

February 2018

# **Investigation Report**

**NHS Improvement re:**

**Wirral University Teaching**

**Hospital NHS Foundation Trust -**

**Issues Arising from Senior Staff**

**Concerns Reported in Late 2017**

Carole Taylor-Brown MSc FCIPD

**tamarix**  
people

- Executive & Leadership Coaching
- Organisational Development & Diagnostics
- Workplace Investigation & Conflict Resolution

Section	Content	Pages
1	Background to the Investigation	2
2	Overview of Investigation	3-4
3	Findings: Area 1 - Governance of Senior Appointments - Sub-Board Director Extension of Chairman's Term of Office	5-9
4	Findings: Area 2 - Governance: Functioning of Board Relationships - Executive Management Team Management of Senior Staff Internal Concerns	10-17
5	Findings: Area 3 - Culture: Working Environment Inhibiting Staff from Raising Concerns	18
6	Findings: Area 4 - NHSI Response to Concerns Raised by WUTH Senior Staff	19
7	Findings: Area 5 - Handling by WUTH of Specific Disciplinary Case 2017	20

## 1. Background to the Investigation

- 1.1. Wirral University Teaching Hospital NHS Foundation Trust (WUTH) is a large Acute NHS Foundation Trust in the North West of England providing acute care services to a population of about 400,000 people across Wirral, Ellesmere Port, Neston, North Wales and the wider North West footprint. There are two principal sites at Arrowe Park Hospital (Upton) and Clatterbridge Hospital (Bebington) with some community-based facilities. WUTH employs c5600 people and has an operating budget of c£340m.
- 1.2. The overall Care Quality Commission (CQC) rating for WUTH is currently “Requires Improvement”. WUTH has some financial challenges and some performance challenges notable in the area of ED; there are no significant quality concerns flagging on current performance indicators. WUTH is currently subject to an additional license condition imposed by NHS Improvement (NHSI) using its powers under section 111 of the Health and Social Care Act 2012, in relation to some aspects of governance including finance.
- 1.3. WUTH has a Board of Directors which, when fully occupied, comprises seven non-executive directors (NEDs), including the chairman, and six executive directors (includes a new position established in late 2107), including the chief executive.
- 1.4. In early November 2017, three executive directors from WUTH attended a meeting with the NHSI North regional team where they shared, in confidence, a number of concerns in regard to the leadership and culture at WUTH.
- 1.5. Notes of that meeting were taken and promptly sent back to the three executives who, after consulting a fourth colleague, submitted a final agreed written copy of their concerns to NHSI on 23 November 2017.
- 1.6. Following formal receipt of those concerns and identification of an additional concern regarding an external appointment relating to the former CEO, NHSI discussed matters with and advised the former Chairman on the presenting issues. The Chairman then sought external legal advice.
- 1.7. Subsequent to this, the former CEO and WUTH mutually agreed to terminate his employment. NHSI initially offered to assist with a temporary secondment to enable fulfillment of the former CEO’s contractual notice period, however this did not in fact occur.
- 1.8. NHSI subsequently commissioned an independent investigation into the concerns that had been reported to them. The investigation commenced in mid-January 2018 and was completed at the end of February 2018.

## 2. Overview of the Investigation

- 2.1. This report sets out the background, process, findings and conclusions of an independent investigation commissioned by the Executive Medical Director/Chief Operating Officer at NHSI, to consider the following matters:
  - 1) concerns raised by members of WUTH staff in late 2017 with NHSI regarding cultural, behavioural and governance issues at the Trust;
  - 2) NHSI's response to the above concerns; and
  - 3) a review of WUHT's handling of a specified disciplinary case (2017) involving allegations of sexual misconduct.
- 2.2. In regard to the first of the issues, it was confirmed at the outset of the investigation that the investigator should consider in detail the particular issues arising from the concerns raised by the senior staff in late 2017. In addition, if appropriate, the investigator would provide strategic signposting of the implications that this might hold for the wider cultural issues in WUTH, which might in turn suggest subsequent lines of inquiry.
- 2.3. This decision was taken to enable timely investigation of the specific concerns (and related matters) which, as a consequence of unauthorised publication of some confidential notes in national media, had generated speculation and caused distress for some of the individuals concerned.
- 2.4. For the purpose of this report, the concerns raised by senior staff in late 2017 (which were set out in writing in a note of concern for NHSI) have been grouped as:
  - 1) alleged failure to follow due process in connection with some senior appointments, with aligned allegations of misrepresentation of senior staff views;
  - 2) alleged poor functioning of the WUTH board, Executive Management Team (EMT) relationships, and aligned poor internal handling by the board of the related concerns raised by senior staff; and
  - 3) an unhealthy working environment and culture which inhibits staff raising concerns.
- 2.5. The investigation has involved interviews of key personnel and a detailed review of documentation, including; emails between colleagues, emails between NHSI and WUTH on this matter, employee surveys, and other documentary evidence provided by interviewees, NHSI and WUTH.
- 2.6. In addition, a review of relevant email accounts was conducted in order to explore the related alleged data breach at NHSI. Similarly, investigation of the NHS accounts which had access on the WUTH's system to the data in question was also undertaken. Neither search indicated that the document was shared with a third party from an NHS email account. More probably, the document may have been disclosed from a private email account.

