

ROYAL BROMPTON & HAREFIELD NHS TRUST

Minutes of a Meeting of the Trust Board held on 12 July 2005 in the Boardroom, Royal Brompton Hospital

Present: Lord Newton of Braintree: Chairman
Mr C Perrin: Deputy Chairman
Mr R Bell: Chief Executive
Mrs I Boyer: Non-Executive Director
Professor T Evans: Medical Director
Professor M Green: Non-Executive Director
Mrs M Leadbeater: Director of Finance
Mrs S McCarthy: Non-Executive Director
Mr P Mitchell: Director of Operations
Professor A Newman Taylor: Deputy Chief Executive

By invitation: Mr R Craig: Director of Governance and Quality
Mr N Hunt: Director of Commissioning and Business
Development
Ms J Thomas: Director of Communications
Mr T Vickers: Director of Human Resources
Ms J Walton: Director of Fundraising

In Attendance: Mr N Chahal: Charity Accountant
Mr J Chapman: Head of Administration
Mrs E Schutte: Executive Assistant
Mr D Wilson: Assistant Director of Finance

Apologies for absence were received from Dr. Caroline Shuldham, Director of Nursing and Quality and Ms Josephine Ocloo, Chair of the Royal Brompton and Harefield Patient and Public Involvement Forum.

The Chairman welcomed members of the public to the meeting.

REF

2005/73 EVENTS AT HAREFIELD HOSPITAL FROM 7 TO 9 JULY 2005

The Chairman offered the Board's congratulations to all who were involved in the events at Harefield Hospital from 7 to 9 July 2005 and in making them an outstanding success. The celebration of the 25th anniversary of the first heart transplant operation at Harefield Hospital was a particular source of pleasure and a special credit to the Hospital and the Trust.

Mrs Jean Brett, Chair of Heart of Harefield, echoed the Chairman's comments saying that the events were especially heartening to Harefield's staff, patients and carers.

2005/74 APPOINTMENT OF NON-EXECUTIVE DIRECTOR

The Chairman reported the appointment of Mrs Sonya Bhatt as a Non-Executive Director of the Trust. Mrs Bhatt had considerable experience as an accountant, would make a valuable contribution to the Trust Board and would be a member of the Trust Audit Committee. A formal announcement of Mrs Bhatt's appointment would be agreed shortly with the NHS Appointments Commission.

2005/75 MEETING OF THE AUDIT COMMITTEE ON 16 MARCH 2005

The Board received the minutes of the meeting of the Audit Committee which took place on 16 March 2005. Mr Charles Perrin, Chairman of the Audit Committee, asked the Board to note that the meeting was inquorate and the status and authority of the meeting was raised by him with the Auditors who were present. They were content that the meeting should continue and its proceedings be reported subsequently to the Trust Board.

Mr Perrin also asked the Board to note that since September 2004 he had held office as Chairman of the Trust Audit Committee and the Trust Finance Committee which was not ideal. The Board would have an opportunity to review the appointments as a consequence of the appointment of a new Non-Executive Director.

Mrs Jean Brett, noting that Mr Perrin chaired both the Audit and Finance Committees asked if it was the consequence of the sad loss of Mr Ronald Gorlin in 2004. Mr Perrin confirmed it was only for this reason that he had had to undertake both roles on an interim basis.

2005/76 MEETING OF THE AUDIT COMMITTEE ON 28 JUNE

The Board received a summary of matters considered by the Audit Committee at a meeting on 28 June 2005.

Mr Robert Craig, Director of Governance and Quality, asked the Board to note that the external auditors had reviewed the quality of patient data and patient medical records as part of their audit programme for the year. The auditors were critical of the quality of paper medical records and their report together with the recommendations from the audit had been referred to the Clinical Records Committee and the Operational Team for review and implementation.

Mrs Jean Brett, Chair of Heart of Harefield, asked why there was only a summary of matters considered by the Audit Committee rather than the minutes. Mrs Mary Leadbeater, Director of Finance, explained that the Audit Committee is a statutory committee of the Board and as a consequence the approved minutes were presented to the Trust Board for information after the Audit Committee had ratified them. It was the Committee's practice however to inform the Board of matters discussed at the immediate following Board meeting.

2005/77 MEETING OF THE FINANCE COMMITTEE ON 28 JUNE 2005

The Board received and noted a summary of matters considered by the Finance Committee at a meeting on 28 June 2005.

Mr Charles Perrin, Chairman of the Finance Committee, drew attention to a substantial diminution in the value of land and building fixed assets of the Trust which arose from a valuation by the District Valuer.

