Final Report of the Investigation into Governance and Management at the State Hospitals Board for Scotland

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03 September 2013

Investigation into governance and Management at the State Hospitals Board for Scotland

1. Introduction and Background to the investigation

1.01. Following a number of anonymous allegations of fraudulent activity at the State Hospital made to the NHS Counter Fraud Service and an anonymous letter to the Cabinet Secretary for Health and Wellbeing, the Chair of the Board of the State Hospital for Scotland instigated a review of the allegations by the Board's internal auditors, KPMG.

1.02. Whilst the Audit Report findings showed that there had been no fraud, the Chair was concerned to investigate if there were issues of good governance and management for the Board arising from the Audit.

2. Terms of reference

2.01. The main Terms of Reference of the investigation centred on the governance and management issues surrounding four key issues

- The High Security Environment Allowance payment
- The Agenda for Change back payment
- The Mental Health Officer Status of two directors
- The night shift arrangements for pre-retirees

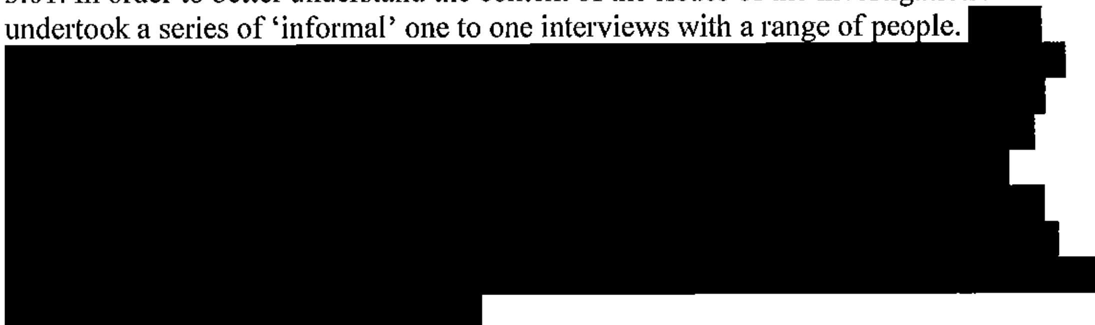
2.02. In addition the investigation looked at one other allegation of an improper process in filling senior management posts.

2.03. The Terms of Reference also state the following: *"The investigation should consider to what degree the allegations suggest broader cultural issues that may be detrimental to the effective performance of the State Hospital".*

A copy of the Terms of Reference of the investigation is attached to this report.

3. Approach adopted

3.01. In order to better understand the context of the issues of the investigation I undertook a series of 'informal' one to one interviews with a range of people.



A copy of the letter of invitation to these meetings is attached to this report.

3.02. I also met informally with the KPMG Auditors, Counter Fraud Services and an official in the Scottish Government Health and Social Care Directorate (SGHSCD)

These meetings were confidential and off the record with no recording or notes made. This allowed for a more relaxed atmosphere and, whilst the meetings were informal, I did follow a protocol so that all participants fully understood the purpose of the meeting and Terms of Reference of the investigation was available to be viewed if requested.

3.03. The meetings allowed me to get a very good understanding of the work of the hospital and the 'Clinical Model' which directs clinical services. I was also able to gain an insight into the management structures and processes in the hospital and a feel for the work roles of all that I met with. The meetings also helped me identify those individuals who would be helpful to follow up in the formal process. For those that I did not interview as part of the formal process I offered the opportunity for them to submit any comments to me in writing. Only two (out of a possible twenty) chose to do so.

4. Formal investigation interviews

4.01. The formal investigation interviews commenced on 19th July 2013 and were completed on 31st July 2013. In all there were twenty one formal interviews and one separate personal written submission, which came after the interviews were completed due to holidays. There were three requests, to which I agreed, to participate in the formal interviews that came after the completion of the informal meetings.