- 2.7. The investigation has been conducted by Mrs. Carole Taylor-Brown who has substantial experience in undertaking workplace investigations and specifically those concerned with staff raising concerns. Mrs. Taylor-Brown is a Fellow of the Chartered Institute of Personnel and Development and holds other recognised qualifications in workplace investigation.
- 2.8. Mrs. Taylor-Brown has no known conflict of interest in undertaking this investigation and has no knowledge, professional or otherwise, of the individuals who are subjects of the investigation. Whilst no concurrent internal or external reviews of the particular matters for this investigation were made known to the investigator, the investigator identified that an aligned review of cultural issues had been commissioned by WUTH and was running in tandem.
- 2.9. The WUTH review was commissioned in November when WUTH's Board agreed to procure a cultural review to consider specific allegations of a poor working environment in some departments. This included alleged bullying and restrictions on freedom to speak up in some areas of WUTH. The WUTH review was scheduled to report by the beginning of February 2018, slightly in advance of this report; accordingly, account has been taken of the outcome of the review in this report.
- 2.10. The investigation received some administrative support from NHSI to support notetaking at interviews (with express consent from interviewees). NHSI's Legal Director acted as case manager.
- 2.11. It was noted at the outset of the investigation that there was a high likelihood that the report would be made available for wider publication and, with that in mind, the investigator has taken reasonable steps to protect the individual identity of interviewees giving evidence, in so far as is possible.
- 2.12. All interviewees were advised that it would be necessary for clarity to identify some posts for continuity and that, together with the exposure of details of the concerns in national media, the identity of some individuals would be readily identifiable to readers of the report.
- 2.13. Interviewees have been given the opportunity to agree the factual accuracy of the records of statements given to the investigation. Where there are substantive matters of dispute in account between parties, this is shown in the report. In matters where there is a wide variance of account (as has been the case in this investigation), this is identified, and the report indicates where a judgment has been formed on the balance of probabilities. (Where the findings of the report suggest some culpability the persons so affected have been notified and given an opportunity to comment).
- 2.14. The investigation was initiated in mid-January 2018 completed at the end of February 2018, when the report submitted to NHSI.

### 3. Findings - Area 1: Governance of Senior Appointments

Issue: It is alleged the former CEO failed to ensure due process in connection with two senior appointments, and in the course of securing these allegedly misrepresented the views of some senior staff.

- 3.1. Concerns were expressed by executive directors about the former CEO's management of two internal appointments; the first concerns the prospective appointment of a sub-board director to an executive board position, and the second concerns the extension of the former chairman's term of office.

#### Sub-Board Director Appointment

- 3.2. Discussions about this prospective appointment began in early 2017 and were initially exclusively between the sub-board director and the former CEO. The primary stimulus for the discussions arose because the sub-board director indicated an interest in an executive board director role elsewhere in the NHS. The former CEO says this coincided with his thoughts that the portfolio concerned should be elevated to a board position.
- 3.3. The former CEO indicated to the sub-board director that he intended to establish, with support from the chairman, a comparable executive board position at WUTH. In consequence, and aware that a due process was to follow (including consideration of the proposal by the Remuneration Committee), the sub-board director determined to withhold making an external application and await the outcome of those discussions.
- 3.4. The former CEO accordingly informed the relevant executive director with line management responsibility for the portfolio of his intentions on the matter. In the meeting between them, which both agreed was not well handled, the executive director was left with the impression that this was to happen without due process and that the matter was not open to influence by the executive management team (EMT).
- 3.5. The executive director shared this understanding with their peer colleagues who indicated similar concerns about the apparent lack of due process and about the proposal itself.
- 3.6. A few weeks later EMT discussed the matter on two separate occasions when the former CEO shared details of legal advice on the matter, the intended process, and that the proposal would be subject to consideration by the Remuneration Committee in May. The former CEO also indicated that the former chairman was supportive of the proposal and suggested to EMT colleagues they may wish to speak directly with the former chairman about the proposal.

