

Memorandum submitted by Jane Hanna, Former Non-Executive Director of South-West Oxfordshire Primary Care Trust

This statement is made by Jane Hanna, former non-executive director of South-West Oxfordshire Primary Care Trust (PCT). The Health Select Committee received evidence on Thursday 10th November 2005 regarding the potential democratic deficit arising as a result of a significant reduction in the number of Non-Executive Directors in the planned changes to primary care. This evidence concerns the issue of an existing democratic deficit in Primary Care Trust Boards particularly in the context of the contracting out of services to the private sector.

My interest in this matter is as a former non-executive Director of South-West Oxfordshire Primary Care Trust (2001-2004) and non-executive Director of the Oxford Radcliffe Infirmary NHS Trust (1993-1997); as a tutor in constitutional and administrative law at Keble College, Oxford and as a district councillor for the Vale of the White Horse, Oxfordshire. I became committed to public and patient involvement in the NHS following the sudden unexpected death of my partner in 1990, which also led to my founding a health charity, Epilepsy Bereaved and working as a member of the Joint Epilepsy Council. This statement includes a summary of the Netcare Contract and the decision-making of the PCT and a more detailed statement of evidence supporting this summary.

The Statement below is has been produced using evidence from a file of written papers and on a written and contemporaneous record kept of events as they developed.

Summary of The Netcare Contract and decision-making of the PCT

The experience of South-West Oxfordshire PCT in relation to the contract with Netcare represents a test case of the effectiveness of Non-Executive Directors in ensuring proper stewardship of public funds, proper governance; accountability, openness and locally responsive decision-making. I believe that South-West Oxfordshire PCT was the only PCT board in England to vote against the contracting out of cataract operations to Netcare. The decision of South-West Oxfordshire PCT was necessary to authorize the signing of the contract with Netcare. This was because there was no national legislation or national directive from the Secretary of State for Health overriding the devolved decision to the PCT. The decision was an important test case of Shifting the Balance of Power and the roles and responsibilities of a Primary Care Trust Board.

The SW PCT Board voted not to approve the private cataracts unit because it was against the local public interest. Board members, including non-executives were subjected to bullying tactics in the months leading up to the decision and subsequent to this decision. Non-Executives also experienced serious delays and barriers to accessing available information relating to the decision and had to correct minutes of the public board meetings on key aspects of the PCT Board's position on at least four separate public board meetings between January 2003 and January 2004. Exceptional pressures were placed on the non-executive directors of the Board and we observed the effects of greater pressure on the executive members of the Board. In the immediate aftermath the PCT was prevented from sending out a press release giving the reasons for the decision and instead the Thames Valley Strategic Health Authority (TVSHA) issued a press release which was critical of the decision of the Board. The non-executives were pressured into meeting in emergency session over the weekend immediately following the decision of the Board and following our decision not to change our decision, the Chair was pressured into calling an emergency meeting of the PCT. The TVSHA agreed to underwrite the financial risks to the PCT. The PCT Board approved the contract with Netcare at this meeting, although all the original non-executives (apart from the Chair) voted against this reversal because of continued concerns of financial impact on the Oxfordshire system as a whole and the impact on clinical services.

In January 2005 the PCT Board Chair was not renewed and the Chair of the Thames Valley Strategic Health Authority (TVSHA) resigned. In an emergency meeting of non-executives in January 2005 we discussed how fundamental relationships of trust within the Board ; between the Board and the TVSHA and the NHS Appointments Commission had been seriously damaged and the need for an inquiry into events. I resigned in June 2005 after experiencing other decisions where the PCT was required to rubberstamp national policy but required to present decisions as local decisions. I also resigned in the end because despite

a request by the non-executives of South-West Oxfordshire PCT in January 2005 for an investigation into events there was no internal or public inquiry.