4.02. One of the very strong concerns in almost all of the informal meetings was that of confidentiality of process. To assure those involved of the strict confidentiality of the interview, I was supported by a small team from NHS Education for Scotland (NES). Dorothy Wright, the HR Director at NES acted as my Senior HR adviser and colleagues from her Directorate acted as note takers and provided the draft notes of the meetings.

4.03. The investigation was undertaken through the use of the State Hospital's HR Policies and Procedures. This requires that those asked to be interviewed submit a brief personal statement as part of their evidence and, as such, is part of the formal record of the investigation. This report draws on that evidence as well as the evidence obtained through the formal interview process.

4.04. The HR Policies also require that each individual interviewed signs off the note of the interview as part of the formal record. These are confidential documents to myself and my adviser and to the individuals concerned and have no wider circulation.

4.05. Each person interviewed was made aware of this along with a brief overview of the interview process itself.

The findings from the investigation are presented in three parts. In part one, I report on the points identified in the terms of reference of the investigation as stated above. In part two offer observations on culture and management. In part three I present conclusions and recommendations.

Part One

5. High Security Environment Allowance (HSEA) payment

5.01. The Audit Reports presented to the Board's Audit Committee on 15th April 2013 were clear in their conclusion that there had been no evidence of fraud but that there were a number of audit findings which had recommendations for actions to be undertaken by management of the Board. All of the recommendations were accepted and duly acted upon

5.02. As noted earlier the investigation reported here begins with the situation following the presentation of the KPMG Reports to the Audit Committee and the further reference to the Board's Remuneration Committee. I can confirm that the Management responses to the recommendations have been carried out.

5.03. One of the issues raised with CFS and also covered by the Audit investigation was the question of eligibility for the HSEA payment to those on Senior Manager and Executive Director terms and conditions of employment. The advice from Scottish Government to the auditors was that the allowance was payable if the Board's proper processes had been followed. KPMG's report found that the appropriate documentation had been provided and that the formal signing off of the Change Forms was evidence of due process.

5.04. I have had access to the correspondence concerning this issue as well as my own inquiries in SGHSCD and can confirm the view provided by KPMG.

5.05. However, at no point had the issue of eligibility for payment or the need for authorisation or approval been considered by the Board through the Remuneration Committee, *as is required in the Committee's extant terms of reference*. The 'de-facto' approval of the Chairman, whilst sufficient for the purposes of audit, exposed a weakness in the governance arrangements around senior manager pay.

5.06. I have pieced together an explanation for this situation. In the past the business of the Remuneration Committee had three standing items. Firstly, for the committee to consider and approve the key performance objectives of the senior management cohort at the start of the business year, (with a mid-year review required to check progress). Secondly, to review the achievement of these key objectives at the end of the business

year and to act upon the results of these reviews in the light of extant guidance from SGHSCD in relation to performance related payments. The Committee would also receive various Circulars on pay policy. The third area of business for the Committee is to receive and formally approve the award of Consultants' Discretionary Points, again in line with extant guidance.

5.07. Any query relating to senior management payment matters was dealt with on a case by case basis by the Chief Executive and the Chair of the Board and not to the Remuneration Committee.

5.08. However, with a recent change of Board Chair there was no formal note of this arrangement and, whilst it could be argued that the Chief Executive had followed previous practice and left the Change Forms for the Chair's signature, the Chairman had signed the forms without adequate knowledge of their ultimate purpose.

5.09. This lapse in process was a source of some embarrassment to the Chair which would not have occurred had the Board followed its own procedures.

5.10. These points have already been followed up by the Audit and Remuneration Committees with revised terms of reference for the Remuneration Committee and the strengthening of the Committee by the inclusion of the Employee Director as a member.

5.11. A further element of confusion surrounding the governance weaknesses in relation to senior manger pay was the absence of high level expert advice for the committee. The good practice guidance on performance management issued by the SGHSCD over a number of years through a series of NHS Circulars, make it clear that it is the role of the Director of HR to provide Remuneration Committees and Boards with such expert advice. This was not the case in the State Hospital. The designated 'Executive Lead' for remuneration had departed the hospital in 2008 and had not been replaced with a like appointment. Rather the HR portfolio was taken on by the hospital's then General Manager. Therefore, the Committee was at a disadvantage without expert guidance with respect to their role and remit.