- 3.7. This latter option was not pursued by EMT colleagues, with some seemingly feeling that their representations would not be considered by the former chairman if, as was suggested, he was supportive of the proposal. The former chairman confirmed that whilst he was supportive, he would have been more than open to hearing such representations, had they been made.
- 3.8. The Remuneration Committee met in May when they deferred a decision on the proposal pending further external advice and the outcome of further discussions within EMT.
- 3.9. In June, the former CEO discussed the external legal advice that had been received with EMT. The legal advice indicated that if the sub-board director were unsuccessful in any subsequent process that followed, WUTH would put that individual at risk of redundancy. At that meeting EMT agreed (with some still holding strong reservations), to corporately support the proposal. Accordingly, following that meeting the sub-board director was invited to join EMT whilst matters proceeded.
- 3.10. The Remuneration Committee planned for July was deferred. However, in July there was a further discussion at EMT, where it was agreed to procure some specific specialist skills to support the sub-director on one aspect of the intended portfolio, which responded to the concerns of some executive directors.
- 3.11. There are disputed accounts as to whether following this discussion the former CEO suggested consideration of the proposal was on hold around this time, or whether he indicated it was delayed due to the cancellation of the July Remuneration Committee.
- 3.12. The Remuneration Committee considered the matter further in September 2017. They approved the post in principle, subject to further external advice on how to assess the sub-board director, who was the only internal candidate, against the ideal candidate profile.
- 3.13. The Remuneration Committee also sought assurance from the former CEO on the EMT support for the proposal. In the discussion that followed (whilst there are disputed accounts of what was actually said), the former CEO gave verbal assurance, based on which the Remuneration Committee concluded that one executive director who had held strong reservations on the proposal, had revised their position and was positively in support of the proposal.
- 3.14. This was not the case, and when this was relayed to the individual concerned, together with the news of the issues concerning the extension of the chairman's term of office, it sparked the executive director concerned to raise their disquiet about this and related matters.

The overall evidence does not support the allegation that the former CEO failed to ensure due process in connection with this proposed appointment. However, the Remuneration Committee agreed in the private NED meeting on 4 October, that in their view, the former CEO gave a misleading level of assurance to the Committee in September 2017 as to the views of a specific executive director. The former CEO says that he reasonably relied upon the agreement reached in EMT in June on this matter, and did no more than reflect in good faith, contemporary additional comments made by the executive director concerned about the recent work of the sub-board director.

The sub-board director independently secured an alternative position elsewhere in the NHS before matters were finally concluded at the Remuneration Committee in October. There are no concerns in regard to that individual's conduct: ultimately, they were left in an untenable position by the handling of this matter.

#### Extension of the Chairman's Term of Office

- 3.15. The responsibility for the appointment of the chair and NEDs at a foundation trust rests with the council of governors (COG) who are supported in that work by officers of the trust, one of the NEDs holding the position of the senior independent director (SID), and a sub-committee of COG known as the Nominations and Remuneration Committee.
- 3.16. The NHS Foundation Trust Code of Governance recommends that the normal term of a NED, including the chair, should not extend beyond a maximum of six years, although it is permissible in exceptional circumstances, subject to rigorous review, to extend this on an annual basis. The former chairman was appointed as chair of WUTH in July 2010 and had previously served for 2 years as a NED at the Trust.
- 3.17. In September 2015 COG agreed to recommend the extension of the former chairman's term by one year, to the end of June 2017. In September 2016 a similar extension was approved. COG indicated this was to be a final extension of term, which would expire at the end of June 2018.
- 3.18. In July 2017, COG revised this position when it agreed with the SID and former CEO that consideration of consistency in a period of significant change in the NHS and local health economy should be a factor when reviewing the chairman's position. COG also agreed that a further proposal to extend the chairman's term of office would be submitted for consideration in September 2017.



- 3.19. There are disputed accounts as to whether the CEO subsequently mentioned this COG amended position to EMT. However, unlike the previous two years, no attempt was made by the SID (or former CEO) to include the executive directors in the subsequent consultations leading to the report on the proposal to the Remuneration and Nominations Committee.
- 3.20. The SID, who was newly appointed to the role, says this was because they were advised that this was not required by the WUTH Constitution and would in any event have looked to the CEO to co-ordinate that aspect. The former CEO recollected the matter of leading the consultations had previously been managed by the SID and did not consider it was his responsibility to lead the consultation process.
- 3.21. Although NED consultation is also not required by the WUTH Constitution, the SID invited NEDs to submit any views for inclusion in their report on the matter. The timescale for response was very tight and over a peak holiday period, however all but one NED responded in time. A late written response was also received in time for the meeting to consider its contents although too late for inclusion in the written report. There were two NED objections to the proposed extension.
- 3.22. When the Remuneration and Nominations Committee met in September to consider the proposal, the SID advocated the extension and indicated the former chairman was willing to serve a further two years with a review at year one.
- 3.23. The proposal met a strong challenge from the lead governor and a persuasive response to the contrary, largely led by the CEO, with the SID taking a less prominent but nonetheless supportive advocacy. It is agreed neither of them referenced the views of EMT in that discussion.
- 3.24. Equally, the SID made no reference to the views of two NEDs, including the written views of the Chair of the Audit Committee received after the SID's report was written, and who did not support the proposed extension for good governance reasons. The SID said they did not do so as they felt the points raised were adequately covered in their report.
- 3.25. The proposal for the extension was approved and then subsequently discussed at an EMT meeting, where some executive directors raised their concerns about the proposal. EMT were advised (correctly) that it was a matter for the governors and they had no formal role in the process. However, no other explanation was given as to why, unlike the two years previous, EMT had not been consulted by the SID.
- 3.26. The outcome of the Remuneration and Nominations Committee was subsequently received by the COG at their meeting in September. The SID presented a summary report of the discussion at the Committee and set out the principal questions and the response to those questions, and recommended they approve the Remuneration and Nomination Committee's recommendation.