Subsequent to the decision, the TVSHA commissioned an independent report into eye services in Thames Valley. The Finnemore report was published in September 2005 and concluded that local NHS services were on target to meet government waiting lists for cataracts some as early as the summer of 2004 and that there was excess capacity in Oxfordshire and highlights the need for urgency in addressing risks to local eye services.

The National Audit Office also investigated the netcare contract from a remit of best value, but this did not include investigating allegations of political interference with the PCT.

A public board paper for the meeting of South-West PCT on 24th November 2005 includes a six month review of the NETCARE contract. Netcare are currently contracted to provide 800 cataracts a year in North and South Oxfordshire from April 2005 for four years. South Oxfordshire is contracted to take on average 456 cataracts and 593 pre-operative assessments per year. The Board Paper shows that in the first 6 months of the contract 255,000 pounds has been paid to Netcare to carry out assessments and operations although only 40,000 pounds of work has been carried out.

A six month review in November 2005 found that only 50 of 323 available pre-operative assessments have been booked and only 43 operations have been done out of 249 theatre slots available. The tariff cost is 72 pounds for preoperative assessments and 824.34 pounds for a cataract operation, but the cost is 6 times the national tariff as the NHS has to pay for all contracted procedures, regardless of whether they are performed. The set up costs of the mobile units and project management are not mentioned in the review but have to be paid for by the NHS.

The review concludes that 'the uptake of slots for Netcare has been slow. The population commonly requiring cataract surgery is elderly, and the Oxford Radcliffe Hospitals have a strong reputation and short waiting lists'. The review notes that in relation to the general surgery chain run by CAPIO referrals have also been slow and concludes "The concept of Independent Treatment Centres has been slow to catch on".

Detailed evidence on events leading up to the original board decision on 27th November 2003

Board members of South-West Oxfordshire PCT were first made aware of initiatives on treatment centres in January 2003 but the Board had concerns even at this stage about the lack of information and transparency about the initiatives. The minutes of the Board meeting on 27th February 2003 (after correcting at the Public Board meeting on the 24th April 2003 state

'The Board accepted the next steps. It was noted that the PCT needed clarity on the timescale and additionally at what point the PCT would need to make a decision to commit or pull out'.

It was always the understanding of the PCT Board that the board was required to take a decision to approve each Treatment Centre after reviewing the outline and full business case, and that legally the signature of the PCT Board was needed. We also understood that the Secretary of State has power to make a formal direction to the PCT.

Board members considered an initial proposal for an ophthalmic treatment centre at a private meeting in July 2003 and a decision was made unanimously at this stage not to proceed because it was not in the interests of Oxfordshire's population. This was because the NHS ophthalmic service was on target to meet waiting lists and had Beacon status as a centre of excellence and that funding a private unit would not be cost-effective and would expose the existing system to serious risk. Two other Primary Care Trusts locally did the same and a letter was sent by the Board to the Thames Valley Strategic Health Authority requesting withdrawal from the scheme.

The Chief Executive of the PCT received a letter on August 21st from Celia Cohen at TVSHA stating that after detailed discussions with the operations directorate of the Department of Health at the highest level the request of the PCT had been refused and that "we must remain a committed participant within the

procurement process". The PCT Board, however, had never made any decision to commit to the ophthalmic Treatment Centre (Ophthalmic ISDTC).

Leaked papers from an anonymous source on 21st August 2003 included an update from the national team to PCTs (Richard Audley) stating that a meeting will be arranged with the bidder and that :

"this is a pro-active meeting and not to question if anybody agrees or disagrees with the ISDTC".

Under the section of the paper `Programme Forward`, the update continues:

" we only have until 19th September to resolve all outstanding issues... The buy in and signature on the contract of the PCTs is your responsibility. If you need any support with engaging them or keeping them on board do not hesitate to ask the NIT OC Team. We will provide assistance in any way we can, and if required will call on that provided by Sir Nigel Crisp and John Bacon to remind PCTs of their commitments and responsibilities to this programme"

A leaked email on 27th August from Tony Hickson at TVSHA stated

"The OC chain has based their figures on the Cataracts, PLUS other ophthalmic procedures, which I know is flawed, however these figures have been out in the tender document by the NIT (National Implementation Team) and cannot be changed".