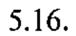
5.12. However, it should be noted that there was a succession plan to address the gap in senior HR advice which was put in place in 2011 with the appointment of a substantive HR Director. Whilst it is now very clear that the Committee will have the benefit of expert HR advice and support, this was not the case at the time the issue of the HSEA payment arose.

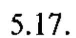
5.13. From the evidence I have gathered I am satisfied that the issue of executive leadership around all remuneration matters has been fully addressed and will be pro-actively taken forward. In addition, the current Chair of the Remuneration Committee completes his term of office as a Board Member later this year and this can give the Board an opportunity to look at training and development for new members as is required by NPMC's Good Practice guide.

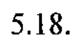
5.13. The reason why the issue of HSEA eligibility had never been discussed at the Board was that it was thought to be restricted to a specific *State Hospital Local Agreement (2006)* under the auspices of Agenda for Change terms and conditions. This has been a view that has also been expressed by the former Board Chair in recent press reports concerning that matters being looked at in this investigation. It is also the stated position of the Joint Staff Side in the hospital.

5.14. The 'truth' of the matter is somewhat more prosaic. On 14 May 2012 the Chief Executive appointed an 'Interim Finance Director' on a secondment from another health board for two days per week. The post was remunerated on the basis of current salary, a responsibility payment "plus the High Secure Environment Allowance pro rata". My understanding is that the individual concerned would have been on an Agenda for Change managerial grade and would, therefore, have been eligible for the allowance under the local agreement.

5.15. This was this point at which the HSEA payment was first associated with a Director Level post. The HSEA was also incorporated into the job description and terms and conditions for the advertisement for the substantive post of Finance Director. This was also the trigger point for the inclusion of the other Directors and Senior Managers within the scope of the HSEA.







5.19. The other Directors say that they had been assured that the payment had been deemed to be eligible having, in one case, noted that it had been cleared by the Chief

Executive and the Chairman. For another it was a welcome 'bonus' but on reflection, not worth all the trouble.

5.20. However, another Senior Manager expressed a strong view that it was not an eligible payment and related only to those on Agenda for Change terms and conditions. He notes that he was told by the Chief Executive and HR Director "that it was all in order and the Chair had signed the forms"

5.21. One other matter that was raised in the course of the investigation was the potential implications for Senior Managers Pay in the NHS in Scotland as a whole. The concern here was that the State Hospital could be seen as breaching a Ministerial determination as Senior Mangers Pay is set by ministerial direction.

5.22. My response to this important point was to be very thoughtful about the underlying issue around HSEA and the interpretations of it. From one perspective it is a unique allowance applying only to the State Hospital and only to staff on AfC terms and conditions. Another view, and one held by the former Chair, is that the performance–related pay element of senior mangers pay arrangements gave Directors access to a payment benefit not available to other staff (notwithstanding that the pay element of performance management has been moribund for several years).

5.23. Historically, the HSEA was seen as compensation for working in the unique environment of the State Hospital and is therefore about 'where you work' rather than 'what you do'.

5.24. Besides AfC and Senior Managers pay arrangements, there is a third pay regime at work in the hospital, namely, the 'Medical and Dental Terms and Conditions'. Members of the medical staff do not qualify for either the HSEA or its partner, but more restricted, High Secure Clinical Allowance (HSCA). Rather, they, uniquely, qualify for Resident Mental Officer (RMO) Allowance. This combines both of the elements in a single payment.

5.25. The other key point to recognise here is that Consultants also qualify for Discretionary Points as part of the Consultant contract and for 'Merit Awards' under the auspices of the Scottish Advisory Committee on Discretionary Awards (SACDA).

5.26. To better understand the context of this payment it is worth noting the following points. The current value of the HSEA is £97.00 per month and the HSCA is £330.00 per month. The value of the RMO Allowance is £1047.96 per month.

