
- Descriptions were available to match the ratings and the Trust had not met the 'inadequate' description. Mandatory training was covered by a key question, therefore, the Trust had failed in this area and had to be classed as 'requires improvement'.
- The Community Health report outlines the responsiveness and other areas. It was an innovative Trust that worked with different sectors.
- Some cases showed that staff were not following policies.
- Leadership and values flowed through the Trust, but some of the governance was not in place.
- Oversight and practice were not always evident.
- Yes, there were governance and practice issues.

**Resolved –**

**That the report be noted and officers be thanked for their attendance at the meeting.**

***ACTION: Inspection Manager, Care Quality Commission***

**80. RESPONSE FROM BRADFORD DISTRICT CARE NHS FOUNDATION TRUST TO THE CARE QUALITY COMMISSION INSPECTION REPORT**

The Medical Director, Bradford District Care NHS Foundation Trust presented **Document "AF"** which outlined the outcome and response following the Care Quality Commission (CQC) inspection. He informed Members that the Trust was disappointed with the outcome, as it had been rated as 'good' for a number of years and it had prevalent leadership, values and ethos. A Regulation had been broken, therefore, the Trust had been rated as 'requires improvement'. This was due to some policies and procedures not being followed, however, they could be

rectified in a short time period. The Medical Director explained that a 51 point Action Plan had been developed in response to the CQC report and this was evolving on a daily basis. A number of actions had already been completed and were to be signed off by the Trust Board, others would be resolved over the next few months. Members noted that the Trust hoped that all actions would be finalised prior to the CQC revisit. It was aspiring to be an outstanding organisation and viewed the inspection outcome as an opportunity to put things right.

Members raised the following concerns:

- What was the Trust doing to improve staff understanding of the Duty of Candour and other policies? Was language an issue?
- What was the Trust doing to improve basic life support?
- What was the reason for the repeated Disclosure and Barring Service (DBS) check?
- Only three incidents of restraint had been logged but they had not been properly recorded. Had only three occurred?
- How much notice was given prior to the inspection taking place?
- How would the Trust fair if a surprise inspection was undertaken tomorrow?
- Could bank staff access training?
- The Trust had been shocked by the rating, but had it been aware that its staff were lacking in training?
- The Trust was exceptional and there was a great deal of disappointment from all areas at the rating. The management and staff had not lived up to expectations, but an apology had not been made.
- The lack of oversight was a leadership issue, which should have been dealt with by the Board and senior managers of the organisation. Had the lack of oversight been apparent or just not addressed?
- Why was training a weakness? What were the demands on the staff, as absences were high?
- Not all serious incidents had been investigated effectively and within timescales.
- How was staff training monitored?

It was explained to Members that:

- There were training issues around Duty of Candour and other policies. The Trust had a high reporting rate. Staff needed to be helped to understand the language and a Communications Programme would be established. The majority of staff were trained in relation to the Mental Capacity Act, however, the Trust was unable to show records of the numbers trained. A robust process was in place to ensure staff were trained.
- More training had been facilitated regarding basic life support, which was monitored and the compliance had improved.
- The Trust's policy required everyone to be DBS checked every three years and some had been out of date.
- The number of incidents of restraint could not be clarified due to recording issues. The electronic record was not helpful to staff and the Trust was

due to change to a user friendly system in the summer which would be beneficial to staff. Many of the recording issues would be resolved by the introduction of the new system.

- A formal inspection of a ward would be given 30 minutes warning and community services were given a few days notice. The Trust had been given fair warning of the inspection and it had a good relationship with the CQC.
- A number of issues had been completed immediately, some required improvements and others were ongoing.
- Bank staff could access records, however, the issue had been in respect of obtaining log on details for them and this had now been resolved.
- The rating had been a shock and the Trust should have been aware of the issues, however, the matters raised would be resolved.
- The Trust apologised for the areas where it had failed and the Board had accepted that it was their responsibility and not that of staff or managers.
- There had been some oversight, however, some areas had been a shock to the Trust.
- Failings were rarely due to one cause. Frontline staff faced many pressures and they would always choose to look after a service user above the completion of online mandatory training. It was not always easy to access training and management's awareness of staff training had been highlighted. Awareness needed to be spread through the organisation.
- The recording of a small number of serious incidents had not been completed within the timescales, which had been due to their complexity. All of the serious incidents had been scrutinised by the CQC and received positive feedback, so the outcome in this area had been a surprise.
- Training was electronic and could be monitored monthly, so the Trust knew exactly which members of staff had not undertaken the training. All appraisals and training was undertaken via IT and staff training information was circulated monthly.