Leaked anonymised emails on 28th August 2003 between managers in Oxfordshire state the view of one manager

"I think we must keep any local noise to zero"

Executive members of the Board met with TVSHA and national team in September and reported that they had negotiated a reduction in the numbers of the cataracts. Non-executives express concern in private and public sessions of the PCT of the lack of information on the initiative including financial risk and impact on clinical services.

The South-West Oxfordshire PCT Board decides in a public board meeting on 25th September to proceed to consider the full business case for the ophthalmic ISTDC but only on condition that the business case ensures that the treatment centre meets the needs of the local population; is affordable; that workforce issues are sustainable and integration with local services is achievable". The PCT also agreed to consult the public on the Treatment Centre at the September meeting (minuted as a correction to the September Board meeting minutes at the PCT Board meeting of November 27th). A letter is sent to TVSHA from the PCT to inform them of the PCT Board's position.

The Oxford Radcliffe Hospitals NHS Trust produced an impact assessment on the eye hospital concluding that the

"the current plan is drastic on the Oxford eye Hospital".

On the 13th October the Chair of the Local Optometric Committee wrote to ask the Chief Executives to put their views before any Board was made. The Committee

"We feel strongly that the DTC locally is unnecessary to meet the NHS targets for Cataract Surgery in Oxfordshire, but risks seriously undermining the quality of training, and therefore in the long term the standard of Clinical expertise"

Neither the full impact statement from the ORH or the letter from the Chair of the Local Optometric Committee were circulated to non-executive board members at this time or indeed at any time before the decision of the PCT Board on November 27th.

Executive directors were under intense pressure from August onwards and on November 5th the Finance Director sought the support from Martin Avis, the Chair of PCT and Jane Hanna, non-executive in a emergency meeting with Cherwell Vale PCT representatives; members of the national team and the TVSHA.

A written note of the pre-meeting between South-West Oxfordshire representatives and Cherwell Vale representatives states the understanding between South-West Oxfordshire PCT and Cherwell Vale PCT :

“SHA is pushing for early approval to the OTC ahead of the December Public Board meeting. All present agreed serious reservations regarding the process and merits of the OTC which needed to be progressed with the TVSHA”

At the meeting with TVSHA and the national team, the PCT representatives from both boards stated that there was a serious risk that PCT boards might not approve the full business case given the speed of decision-making; the gaps in information and full evidence and the of lack of patient and public involvement or consultation. A TVSHA representative said

“that the PCT did not have an option. The Boards would be surcharged”.

When the basis of a surcharge was challenged, the representative stated

“ ..this was new territory”.

When the TVSHA were asked to put the liability to surcharge in writing another TVSHA representative present said the

“the TVSHA would never put a threat in writing”.

It was agreed that the PCTs would consider the full business case at a meeting in November, but would not guarantee approval.

At a private meeting of South-West and South-East Primary Care Trusts the Board, Martin Avis explained that he and other Chairs had been verbally threatened since August. Martin told the meeting that another local PCT Chair had been told she would lose her job if the contract was not approved. Subsequently I have learnt from the person involved that it was the Chair of Cherwell Vale PCT.

At an emergency private session on Tuesday 25th November between senior managers of South-West Oxfordshire PCT and Martin Avis, Jane Hanna and Catherine Kirby (Non-Executive), the Finance Director, Caroline Kenny became distressed after realising non-executives might vote against the treatment centre and made a statement `but what about my career?. It was understood by everyone present that all that senior managers has been under extreme pressure regarding their personal futures.

The Non-Executives had made it clear to the Chair on many occasions and he had told the non-executives that he had communicated to TVSHA that we were happy for the Secretary of State to override our decision in the national interest as he has powers to do, but that we were not prepared to agree to a contract except on the objective merits of the scheme.