5.27. The key management and governance issues emerging from this issue have largely been recognised and dealt with. The Committee has been strengthened by the addition of the Employee Director whose presence on the Committee can shorten lines of communication around the Partnership Forum and the Staff Governance Committee and serve as a barometer around staff concerns with respect to Senior Managers' Pay.

5.28. The revision of the Committee's Terms of Reference to reflect on good practice and compliance with requirements set out in the NHS Circular PCS (ESM) 2013/1. Finally, there is now clarity over executive leadership and expert advice to the Committee and whilst the HR Director is relatively new to post, she has ready access to good professional advice via the NHS Scotland HR Directors Group.

5.29. From all of the evidence I have gathered in this investigation in relation to the whole story around the HSEA Payment, it is clear that the benefit of hindsight has been fully applied. The worrying aspect of this, and other issues raised, is the glaring absence of any foresight.

5.30. There are issues exemplified here of poor managerial judgement and leadership on the part of the Chief Executive and to some degree the other Directors.

5.31. All Directors of the Board are subject to Ministerial appointment, both Executive and Non-Executive, and are covered by the *Code of Standards of Ethics and Behaviour*. All board Members have, in my view, a higher duty around possible conflicts of interest and personal gain through financial benefit.

5.32. In the case of the Chief Executive, this issue is thrown into even sharper relief by the responsibilities that she has as the Board's 'Accountable Officer', a crucial aspect of which is to protect the Board from the type of situation it now finds itself embedded.

5.33. The KPMG Audit Report highlighted the issue of 'Transparency of Payments' as a 'Moderate risk from their perspective. It is my view that the handling of the two issues of eligibility for the payment and approval exposed the Board to serious reputational risk which has been realised and added further damage by its spread into the political domain bringing Scottish ministers into an already complex and sensitive situation.

5.34. More importantly, however has been the damage to working relationships within the Board at a time of financial strictures

6. Agenda for Change back payment and claims of favouritism

6.01. The Audit Reports presented to the Board's Audit Committee on 16th April 2013 were clear in their conclusion that there had been no evidence of fraud but that there were a number of audit findings which had recommendations for actions to be undertaken by management of the board. All of the recommendations were accepted and duly acted upon

6.02. As noted earlier the investigation reported here begins with the situation following the presentation of the KPMG Reports to Audit Committee of the Board and further referral on to the Remuneration Committee. I can confirm that the management responses to the recommendations have been carried out.

6.03. The complaints to CFS and the anonymous letter to SG claim that the Chief Executive manipulated the Agenda for Change (AfC) evaluation process to influence outcomes of reviews to the benefit of 'favourites'. This, along with the other allegations was subject of an internal review which provides a very clear narrative of the AfC process and some of the individual cases referred to in the 'favouritism' allegation as well as providing a comprehensive account of the specific case investigated by KPMG. I have included the report (*Response to allegations to NHS Counter Fraud Service 16 January 2013*) as an annexe to this report

6.04. Everyone who had any involvement in the particular case was universal in their agreement that this was both complex in its pathway to the ultimate decision to make a back dated payment,

6.05. The involvement of the Chief Executive came in only at the later stages of what was a long complicated process of submissions, appeals, re-submissions and a full grievance process (which was not upheld) and numerous excursions that ultimately took the case outside the rules of the AfC process into the domain of Senior Management executive decision making.

6.06. The decision to agree a re-grading with back payment of salary with a compromise agreement was made by the HR Director with the ultimate support and agreement of the Chief Executive.

6.07. Having acknowledged that the decision was outside the AfC process the arguments become clearer cut. The decision to re-grade the post was done on the basis of perceived "procedural fairness" following the re-banding of a comparator post in 2010 which had been seen to be in the same 'job family' under AfC.

6.08.