- 3.27. The draft minutes of the meeting had not been completed when requested by the investigator, however from statements received in connection with that meeting, there was no substantive debate at the COG, no objections were raised and the recommendation of the Remuneration and Nomination Committee and SID, was approved.
- 3.28. Shortly after that COG meeting, one of the executive directors contacted a governor about the process. There is some variance in the accounts of this conversation, and specifically around the timing of when the governor expressed concern about the former chairman's extension.
- 3.29. The governor concerned says that they did not express concerns about the 2017 process and had advised the executive director of their concerns in connection with the 2016 process. This is contrary to the recollection of the executive director.

The evidence found in the investigation does not support the allegation that the former CEO failed to ensure due process (as this primarily sat with the SID), or misrepresented the views of senior staff in connection with this appointment. Ideally however, in a healthy EMT and board, this matter would have come up for open and inclusive discussion which appears to have been past practice at WUTH.

There are some failings in the process led by the SID. It is of concern that unlike past practice, COG was not informed of the views of all of the board of directors; some were excluded, and adverse views were not openly shared with COG.

The COG should have reasonably been able to rely on the SID to have ensured that all of the board of directors views were represented to them, as this was unequivocally stated by the former SID in their report to COG/Remuneration and Nomination Committee. In the absence of this, the SID should ideally have explained why this had not happened and exposed the contrary views more explicitly.

If other events had not overtaken the matter, this process would have needed to be re-run to enable COG to receive account of all relevant views in their deliberations.

#### 4. Findings - Area 2 - Governance - Functioning of Board & EMT Relationships

##### Internal Management of Senior Staff Concerns of Senior Appointments

Issue: - It is alleged that the board and EMT relationships were not functioning effectively in 2017 and that NEDs failed to handle senior staff concerns appropriately when they were raised.

##### Functioning of the Board

- 4.1. The WUTH board entered 2017 with a relatively positive review following independent external assessment of their performance against Monitor's Well Led Framework. The same assessment noted that there was a strong NED cohort and a newly forming EMT (for which there were reported high levels of confidence from internal and external stakeholders).
- 4.2. The external assessment which was considered in detail by the board in September 2016, also indicated that there were no reported or observed tensions or factions in the board. Good challenge and debate had been observed between executive directors and NEDs, although some mixed views had emerged around the balance of debate and challenge at board to surface some of the more difficult issues.
- 4.3. At the time of the external assessment, the board had a stable NED cohort; two NEDs were due to retire at end of their term in mid 2017. By contrast, the executives had only the CEO predating 2016; three executive directors had commenced in 2016 and a further was to join in January 2017. This followed a high turnover in the executive team around 2012/13.
- 4.4. Noting this, seemingly most NEDs felt that for most of part of 2017 the board was functioning well, had incorporated two new NEDs, and they had no significant concerns to report. They acknowledge however, that the overall effectiveness of the board declined in the latter stages of 2017.
- 4.5. Executive directors did not share this confidence, and increasingly from Spring 2017 felt that the board was not functioning as effectively as it should be. From their accounts this was partly attributable to the style of the board (and former chairman in particular), which for some executive directors, they experienced as being unnecessarily structured and controlling, and which they considered did not sit well in the contemporary NHS work environment and with their expectations of a modern NHS unitary board.
- 4.6. Underpinning this concern, executive directors also felt that open dialogue within the board was being restricted because the former chairman was exercising a degree of undue control and influence on matters, and that he was seemingly "smoothing out" issues of contention.