The vote on 27th November

The Non-Executives were very worried by the intense pressure and the lack of full information needed to make the decision. On the night before the meeting we were emailed at 5.40 pm with a 40 page document on the clinical practice of Netcare and we only received the actual completed Full Business Case one hour before our meeting on 27th. Prior to this we had received very scrappy papers with key information missing on local affordability and about local risk. The full business case was very much a national document and did not put the local case. A summary paper by our executive putting a local case was lacking in evidence regarding the impact of the decision and on key financial risks.

After a very robust debate of some 2 hours a vote was taken at the Public Board meeting. The vote was 4 (Execs and Chair):4 (Non-Execs). Jean Bradlow, the Public Health Director abstained in the vote. All the non-Executives (apart from the Chair) stated that they were unconvinced by the evidence.

The impasse in the vote was resolved by the Chair. He asked the non-executives to repeat their reasons for voting against. Jane Hanna summarized the concerns which were minuted. Martin Avis, Chair then voted with the non-executive members.

In the aftermath of the decision. The executive members of the PCT were very distressed. Jean Bradlow told Jane Hanna that the decision would effect her job and Mary Wicks, the Chief Executive was visibly upset. The non-executive directors were congratulated by representatives from Cherwell Vale PCT that were present in the audience and by some of the managers in South-West.

The Chief Executive, Communications manager, the two Chairs of the PCTs and Jane Hanna and Catherine Kirby agreed key messages for a press statement.

Immediate events following the Board decision on 27th November

A press release was produced that afternoon from the PCT explaining the reasons for the decision, but we were told that TVSHA had forbidden the issuing of the press release. Jane Perry, Communications manager of the TVSHA issued a press statement

“We know that treatment centers are very beneficial for patients so we are surprised and disappointed by the decision by the South-West Oxfordshire PCT Board not to progress their plans for a local treatment centre”

The non-executives were then exposed to negative publicity in the local press on the Friday. Senior executives from the PCT and the Chair of the PCT were summoned to TVSHA. All the non-executives were rung on Friday 28th by the Chair of Trust and told that he had been instructed that the Secretary of State for Health wanted a letter on his desk reversing the decision by Monday at 12 noon. Martin also told us that he had been told by Jane Betts at the TVSHA that she was on her way to the Appointments Commission and that the `tumbrels were turning` - we understood this to mean a phrase used during the french revolution and the guillotine !

Martin Avis called an emergency meeting on Sunday 29th with non-executives, the Chair of the Professional Executive Committee and the Chair of the Patient and Public Involvement Group of the PCT. It was explained that everyone's positions on the Board were under threat from our decision. Non-executives told the Chair of Trust and the Chair of PEC that they would need to meet alone to decide what to do. The meeting lasted from 11am until 7pm. We carefully wrote a letter saying that they we were always prepared to consider new evidence that a national scheme was in the local interest but that we could only do this at a properly constituted Board meeting as required under our standing orders. The letter was proposed to Martin Avis by email that evening and he agreed he would send the letter the next day.

On Monday 1st December the Chair rang me to say TVSHA would not allow us to send a letter to the Minister unless it was sent by Mary Wicks, the Chief Executive as well as the Chair on behalf of the non-executives. The Chair indicated he was very concerned about Mary Wicks. We agreed to write instead to Jane Betts, Chair of Strategic Health Authority.

Nigel Crisp said on the Today programme in December that the PCT could decide not to approve the treatment centre, but we would need to give our reasons. John Reid stated in Parliament that it was our decision so long as we gave reasons. We produced two pages of reasons after the meeting of the 27th but we also clearly understood from our Chair and from the executive team that we had been told that these reasons were not sufficient and that the PCT had to reverse the decision.