6.09. Having only recently come into post, the HR Director did not think to report her decision through the Remuneration Committee, which she thought was primarily concerned with its standard business around performance objectives and appraisal. She has confirmed that she is now the 'Executive Lead' for the Remuneration Committee and that any such case would, in the future, go to that Committee for consideration and any approvals.

6.10. The account offered by the HR Director was confirmed by the Chief Executive, who fully acknowledged the difficulties that the Board had experienced around AfC and also the particular aspects of this case which had been picked up by the HR Director. She noted that the HR Director had advised her that, "on the basis of fairness" the post should be awarded a Band and she had agreed to that recommendation.

6.11. In the course of my investigation of this particular case I picked up some wider repercussions of this case.

6.12. However the main concern I picked up about the actual payment was whether the amount of back pay was ever formally reported to the Board. The 'payment' had been reported to the Remuneration Committee after the fact but no discussion had taken place. The three Audit Reports have been discussed subsequently at both the Audit and Remuneration Committees, however, as with the HSEA payment I am not sure if formal homologation of these two decisions is needed or has been undertaken.

6.13.

6.14. Similar sentiments were also expressed by others, that those who "shouted the loudest" got more favourable outcomes from AfC. There was also a widely shared view among those involved with running the AfC process, that the original decision to manage AfC in-house had been a mistake from the very start for a range of reasons not the least of which was matching the person and not the post – the opposite of what AfC was intended to do.

6.15.

7. 'Mental Health Officer' (MHO) Status

7.01. The Audit Reports presented to the Board's Audit Committee on the 16th April 2013 were clear in their conclusion that there had been no evidence of fraud but that there were a number of audit findings which had recommendations for actions to be undertaken by management of the board. All of the recommendations were accepted and duly acted upon

7.02. As noted earlier the investigation reported here begins with the situation following the presentation of the KPMG Reports to the Audit Committee and further referral to the Remuneration Committee. I can confirm that the Management responses to the recommendations have been carried out.

7.03. The Mental Health Officer (MHO) Status is not, and never has been, part of the State Hospital's terms and conditions of employment. The status is actually conferred on individuals who meet certain defined criteria from the Scottish Public Pensions Agency (SPPA). It allows holders of that status access to certain benefits, particularly around earlier retirement.

7.04. MHO Status is highly valued in that regard and some individuals have made distinct life and career choices with it strongly in mind. For example a move to clinical role outside of mental health care could lose the status and the benefits without compensation of better career opportunities in services beyond mental health.

7.05. There are approximately 100 employees of the State hospital with MHO Status. The scheme closed to new members in 1995.

7.06. Of those interviewed as part of the investigation, the majority had nothing to say about this issue. Those directly affected expressed some surprise that this issue had been raised as an act of fraud given that it is a personal award and is clearly governed by the rules of the scheme applied by the SPPA. There was a ready acceptance that job descriptions needed to be up-dated and there was agreement that the Board's HR Records systems needed to be overhauled to satisfy the SPPA on any job changes.

7.07. The HR Director indicated that the two specific job descriptions are currently being re-written under the auspices of the Remuneration Committee which will formally sign them off as accurately reflecting the job requirement of the hospital as their prime purpose.

7.08.

7.09. One of the concerns that arose when the allegations were first made to the CFS, was that the job descriptions of the two post holders mentioned could have been written with the express purpose of attracting and maintaining MHO Status, rather than properly describe their role in the Hospital for the benefit of patients and effectiveness of the organisation's leadership and management. This was not the case.

7.10.

7.11. The Audit Reports made a number of recommendations regarding the HR Records systems and these are being taken forward. However, whilst the MHO Status is a matter for determination by the SPPA, it is my view that it should also come within the scope of the Board's Remuneration Committee with clear executive accountability with the HR Director.

7.12. One of the governance issues which emerges from this relates to potential conflict of interest and personal benefit, as noted earlier with respect to the HSEA payments.

8. Pre-retirement night shift rotas

8.01. As noted earlier, one of the allegations made to the CFS related to "nursing staff due for retirement being allocated night shift duty with the aim of boosting pensions". This allegation was investigated and was not seen as fraudulent but was not seen as good practice. The position of the Board is that shift patterns and rosters prime purpose is about the provision of high quality patient care and not about pension benefits.