- 4.7. This is not accepted by the former chairman or the majority of NEDs. The former CEO says he considered that, on balance, there was an over-focus on positive news at the board, which he says he did not entirely support, but does not agree this resulted in issues being suppressed.
- 4.8. The executive director's concerns were further compounded because they considered that there appeared to be a lack of independence in the former CEO and former chairman's relationship, as exhibited in the matters discussed in the previous section. Both the former chairman and former CEO dispute that this was the case, and this is not the general observation of NEDs; the Chair of Audit explicitly raised this as a risk when objecting to the proposal to extend the former chairman's term.
- 4.9. The NEDs, in contrast to the views of executive directors, generally welcomed the former chairman's approach (with some newer NEDs holding different views), including his oversight of executive requests for NEDs to fulfill tasks, which they felt ensured fair distribution of workload.
- 4.10. No evidence was provided by executive directors that the practice of oversight of NED activities by the former chairman had resulted in executive directors being restricted from accessing NEDs. NEDs also confirmed they had no concerns in this respect.
- 4.11. NEDs also reported that the pre-board meetings conducted by the former chairman had no adverse influence, directly or indirectly, on their ability to raise or discuss contentious or indeed any issue, at the subsequent board meeting, including amending minutes.
- 4.12. Executive directors did not attend these meetings, and no conclusive evidence in regard to the allegations that the former chairman inhibited executive directors from making amendments to minutes, was presented. There was significant dispute in accounts of the particular instance cited in the note of concern submitted to NHSI.
- 4.13. By summer 2017, as some difficult and challenging issues began to surface in board discussions, this seemingly tested the unity of the board's relationship particularly from the executive directors' perspective. It is difficult to determine how much this was a factor of the functioning of the board, or how much related to the increasing fractures in the relationship between the EMT and CEO. However, on balance, it would seem unavoidably, the latter impacted significantly on some board debates, and became more evident when contentious issues had not been fully discussed between the former CEO and EMT.
- 4.14. The most substantive of these issues reported to the investigation, related to the discussions on the outcome of the medical engagement survey, which exposed divisions between the CEO and some members of the board, as to whether the most appropriate leadership model for clinical triumvirates should be (executive) operational or medical leadership.

- 4.15. The survey results had not been considered by EMT in advance of the board meeting, having arrived only a few days previously (in the two weeks prior both the CEO and a key executive director had been on planned annual leave). In a challenging debate, tensions between these opposing views emerged, with the former CEO making an inappropriate remark, heard by several people (other than the former chairman) sat in close proximity.
- 4.16. From the former CEO's perspective (who does not recollect making the remark), he feels this could only have been out of frustration that the matter had not been fully discussed with him and EMT before it was presented to the board. The matter was subsequently resolved within EMT and presented and agreed as a unified solution at a following board meeting. One executive director believes the leadership point had been agreed between them before the meeting. The former CEO disagrees.
- 4.17. When the issues around the appointment of the sub-board director and former chairman's extension of term of office coalesced in early autumn, relationships between some executive directors, the former CEO, and former chairman, seemingly began to decline further. This resulted in the escalation of executive directors' concerns internally.
- 4.18. The subsequent handling of these by the former chairman in particular, but also other NEDs, further deteriorated the trust and confidence of the executive directors collectively. Relationships were irreversibly damaged in late December when the former chairman identified three of the four executive directors as the individuals who had raised concerns, without consent, and in front of other (limited in number) subordinate staff.

For a large part of 2017 it would seem on balance, that the board was not functioning as a unitary board, but this may not have been wholly evident to NEDs because of the contributory and underlying issues within the EMT. As the year progressed, all executive directors became increasingly disaffected by the former chairman's leadership of the board, which they felt was inhibiting open discussion of some issues (the former chairman with some support from NEDs, denies the latter). Executive directors also perceived that his leadership was increasingly compromised (denied by the former chairman and the former CEO) by the apparent lack of independence between himself and the former CEO.

The passage of time which the former chairman served the board (nearly 10 years, and almost eight as chair), might reasonably be held, on balance, to give some basis for the executive directors' concerns, in that his modus operandi had become so well established that it was organisationally customary, and thereby difficult to influence for newer board members. The former chairman does not agree this to be the case, however it is a useful reminder of why extended terms of office at board should be held in close review so as to ensure openness to fresh perspectives.

The board could, and should, have spent some development time at an early stage in 2017 with the new executive team when at full complement, to explore and discuss working practices and expectations, and thereby enabled a context for mutual exploration and development of an agreed board culture.