On 4th December the TVSHA agreed that the financial risk to the PCT would be underwritten. Nick Relph, Chief Executive of Thames Valley Strategic Health Authority wrote:

“The SHA commits that should this number (400 cataracts) be shown to be too high either by the ophthalmology review or from experience once the programme has commenced we shall ensure that the PCTs financial position is not adversely effected. This will be achieved by reducing the numbers in the contract and brokering this activity elsewhere....I understand that the precise level of establishment costs is still subject to agreement but would expect either the NIT and/or the SHA to ensure that your financial position is not prejudiced...regarding project management costs we are working with the NUT to ensure that adequate funding is made available for project management costs”

Martin Avis emailed all non-executives on December 5th to state that

“ There is now no financial risk in the brokerage, set-up costs...The excessive amount of precious executive (and non-executive) time this agreement, for some 450 cataract operations per annum, has and is consuming should cease.. it is unfortunate that the Board has become split by this incident”

We also received emails from Tony Williams, Chair of South-East PCT (which shared the same executive directors as the South-West) expressing his serious concern about the pressures on Mary Wicks, the Chief executive.

Catherine Kirby wrote a detailed email on behalf of the non-executives on 7th December that in the interests of greater clarity and the integrity of the Board a large number of questions that remained unclear or without evidence or information still needed to be answered – these were listed in detail in the email. In particular, this concerned the financial risks on the Oxfordshire system as a whole; clinical risks to our population as well as the failure to adequately involve or consult local stakeholders and the public.

Nick Relph, Chief Executive of TVSHA wrote to Martin Avis on 10th December that the Treatment Centre did not require formal public consultation..

”It would not normally be necessary to consult when the change relates to a new, additional, service for local residents”

Dr Reid, Health Secretary stated in Parliament

“I will be prepared to accept them and all reasonable people will accept that local primary care trusts have to make their own decisions, but the public will want to be sure that those decisions are based on the interests of local patients, and are not unduly influenced by the interests of local providers and producers, especially consultants. It is essential that, in all these, decisions, the interests of the patients are put first”

Emergency meeting 11th December

The Chair called an emergency meeting for the 11th December 2003. The Board members present was different from the original first meeting on the 27th. For example, Mike Russell was present as a non-executive, but had been away in the immediate lead up to and the original board decision. The Board approved the OTC.

The non-executives who voted against at the first Board meeting did not alter their position. The reasons given were that the non-executives were concerned that 800,000 pounds was being transferred from the local eye hospital and that patients who needed eye care of a more serious kind such as patients with diabetes and glaucoma would lose vital high quality services for the sake of a private mobile cataracts unit that was not needed. We also were very concerned that even if TVSHA took the financial risk that this was a risk that remained on the Oxfordshire NHS and that, based on our experience, the PCT would inevitably be caught up in resolving financial risk to the whole system . We also considered that it was wrong to proceed with such haste without public involvement and consultation. There were also some concerns about price because the local NHS provider was quoting a lower price than netcare and when we were assured that netcare would be 12% under National tariff we could never get a clear answer as to what the national tariff was – the national tariff figure changed from meeting to meeting or were not given at all. We gave our reasons in writing again after the meeting of the 11th.

Aftermath

Lesley Legge, Chair of the Oxfordshire Health Scrutiny and Overview Committee wrote to Dr Reid on 18th December seeking an explanation why decision-making was so rushed and uninformed and why there had been inadequate involvement of local people or indeed adequate information to the Health Scrutiny Committee. She questioned how there could be any meaningful public involvement and protection of local interests when these interests could be suspended as a matter of national expediency.

Following the decision, the non-executives were emailed by the Chair with information about their duties to act in a corporate manner.

Martin, Chair of Trust was only the Chair in Oxfordshire not to be renewed in January. The Guardian reported in June 2004 that he had been verbally threatened since August and the “The Chairs of other PCTs were, but they wont talk”. He told the non-executives of the PCT that he had been verbally informed by Bernard Williams, Chair of the Appointments Commission that he was not renewed because of the Treatment Centre decision.