8.02. An internal review notes that the issue had been raised in a Joint Negotiating Committee on or around 15 September 2011 as a request from the staff side for what looks to be a formalisation of custom and practice whereby "staff would be guaranteed 1 year of their last 3 on nightshift for pension purposes?" (*Response to allegations to NHS Counter Fraud Service 16 January 2013).*

8.03. There was in place a semi-formal and long standing practice at the State Hospital for nursing staff approaching retirement to go onto the night shift roster alongside other requests for night shift working that related to other reasons, including child care commitments and occupational health recommendations.

8.04. The night shift roster was managed historically by the Nursing Resources Administration.

8.05. Following the CFS Report, the practice has been discontinued. This issue did not feature greatly in the investigation largely because the response from the Joint Staff Side was to take the matter forward as a collective grievance against the decision which is currently under way.

8.06. Comments have been made about impact upon staff morale as those affected would have "made plans based on their expectations about pensions".

9. Improper process for filling senior manager posts

9.01. This allegation was also part of the previously mentioned internal inquiry into all of the allegations (*Response to allegations to NHS Counter Fraud Service 16 January 2013).*

9.02. It provides very useful background information and a clear explanation concerning the posts of [redacted] and [redacted] and how they were filled.

9.03. The internal response states: "It is common practice across the NHS for Executive Team Portfolios to be adjusted to fit the needs of the organisation. At no time did any of these [portfolio] changes affect the salaries of the individuals concerned. All changes were approved by the Board and agreed in partnership prior to implementation".

9.04. The only comment made in any of the submissions was favourable about the way the portfolio adjustment was made.

9.05. These represent, to me, the reasonable deployment of management resources with clear evidence that due process was followed and provides evidence of good practice in succession planning.

10. Culture, leadership and behaviour at The State Hospital

10.01. The Chief Executive enjoys very strong support and respect from the medical staff of the hospital. This is expressed in the letter from the local Medical Advisory Committee to the Chair of the board and was also conveyed to me in both the informal meetings and in the formal interviews I had with them. [redacted]

10.02. The Chief Executive is seen by the medical staff and many others as a strong leader who brought stability at a time of turmoil when she joined the Board of the State Hospital in 2003. In particular, she is credited with bringing the vision of a clinical model for a state of the art high secure psychiatric hospital into reality. In addition, she is greatly credited with the creation of the Forensic Network for Scotland which is very highly regarded internationally.

10.03. Along with that she is credited with the transformation of the physical estate with modern facilities appropriate to the standards of care contained in the vision for the hospital, creating a space for patients and staff to flourish.

10.04. The 'Clinical Model' has a high degree of buy-in from the staff, which, in the view of some, is checked, for the moment, by aspects of the change process which some staff feel is moving too quickly. There was also some concern expressed to the contrary, that

the current situation, concerning the allegations to CFS, the Audit reviews and this investigation, are adding to uncertainty around the development of the model and a concern about the potential for "paralysis" in decision making.

10.05.

10.06. Some of the concerns that staff have around change are reflected in issues of culture and behaviour more generally in the State Hospital in its journey of transformation. Some of these issues find their expression in employment relations problems and poor partnership working. Yet other issues are wrapped up in the anonymous allegations made to the CFS and to the Cabinet Secretary and the way these are perceived in the wider hospital community.

10.07. The allegations and the internal audit review that followed form part of the 'atmosphere' or 'pulse' of the State Hospital.

10.08. One way of reading the different allegations is that the thread that binds them all together is the part played by the Chief Executive and the Senior Management in leading the Hospital.

10.09. In the foregoing sections of this report I have found no evidence of fraud or serious misconduct, but I have found that in the case of the HSEA payment a lack of good judgement on the part of the Executive directors of the Board and in the Chief Executive as Accountable Officer. In relation to the AfC back payment there were examples of poor decision making that probably cost the Board a lot of money. The situation surrounding the MHO Status shows a combination of weak systems and a lack of judgement in relation to the letter to the SPPA, albeit that it was nearly ten years ago.