#### Relationships within the EMT

- 4.19. As has been mentioned above, a seemingly significant contributory factor to the issues that emerged in the board was the underlying dynamic in the EMT. It is of note that in both the external well led assessment, and following an early senior leadership event in 2017, the former CEO was advised of the need to spend some time settling in the new team through appropriate team development.
- 4.20. In the absence of this development, it would appear some of the underlying concerns within EMT did not surface in a constructive way and led to some inner factions forming within the team early in 2017.
- 4.21. It is not clear how well sighted the former CEO was on this emerging dynamic, and with hindsight, he acknowledges he should have given more time to develop the team. However, he says that increasingly during 2017 his attention was on external matters and on delivery of the key national priorities, and as EMT colleagues were extremely busy it was agreed to defer (disputed by EMT) these events.
- 4.22. The executive directors collectively perceived, in addition to a lack of focus on the team, that the former CEO was disconnected from some of the key issues in the trust and increasingly inclined to show frustration when difficulties or performance challenges emerged. The CEO reactions to these interactions were experienced by the executive directors as volatile or irritated, which at times they found to be intimidating.
- 4.23. Some of the examples of the CEO's contested behaviour provided to the investigation were substantiated by other witnesses. Some of these suggested that executives had on occasions been under unreasonable pressure to resolve issues without these issues emerging as problems. However, in other examples, it would seem that, on balance, it might be viewed more that the CEO was being assertive and not entirely unreasonable in holding a position to achieve a reasonable outcome overall.
- 4.24. The former CEO refutes any suggestion of a lack of operational grip, and whilst acknowledging he could become frustrated, he does not consider that his behaviour was at any time inappropriate. He cited examples of being personally supportive of his colleagues during 2017 in particular (on which they agree but say this does not negate the other experiences).

- 4.25. The CEO also acknowledges, that after five years in a demanding post, whilst a considerable distance away from his family base, he was finding the increasing demands on him trying at times, and it might have been possible on occasions, for this to have come to the fore.
- 4.26. A particular concern of the executive directors was the allegation that the former CEO had intimated to them that failure to deliver on a matter would compromise their job security. They say in the context of a historically high turnover in the executive team in recent years, they found this to be inappropriate and intimidating behaviour by the former CEO.
- 4.27. The former CEO rejects that he threatened individuals' job security and says that any such conversations that did take place were only a reflection of the pressure he was personally feeling in the context of other contemporary regulatory interventions which had resulted in senior NHS staff, including his peers, losing their positions for failure to deliver national priorities.
- 4.28. The turnover of board and sub-board level positions at WUTH does appear to be high; 24 senior managerial posts show resignations over the period April 2012 – December 2016, and this includes two refreshes of the executive team (Some of the executive turnover might be attributable to fall out from the 2012/13 issues at the trust which pre-date the former CEO).

The tensions in the team from the handling of other matters discussed earlier in this report (sub-board director and extension of former chairman's term), shows that the communications between the CEO and EMT were not as open as they could be and that EMT was not effectively working as a cohesive team. This apparently further disintegrated as the year progressed.

The absence of team development particularly in light of the advice of two external advisers, is remiss of the former CEO, (notwithstanding the pressures), and in the absence of this development, the team fragmented. This impacted adversely on the functioning of the board (and others working in close proximity with EMT).

On the balance of evidence considered, the former CEO seemingly had a powerful presence and at times this could be experienced by others as intimidating, particularly when the former CEO was frustrated. It would seem that the former CEO was not fully appreciative of his impact on others, particularly when seemingly frustrated.

In these circumstances, whether this was his intent or not, his behaviour was experienced as intimidating and was thereby not always consistent with NHS healthcare leadership values.

The former CEO considers this was an unfortunate reflection of his own pressures at that time for which he apologises.

### NEDs Management of Internal Concerns

- 4.29. At the end of September, in the context of growing disquiet within the EMT and concerns that the former CEO had allegedly misrepresented their views to the Remuneration Committee on the issue of the sub-board director, an executive director approached the SID to escalate their concerns.
- 4.30. There are disputed accounts of the status of the conversation between the executive director and the SID as to whether this conversation was expressly under WUTH freedom to speak up policies, or whether this was simply referenced by the executive director to show compliance with the policy. There is also substantive dispute between both parties on the level of agreement between them regarding the subsequent involvement of the deputy chair.
- 4.31. However, after discussing matters with the SID, the executive director, supported by another executive director, met with the deputy chair. They both shared their growing concerns about matters relating to the former CEO's leadership, and wider issues relating to the culture within WUTH.
- 4.32. In consequence of that discussion, the deputy chair sought their consent to refer the matter to the former chairman. One of the executive directors does not agree this was a consented position, but more one on which they felt compelled to agree under strong persuasion.
- 4.33. The former chairman subsequently met with three executive directors as a group a few days later and spoke with another on the same day. All executive directors reinforced their concerns about the former CEO's leadership, wider culture within WUTH, and issues concerning the former chairman's extension of term of office. There is dispute as to whether the file note of the meeting retained by the former chairman fully represents the concerns the executive directors shared with him.
- 4.34. It is agreed that in this conversation, all executive directors indicated they did not wish the former CEO to be made aware of the concerns they had expressed because they alleged they held concerns about potential retribution. The former CEO considers this was an unreasonable position to hold and without substance.
- 4.35. There has been some suggestion that the board secretariat was involved in this matter by the former chairman before the executive directors had consented. The evidence does not support this to be the case.
- 4.36. The former chairman then met and discussed with NEDs the issues concerning the former CEO which had been brought to his attention. The NEDs agreed that while they could not recollect the detail of the former CEO's statement to the Remuneration Committee, it had misled the NEDs.