#### **Resolved –**

**That an update report on the Trust's Action Plan be submitted in six months.**

***ACTION: Medical Director, Bradford District Care NHS Foundation Trust***

#### **81. AIREDALE NHS FOUNDATION TRUST'S WHOLLY OWNED SUBSIDIARY FOR ESTATES, FACILITIES AND PROCUREMENT SERVICES**

The Director of Operations, Airedale NHS Foundation Trust, presented a report (**Document "AG"**) which detailed the reasons for the establishment of a wholly owned subsidiary for Estates, Facilities and Procurement Services, which had come into effect on 1 March 2018. Members were informed that the Trust had increasingly had to think differently in order to sustain quality within a tight financial environment and to be imaginative in how it delivered savings. A number of options had been considered, however, the Trust Board had been persuaded to establish a wholly owned subsidiary, which would be owned by the Trust and they would retain the key decision making.

Members then made the following comments:

- The projected revenue saving was £2.5 million in year 1. What was the current situation?
- The procurement aspect seemed sensible and exciting.
- What was the Trust's highest risk and what had the Board done to mitigate this?
- What were the risks in the operating climate?
- New staff would have different terms and conditions. Were there any guarantees?
- Would there be any risks going forward?
- Why were the new Service Level Agreements (SLAs) more restrictive than previously and why were new ones required?
- How much work had been put into the potential impact on patients?
- Had any key staff been lost?
- The work undertaken by the Director of Operations in respect of the Children's Cardiac Centre in Leeds was praised.
- Would the Trust remain responsible for the new company's debts?
- Could the commercial focus be increased without taking this course of action?
- Was there the potential to realise additional income?
- Had the terms and conditions and pensions been transferred with the staff?
- Would the new staff have a choice in relation to pensions?
- What about tax issues?
- Were conflicts of interest being managed with regards to the TUPE (Transfer of Undertakings (Protection of Employment)) Regulations and pension issues? How was it being ensured that there would be transparency in the process?

The Director of Operations, Airedale NHS Foundation Trust and the Director, AGH Solutions, reported that:

- The projected revenue saving was made up of different components. The NHS had a set of procurement rules, however, the new company could work with other organisations, as it was not restricted in the same way. It was hoped that opportunities could be given to local people, as the subsidiary had flexibility and freedom. New staff would be offered different terms and conditions and could not be offered the NHS pension. Overall the Board could make savings and a reinvestment.
- The Trade Unions had not agreed with everything and the best compromise had been achieved. The Trust could now outsource to companies that were not on the NHS register.
- There had to be a separation between the Trust Board and the subsidiary, however, it had been insisted that the company had a People's Strategy and was aligned to the Trust's core values. The Board also maintained certain rights over key issues. Sessions had been undertaken with Trade Unions and it had been agreed that the terms and conditions of staff that transferred would be guaranteed for 25 years. Pay awards offered to NHS staff would also be matched.

- Existing staff would have a 25 year guarantee, however, new employees would have new terms and conditions. The subsidiary had the flexibility to offer the market rate.
- The company had started with 321 employees and there were nine other similar companies with over 100 staff, which had all grown since being established.
- It was incredibly challenging to keep up to date with the detail of services with no oversight and staff had found it difficult to obtain access to good management support. All 321 employees would have good access and a SLA, which would benefit the service. All SLAs had been considered prior to being signed off and the establishment of the subsidiary had allowed them to be more explicit and contain a deeper level of assurance. Alerts to issues would be raised earlier and the Trust Board was confident that this would help the company achieve and not detract from the service.
- No staff had been lost and there had been a great deal of engagement undertaken throughout the process. Staff survey levels had improved. The Trust genuinely cared about its staff, however, it had not always got things right. Many concerns had been raised and the Trust had gone over and above the TUPE process. Some staff were satisfied, but others were unsure.
- The Trust would remain responsible for the debts and a unitary pay agreement was in place. This was a significant part of how the Board would hold the company to account. A key issue in the business case had been the exit plan and what would happen if the change did not go well, therefore, the Board would be closely monitoring the company. The company could not secure loans on the Trust's assets and Directors could be removed at any point.
- The commercial focus could have been increased, however, companies had to meet exacting standards to be included in the NHS Framework.
- There were some areas where the company was looking to expand, however, a smooth transition was required for the first six to twelve months before the intended growth was undertaken.
- The company was looking to repatriate services back in. Staff were employed under an Agenda for Change condition and the Trust could not offer different hourly rates. The company would be more flexible and would not employ staff on this basis.
- Not everyone had an NHS pension and new employees would have a National Employment Savings Trust (NEST) pension. There was a risk involved and the Trust had focussed on a strategy for people. The Company Board would have to work hard in order to retain its staff.
- Part of the recovery benefit was VAT retrieval and the Board had questioned itself as to whether they would have established the company without this aspect. The delivery of a new governance model was not new to the Trust Board and it was clear in relation to the Articles of Association and what decisions could be taken. How the Company Board was held to account by the Trust would be monitored monthly. The company had been established with the intention of managing governance well.