10.10.

10.11. Nonetheless, the issue of bullying and harassment was always present. In part that was because of what was alleged to the CFS and also because the issue has been highlighted by the Board as a major policy drive.

10.12. It is likely that the high levels of awareness of the *Zero Tolerance Campaign* and the *Dignity at Work* policy was a factor in people coming forward to offer evidence to my investigation, albeit reluctantly in a number of cases.

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10.23. For the Chief Executive of any organisation there is a responsibility to exemplify and act as a 'role model' for the appropriate leadership behaviours. Indeed there is an obligation to do so. Concomitant with that is a higher level of expectation around the position of Chief Executive. That applies also to the State Hospital.

10.24.

10.25. These findings, I know, will be difficult and challenging for the Board.

Part Two

11. General observations on culture and management

11.01. As mentioned above, bullying and harassment has been a continuous running theme throughout the time of the investigation. This is partly due, in some measure to the heightened awareness that has come from the high profile it has received in the Board's *Dignity at Work Policy* and the subsequent *Zero Tolerance Campaign*. It is due also to the reference made in the allegations to CFS and to the Cabinet Secretary and to the SGHSCD. The issues that have come up in the investigation are the same ones that came out of the internal Staff Survey.

11.02. The Survey Report, '*Tackling Bullying and Harassment*' was produced following from on internal survey of staff under the *Dignity at Work* policy. The response rate was remarkable at 79% and produced some excellent data to inform policy and actions. The highlights of the Report indicate the key issues facing the Board. These have been encapsulated in the *Zero Tolerance Campaign*; namely, that it is safe to complain and that issues that are raised would be treated promptly and professionally.

11.03. The main issues cited by staff for not reporting Bullying was that it would not be safe to do so

11.04. In one sense, I have found nothing that the Board does not already know, and is acting upon, but some of the behaviours are deeply embedded culturally.

11.05. However, the very good work done around the *Zero Tolerance Campaign* has given prominence to the issue and galvanised a real sense of energy and urgency. This is framed around the Board's approach to the NHS Scotland's 20-20 Vision and in the setting up of the *'Culture, Values and Behaviours Group'*.

11.06. Whilst the remit of the investigation did not specifically mention the management arrangements at the State Hospital, it was also a running theme in the meetings and in the formal interviews. In particular, there was a concern raised about the potential for "paralysis" in decision making as noted earlier.

11.07. There are a number of factors at play here. Firstly, the review of operational management and the subsequent prolonged absence of the General Manager (and his subsequent resignation) meant that the portfolios of the senior managers had to be

adjusted to take up the various elements of that role. Secondly, a prolonged period of sickness absence of the Chief Executive meant a further re-balancing of responsibilities which has been compounded in part by the process of this investigation. Thirdly, the dissolution of the Operation Management Group has had the effect of changing the role of the Senior Management Team (SMT).

11.08. The now extended SMT is viewed very favourably by some as a shortened line of reporting and access to the senior decision makers and an enhancement to their position. For some others the more operational focus dilutes the strategic thrust that the top management should have. There is an issue to be balanced here between the executive directors and their relationship with the Board and its business and the day to day running of the hospital.

11.09.

11.10. It can be argued that the new build and the relocation of services and the development of the clinical model of the new hospital masked some of the points highlighted earlier in the paper. Also there is a need to acknowledge the difference between managing in the dynamic environment of the new build and running the hospital in 'steady state'.

11.11.

11.12.

11.13. These last set of issues also raise the place of Organisational Development (OD) in moving forward. In part it appears that the development of the State Hospital's approach to taking forward the NHS Scotland *'2020 Vision'* may be the vehicle on which the appropriate management development can be taken forward.