- 4.37. The CEO says this was not his intent and believed he was reflecting the shared agreement and a recent comment by the executive director concerned about the sub-director's recent work on a particular project.
- 4.38. On the other issues raised and discussed at that meeting about the former CEO's leadership, while in agreement on some points, NEDs concluded that nothing had been presented which could support a sudden intervention.
- 4.39. As a result, and mindful of the need to preserve the anonymity of the executive directors' position, it was agreed by NEDs that the former chairman would meet with the former CEO and discuss with him the need to actively seek alternative employment in a sensible timescale on the basis that it was now time for him to move on after five years in post.
- 4.40. Two meetings between the former CEO and former chairman to discuss this, took place at the end of October, when the former CEO indicated he also wanted to move on and was actively looking for alternative appointment nearer to home. He also shared at that meeting that he was seeking a non-executive position in the private sector. The former chairman says the full detail of the terms of this appointment were not fully disclosed to him at this stage and only became known to him subsequently.
- 4.41. There is a substantive and unresolved dispute between the executive directors and the former chairman, as to whether the former chairman subsequently met with the executive directors to feedback on the outcome of his discussion with the NEDs on the concerns they had shared with him.
- 4.42. The executive directors maintain that no such meeting took place, and in the absence of any indication that their concerns were being addressed, escalated matters to NHSI in November. The former chairman submitted a file note of the alleged discussion to the investigation and reaffirmed that this meeting had taken place between them.
- 4.43. In December, following the departure of the former CEO and the exposure of matters in national media, the former chairman disclosed in a private board meeting attended by other sub-directors, the identity of three of the four executive directors who had raised concerns. This caused considerable embarrassment for the named executive directors, who additionally considered that this unconsented disclosure was in breach of the confidentiality provisions in WUTH freedom to speak up policies.
- 4.44. The former chairman says he did not feel it was inappropriate to share the names as it was a closed board meeting with only two sub-board directors present. He apologised to the executive directors concerned later at the same meeting.
- 4.45. The former CEO was never fully apprised of the concerns of the executive colleagues by the former chairman, or any other internal member of WUTH, and learnt largely of these through media coverage.

The manner in which these issues were handled initially does not seem on the face of it to have been inappropriate, even given the disputed accounts. Given the seriousness of the concerns being presented, and the seniority of staff involved, it would have been necessary for the SID to have escalated matters to other NEDs. Executive directors should have reasonably expected to have facilitated that process in the best interests of the WUTH, and in order to take matters forward in an appropriate way to respond to their concerns.

Having been made aware of the concerns by the full complement of executive directors, it should have prompted the former chairman and NEDs to act (with suitable safeguards), to establish an independent investigation to gain greater clarity and understanding of all the issues being raised, and to have escalated matters to NHSI.

The failure to do so left all parties concerned in an invidious position, and in the absence of any substantive feedback or apparent actions, further undermined the trust and confidence between the executive directors and the former chairman in particular, and possibly, the wider NEDs.

Ultimately, trust and confidence in the handling of these matters became so eroded that it compromised the effective leadership of WUTH, and when the former chairman breached individuals' confidentiality without consent, the relationship between him and the executive directors was irretrievably broken.

The failure to act and deal with these issues appropriately exposed WUTH to a period of unstable leadership which fell short of the principles enshrined in the NHS Constitution and responsibilities of the board as a whole.

## 5. Findings - Area 3: Culture – Working Environment that Inhibits Staff Raising Concerns

Issue: It is alleged, that within WUTH there is an unhealthy working environment and culture which inhibits staff raising concerns.

- 5.1. The intent of this investigation was to identify if the concerns of the executive directors that the culture within WUTH prevented staff from raising concerns, was grounded in more substantive organisational cultural issues.
- 5.2. The investigator was mindful that in November 2017 the board received a report which suggested there were some very serious concerns about working environments and cultures which had begun to emerge in some areas of WUTH, and that this contrasted with earlier information and surveys which showed some steady progression towards improving the organisational culture.
- 5.3. The board commissioned their own review into these matters, and accordingly the investigator waited for the outcome of that report. That report received in January indicated some significant issues suggestive of some deep-rooted issues and behaviours, some of which were seemingly not recognised by the perpetrators. This in itself serves to provide a clear indication of the challenging issues within the organisational culture at WUTH.
- 5.4. Independent of that review, a number of separate issues were brought to the attention of the investigator which show that staff across WUTH have concerns about; the impact of cost improvements on services, the behaviours of senior leaders, fear about speaking up, and concerns that to do so will promote some adverse response. Particular concerns were also expressed about the position of nursing within the trust and its ability to influence to achieve the level of care that nursing staff would wish to provide, which appear to warrant urgent further inquiry.