Mrs Mary Leadbeater, Director of Finance, explained that the valuations which related to land owned both by the Trust and by the Charity took place at different times over a five year cycle and as a consequence the Finance Department are required to use national indices to update values and in the last few years use of these indices had led to a rise in the value of land and building fixed assets. These uplifted figures had now been revalued downwards by the District Valuer. Deloitte, external auditors to the Trust, had agreed that the national NHS indexation process was questionable in respect of large value assets.

2005/78 ANNUAL ACCOUNTS AND ANNUAL REPORT FOR 2004/5

The Board received the accounts and annual report for 2004/5 and congratulated Mrs Mary Leadbeater and members of her team for the significant work that had been undertaken in the year to produce annual accounts which had resulted in the Trust achieving an income and expenditure surplus of £7,000, meeting all statutory duties.

Mrs Suzanne McCarthy, Non-Executive Director, drew attention to a reference in the report from the Director of Finance that the Trust is keen to seek Foundation Trust status when the Board had agreed only to explore it. Mr Robert Bell, Chief Executive, said Department of Health guidance indicated that all NHS Trusts will achieve Foundation Trust status by 2007/8. The Board had now to recognise the Trust was mandated to become a Foundation Trust and a paper on this would be discussed at the meeting on 27 July. The Chairman recommended that the phrase should be changed to "The Trust wishes to explore Foundation Trust status". This was agreed.

Mr Robert Craig said the Risk Strategy Committee had reviewed the statement of internal control in the accounts at its most recent meeting. It had made minor changes on Page 3 which had been incorporated into a revised statement that was tabled for the Board meeting. Mr Craig asked the Board to note the changes which were not material to the statement.

2005/79 EXTERNAL AUDITORS OPINION ON THE ANNUAL ACCOUNTS

Mrs Mary Leadbeater, Director of Finance, said that in considering the annual accounts and letter of representation, Board Members would have noted the continued existence of a contingent liability in respect of the agreement with Partnerships UK (PUK) signed in 2002 to share the procurement costs of the Paddington Health Campus

Development (PHCD) Project. The Trust's position, at 31 March 2005, was that the Outline Business Case for the PHCD had been submitted to the Department of Health and an amendment was in preparation, the agreement was in existence and there was no intention to terminate it. As a consequence the agreement had to be noted as a contingent liability in the Trust accounts, recognising that if the PHCD was abandoned PUK would be entitled to reimbursement of the share of the procurement costs that had been supported. Mrs Leadbeater said her understanding, which was shared by the Finance Director of St. Mary's NHS Trust and the St. Mary's Trust Board which had considered the matter at a recent meeting was that the procurement costs incurred at 31 March 2005 were not an actual liability to be accounted for in 2004/05.

Mrs Leadbeater said Deloitte, the Trust's external auditors, had a different opinion which it had explained in the paper which they had submitted to the Audit Commission on 8 July and which had been distributed to Board Members on 11 July. In their opinion the agreement provided for liability to accrue over the period of the project development and in the absence of any firm evidence that the minimum amount that accrued to be paid under the agreement will not be payable, the events after March 2005 created a liability amounting to £3.244m which should be recorded in the Trust accounts and charged against the income and expenditure account for the year. Mrs Leadbeater said she had sought an opinion from the Department of Health technical advisors who had confirmed her understanding that the accounts should show a contingent liability existing at 31 March 2005. The Auditors had written to the Audit Commission to explain their position. Their letter which had been reviewed by the PHCD Finance Team contained errors and the Team had written to the Department of Health.

Mr Robert Bell, Chief Executive, said there was no dispute that a liability existed between the Trust and PUK. The only material issue was when it became an actual liability to be accounted for. The agreement had to be terminated for the liability to materialise; only the two Trust Boards acting singly or jointly could terminate it. The Trust had received no request from PUK for repayment since the SHA abandoned the PHCD Project nor had any meeting taken place with PUK to actualise repayments.

Mr Charles Perrin said the liability was debated at length by the Audit Committee which supported the opinions given by the Director of Finance and the Chief Executive. The Board was asked to note that the Auditors had given a qualified opinion and not an adverse opinion in their report to the Directors and, although the liability was above the materiality threshold, it was within 1.1% of the Trust's assets. However, it was important that the difference of opinion with the Auditors is fully disclosed both to the Board and in published Accounts. Mr Perrin further said that the SHA Chief Executive had

indicated that the Department of Health or the SHA may contribute to the development costs. For this reason there was uncertainty over the quantum of liability.