A representative of UNISON was present at the meeting and addressed the Committee explaining that the relationship with the Trust and NHS employers was very important and affected the whole of the country. He stated that change had

been ideologically driven and front line jobs had been affected. These public facing roles were important for the welfare and recovery of patients. The status of working for the NHS was important to these people and if removed they would feel rejected, therefore, the roles should be kept within NHS employment. The Trust had a duty to postpone the plans and consult with Local Authorities, as there were other ways to reap the benefits. The representative of UNISON acknowledged the financial pressures of the Trust, but indicated that a public consultation should have been undertaken. A petition signed by over 3000 people had been submitted to the Trust Board, but the Union believed that it had been ignored. Members noted that the Union was concerned that there would be major issues in relation to workforce employment and terms and conditions, which would result in a culture change. The 25 year guarantee did not have any meaning in law and the Chair of the Board who had made the promise had left. The representative of UNISON stated that there was insufficient transparency in relation to the savings, new employees would not contribute to the NHS pension scheme so it may become unviable and there would be a two tier workforce consisting of Agenda for Change staff and new employees. He reiterated that he believed that the Trust had a public duty to disclose the information and that other options should be considered. In conclusion he requested that Airedale NHS Foundation Trust be asked to stop the process and look at other options.

**Resolved –**

**That the Committee be kept updated on the progress of the wholly owned subsidiary for Estates, Facilities and Procurement.**

***ACTION: Director, AGH Solutions/Director of Operations, Airedale NHS Foundation Trust***

**82. BRADFORD TEACHING HOSPITALS NHS FOUNDATION TRUST POSITION STATEMENT - CREATION OF AN ALTERNATIVE DELIVERY MODEL FOR ESTATES AND FACILITIES SERVICES**

The Director of Finance, Bradford Teaching Hospitals NHS Foundation Trust (BTHFT), presented a report (**Document “AH”**) which outlined the current position as to the creation of an alternative delivery model to provide Estates and Facilities services to the Trust. He explained that the Trust was in a different position to Airedale NHS Foundation Trust and were still considering the options, taking into account the financial challenge along with the vision and values of the organisation. It had been agreed that a full business case would be developed in order to review the options and the favoured model was a Wholly Owned Subsidiary. This would be submitted to the Board of Directors in July 2018 to ensure that the right decision would be taken.

The Chief Executive, BTHFT, confirmed that Airedale NHS Foundation Trust had started work on the matter before BTHFT and had undertaken exemplary work. He stated that he could not determine what route they would take, however, they were committed to following an extensive process.

Members made the following points:



- What had made the Trust realise it required more time?
- Would there be an option to go to other areas and the potential to privatise?
- Staffs' feelings towards being part of the NHS was a key issue, as they may work differently if not for the NHS. Had this been considered?
- The options had been available for years. Having lots of companies at arms length trading with each other raised concerns. Had the Trust looked at the wider picture?
- A wholly owned company involved risks in relation to the management of provision.
- Were there Health Trusts that had totally outsourced services?
- If the project failed would the staff that had been transferred under TUPE return to work for the Trust?

Members were informed that:

- The Trust needed further time as the issue had not been progressed and the information required was incomplete.
- The process would be similar to that operated by Airedale NHS Foundation Trust and cover Estates and Facilities. Other areas had included Corporate Services.
- Keeping the NHS logo could be a way forward. Staff were in crucial and critical roles and both Trusts felt very strongly about this.
- Wholly Owned Subsidiary companies existed across the country and it was not uncommon for one of the Trust Board Members to sit on the Subsidiary Board. BTHFT had not determined what action it would take as yet.
- The Trust Board would bring the services back in house and staff would be transferred in via TUPE Regulations.

**Resolved –**

**That the Committee notes:**

- (1) the concerns raised by the Trade Union representative.**
- (2) the increasing complexity in the way that public bodies are organised, the delivery of public services and the challenges surrounding accountability and transparency and requests that these issues be taken into consideration during the evaluation and consultation being undertaken by Bradford Teaching Hospitals NHS Foundation Trust.**

***ACTION: Chief Executive and Director of Finance, Bradford Teaching Hospitals NHS Foundation Trust***

**Note: These minutes are subject to approval as a correct record at the next meeting of the Health and Social Care Overview and Scrutiny Committee.**

THESE MINUTES HAVE BEEN PRODUCED, WHEREVER POSSIBLE, ON RECYCLED PAPER