It can only be concluded that there appear to be some deep systemic cultural issues within WUTH, on which the trust is in need of external assistance and advice to enable matters to be appropriately surfaced.

Staff also need further external support in regard to freedom to speak up, so that they can have confidence that such issues will be properly considered and dealt with, without the concern that speaking up will have adverse consequences for them personally.

## 6. Findings - Area 4: Governance - NHSI Response to Concerns Raised by WUTH Senior Staff

Issue: - Did NHSI respond appropriately to the concerns expressed to them by WUTH senior staff?

- 6.1. WUTH executive directors first discussed their substantive concerns with NHSI North team in early November, when three of the four expressing concerns attended a meeting. Notes of that meeting were sent back promptly to the executive directors, however were not submitted to NHSI until late November when other issues concerning the former CEO's employment with an external company emerged.
- 6.2. On receipt, NHSI promptly considered internally, and then discussed the emerging concerns with the former chairman of WUTH. NHSI advised the former chairman of the need for formal investigation by an independent person, of the executive directors' concerns, and of the external appointment, and recommended (and gave), further external advice and input on the matter.
- 6.3. Whilst these matters were being dealt with, NHSI maintained contact with the executive directors and offered support as necessary. NHSI also obtained from the executive directors' consent to share the agreed note of concern with the former chairman, to enable WUTH to consider commissioning an external investigation into those concerns.
- 6.4. During the course of discussions between NHSI and WUTH, it was established that the former CEO was to resign by mutual consent. However, in the absence of a satisfactory clause in the contract of employment, he would be required to work the remainder of his notice period (once he was fit for work) outside WUTH.
- 6.5. Subject to due diligence checks, NHSI offered to consider a short-term placement to assist WUTH. However, while this was under consideration, and without approval, the former chairman issued a press statement confirming the arrangement. This press statement was in breach of any substantive agreement and although due diligence checks were then completed, the offer of assistance was withdrawn by NHSI and WUTH reverted to identifying an off-site project for the former CEO.
- 6.6. NHSI also subsequently confirmed it would commission its own investigation, independent from WUTH, into the matters that had arisen for assurance.

The evidence shows that the handling of this matter, and the advice given to WUTH by NHSI, was timely, comprehensive and tightly managed by senior personnel, and that appropriate contact and support was offered to the executive directors raising concerns. The prospect of the possible secondment for the former CEO was limited to the outstanding period of his contractual notice and subject to due diligence checks.

## 7. Findings – Area 5: Governance/Culture - WUTH's Handling of a Specified Disciplinary Case

Issue: Are there grounds for concern regarding WUTH's handling of a specific disciplinary case in 2017?

- 7.1. In 2017, WUTH had a complex and sensitive disciplinary case which concerned some allegations of sexual misconduct by an established consultant (respondent). The respondent in the case submitted a grievance to WUHT which was investigated and determined in advance of the disciplinary hearing.
- 7.2. The respondent's grievance raised seven concerns which fell broadly under two headings; concerns about the conduct of the case manager (an executive director) and, concerns about procedural failings in the management of the investigative process.
- 7.3. Those matters were investigated, and the investigation report of those grievances was reviewed to give external professional opinion on the grievances raised and conclusions of the investigation. This review was consistent with agreed WUTH procedures. The review supported the conclusion of WUTH's own investigation of the grievances, concluding that:
  - 1) the allegation of racial discrimination was unsubstantiated;
  - 2) the alleged victimisation was unsubstantiated; and
  - 3) there were some procedural failings in the management of the case, including vagueness and lack of process in some documentation, and including on the full nature of the allegations, failure to issue appropriate documentation relating to, and management of, exclusion, and lack of pace in the investigation.
- 7.4. The external review further concluded that the issues did not present a significant barrier to the fair conduct of the case. A further review of the extensive paperwork within this investigation supports that as a reasonable and balanced conclusion.
- 7.5. The disciplinary hearing followed, and the respondent was supported by legal counsel at the hearing. The investigator has been advised that the respondent did not submit an appeal against the outcome of that hearing, which resulted in summary dismissal and referral to GMC.

The additional review of the case has not added anything further to the issues identified as part of the respondent's grievance investigation.

The detail of the case itself however serve to underline that staff felt inhibited and unsupported in raising concerns about the conduct of colleagues over a prolonged period of time. This is suggestive, as highlighted earlier in this report, that there are some deep systemic cultural problems in WUTH, which need rooting out, and for staff to be supported to raise concerns, so that a healthier working environment and organisational culture can be developed.

**Note of Thanks**

The investigator would like to place a note of thanks to a member of the WUTH corporate administrative staff who was exceptional in supporting the requests for information and in arranging interviews and supplying contact details.

Thanks go also to the support received with notetaking at interviews, from a member of staff within the NHSI legal team.