Recognising that the accounts had to be signed and submitted to the Department of Health by Friday 15 July, Mr Perrin said he believed that the Director of Finance should seek an opinion within 24 hours from the external auditors on the consequences of the Trust's intention to treat the development costs as a contingent liability in the 2004/5 accounts. The Chairman therefore recommended that the accounts should be signed, that the letter of representation should be accepted subject to any modifications following notification of errors, that the external auditors should be asked for written views within 24 hours on the consequences of the Board's decision and should any untoward matter arise the Chairman of the Finance Committee, the Director of Finance and the Chief Executive should review it immediately and refer to him for decision.

The Board supported the Chairman's recommendation.

2005/80 COMMENTS FROM MEMBERS OF THE PUBLIC

Mrs Jean Brett, Chair of Heart of Harefield, expressed sympathy for the position of the Trust in facing a liability of £3.2m. However, in the light of the many warning signs on the Paddington Project, it was worth the Trust considering PUK's involvement throughout, including what advice PUK gave and whether it should have got out sooner.

The facts were that in July 2002 the Trust entered into a partnership agreement with PUK specifically to develop the Paddington Health Campus. That project having failed, the Trust as a signatory to the agreement was liable. Mrs Brett requested a copy of the partnership agreement and of the external auditors' letter to the Audit Commission.

Pointing out that external auditors were employed to advise the Trust, Heart of Harefield did not feel it was wise for such advice not to be accepted. The impression could be given that the Trust was being defensive in protecting its bottom line. It would be better to be diplomatic, face the facts and avoid escalating the difference of opinion with the Trust's external auditors. Having accepted the liability, bodies such as the Department of Health and SHA could be approached for assistance.

Mrs Brett said that there could be no doubt that Paddington had failed, it would soon be the subject of an inquiry by a body such as the Department of Health or National Audit Office. With this background it was not helpful to have a disagreement with the Trust's external auditors on when the Paddington Campus Development costs should be met. Point six in the suggested letter of representation was of concern.

Mr Perrin said he had noted Mrs Brett's comments with care. He had already suggested he considered it would be helpful for the Board to have an opinion from the external auditors on the intention to treat the liability as contingent and the basis of any difference of opinion would be disclosed. No doubt the Audit Commission would have a view and the external auditors would note it. They were not expected to become further involved but if they did so the Board would address their concerns. Mr Perrin said he had no reason to believe the external auditors might want to cease to act for the Trust. In any event they were appointed by the Audit Commission and not by the Trust. Mrs Leadbeater said all discussions with the Partner who represented the external auditors and the Audit Team had been amicable and professional. They recognised the status of the liability was uncertain.

Mr Bell said the external auditors had confirmed they were prepared to certify the accounts; there would be much greater cause for concern if the Board was proceeding to sign off the accounts against the advice of its auditors. Exceptions occur frequently in published accounts of commercial companies and were often over far more serious matters than the liability in question. While a note to the accounts is never desirable, in the Trust's case it related to an opinion and was not a statement of disagreement.

Mr Bell further said that the agreement with PUK related to the single issue of the PHCD. The Trust's view was that although the proposed development in the OBC had been abandoned there would be a development at Paddington for St. Mary's Hospital and thus the development costs incurred would be applicable in some form in the future. Mr Bell reiterated that the Board was acting prudently under the recommendation that had been agreed but if the external auditors gave a contrary opinion the matter would be reconsidered.

On disclosure of the agreement with PUK Mr Bell said that there were other signatories who would have to be consulted. All the signatories would also have to be satisfied there would be no breach of confidentiality over disclosure.

Mrs Brett reiterated that the external auditors were appointed to advise the Board and by appearing to reject their advice problems could be caused. The difference of opinion was whether the £3.2m was a contingent or actual liability with the Trust defending the contingent liability position, neither could Heart of Harefield agree with the Chief Executive's view of a future development being covered by the same PUK partnership agreement.

The Chairman said the Board was not disregarding the advice the external auditors had given. It did not share their opinion and was referring the matter back to them.

2005/81 LETTER OF REPRESENTATIONS

The Board noted the letter of representations. The Chairman thanked Mrs Brett for her comment on point 6 within the letter of representation and the connection with item 9 on uncorrected mis-statements. Mr Perrin said Mrs Brett's reference to Paragraph 6 and Item 9 of the attached schedule of uncorrected mis-statements should be referred to the external auditors. This was agreed.

The Board otherwise noted and agreed the letter of representations.

**Lord Newton of Braintree
Chairman**