Non-executives met in January in emergency session to review what had occurred. It was agreed that there had been a serious breakdown of trust as a result of what had occurred in relation to the treatment centre decision. The relationships of trust which were discussed included within the PCT, between the PCT and the NHS system as a whole including the NHS Appointment Commission.

During February Martin Avis and executive board members told non-executives in private board sessions that it had been made very clear that we had no choice but to agree to all the other treatment centres, but that the board was also instructed to present these national initiatives as local decisions of the PCTs.

Jane Betts Chair of TVSHA resigned at the end of March concluding that the SHA was quoted in the Guardian as saying the TVSHA was

‘local office of the NHS’

She was quoted as admitting the bullying tactics from TVSHA and that TVSHA was:

“the jam in the sandwich” because it was under heavy pressure from the Department of Health to deliver a deal that the prime minister had set his heart on. The contract was *“on the top 10 list of things the prime minister wanted to see done...someone was playing political hardball with the people of south-west oxfordshire”*

A New Chair, Fred Hucker was appointed to South-West Oxfordshire PCT in April 2004. He was formerly a non-executive at the TVSHA. There were only 2 applicants interviewed for the job - Paul Wesson, non-executive Director of South-West Oxfordshire PCT, was the other candidate. Bernard Williams was a member of the appointments panel.

After Fred Hucker was appointed all the Non-Executives were sent a letter from Sir William Wells, Chair of the Appointments Commission informing us that our new Chair would be making recommendations about our performance at the end of 12 months and that our appointment might be terminated before the end of our office term. It stated that this letter was sent to all non-executives of PCTs with new Chairs. The non-executives interpreted this letter as a threatening letter given the situation we were in and given we had not been placed on probation in the first twelve months after our original appointment.

Jane Hanna resigned on Thursday 27th May some six months later because no attempt had been made to learn lessons and instead the Board has continued to make other decisions under centralised pressure and without openness or consultation with local patients and the public.

File on 4 on June 2nd reported on a detailed investigation into the events surrounding the cataracts decision and other examples from across the country. Nigel Crisp was interviewed about the allegations of bullying and why he had said on the Today programme in December 2003 that local Boards could make decisions on Treatment Centres. He said that it was in fact that the treatment centre decisions were in fact many people's decision including the private provider before cutting short the interview.

In December 2003 TVSHA had commissioned an independent review of eye services in Thames Valley. In June 2004 a draft final report was leaked and reported in the local press. The report was extremely critical about the financial and clinical risks that threatened eye services in Thames valley as a result of the Netcare contract.

The Finnemore report was finally made public in September 2004 . The final Report differs not in terms of facts but in the interpretation of the facts. The detail of the final report still concludes that local NHS services have a high reputation and are on target to meet government waiting lists for cataracts some as early as summer 2004 and that there is excess capacity in Oxfordshire; it includes reports from hospitals of clinical priorities being distorted by focus on cataracts at expense of patients with more serious eye conditions; and

highlights the need for urgency in addressing risks. Whilst the draft report concluded that the eye unit was being put in the wrong place and that there was a significant risk of destabilising the Oxford eye hospital, the final report now says that the excess capacity will be helpful in managing need from elsewhere in Thames Valley and perhaps as far a field as Scotland and Wales. In terms of risk the detail of the report continues to highlight that the risks are urgent in terms of long-term viability and quality of patient services.

A public board paper on a review of the treatment centre, 24th November 2005 finds that only 50 of 323 available pre-operative assessments have been booked and only 43 operations have been done out of 249 theatre slots available. The tariff cost is 72 pounds for preoperative assessments and 824.34 pounds for a cataract operation, but the cost is 6 times the national tariff as the NHS has to pay for all contracted procedures, regardless of whether they are performed. The set up costs of the mobile units and project management are not mentioned in the review but have to be paid for by the NHS. Finally, the paper mentioned negotiations by TVSHA regarding the underwriting of the financial risk, but does not mention the written agreement from TVSHA to the South-West PCT Board that all financial risks will be underwritten by TVSHA.

Jane Hanna