11.14. Whilst this investigation, and the circumstances leading up to it, have undoubtedly had an impact on the management of the hospital, there can be no doubt that some of the important points raised in the preceding paragraphs pre-date the investigation. It could also be argued the development of the new hospital and the new clinical model came with the old culture and management.

11.15. The internal review of operations management was done in isolation from the broader management arrangements in the hospital.

Part Three

12. Conclusions and recommendations

12.01. As noted already, I have found nothing that the Board does not already know, and is acting upon, but some the behaviours are deeply embedded culturally.

12.02. However, the very good work done around the *Zero Tolerance Campaign* has given prominence to the issue and galvanised a real sense of energy and urgency. This is framed around the Board's approach to the NHS Scotland's 20-20 Vision and in the setting up of the *'Culture, Values and Behaviours Group'*.

High Security Environment Allowance (HSEA) payment

12.03. The KPMG Audit Reports had recommendations for actions by management. All of the recommendations were accepted and duly acted upon and the responses to the recommendations have been carried out. These have already been followed up by the Audit and Remuneration Committees.

12.04. One of the governance weaknesses in relation to senior manager pay was the absence of high level expert advice for the committee. I am satisfied that the issue of executive leadership around all remuneration matters has been fully addressed and will be pro-actively taken forward.

12.05. The HSEA payment serves as an example of a combination of lack of foresight as to the possible consequences of the decision to make the payment and poor managerial judgement and leadership on the part of the Chief Executive and to some degree the other Directors in that the possibility of conflict of interest and personal financial gain was not considered.

12.06. The Chief Executive also carries the responsibility of being the Board's 'Accountable Officer'. A crucial aspect of which is to protect the Board from the type of situation it now finds itself embedded.

12.07. The handling of the two issues of eligibility for the payment and approval exposed the Board to serious reputational risk which has been realised and added further damage by its spread into the political domain.

Agenda for Change back payment and claims of favouritism

12.08. The KPMG Audit Reports had recommendations for actions by management. All of the recommendations were accepted and duly acted upon and the responses to the recommendations have been carried out. These have already been followed up by the Audit and Remuneration Committees.

12.09. Everyone who had any involvement in the particular case agreed that this was both complex and very difficult. The decision to agree a re-grading with back payment of salary with a compromise agreement was made by the HR Director with the agreement of the Chief Executive. It was done on the basis of perceived "procedural fairness" following the re-banding of a comparator post in 2010 which had been seen to be in the same 'job family' under AfC.

12.10.

12.11.

'Mental Health Officer' (MHO) Status

12.12. The KPMG Audit Reports had recommendations for actions by management. All of the recommendations were accepted and duly acted upon and the responses to the recommendations have been carried out. These have already been followed up by the Audit and Remuneration Committees.

12.13. The Mental Health Officer (MHO) Status is not part of the State Hospital's terms and conditions of employment. It is conferred on individuals who meet certain defined criteria from the Scottish Public Pensions Agency (SPPA).

12.14. The two job descriptions identified in the Audit are currently being re-written under the auspices of the Remuneration Committee which will formally sign them off as accurately reflecting the job requirement of the hospital as their prime purpose.

12.15. However, whilst the MHO Status is a matter for determination by the SPPA, it is my view that it should also come within the scope of the Board's Remuneration Committee with clear executive accountability with the HR Director.

Pre-retirement night shift rotas

12.16. One of the allegations made to the CFS related to nursing staff being allocated night shift duty to boost pensions. The position of the Board is that the prime purpose of any shift patterns and rosters is about the provision of high quality patient care and not about pension benefits.

12.17. This issue did not feature greatly in the investigation largely because the response from the Joint Staff Side was to take the matter forward as a collective grievance against the decision which is currently under way.

Improper process for filling senior manager posts

12.18. This allegation relates to two senior manager posts. However an internal review noted that: "*It is common practice across the NHS for Executive Team Portfolios to be adjusted to fit the needs of the organisation. At no time did any of these [portfolio] changes affect the salaries of the individuals concerned. All changes were approved by the Board and agreed in partnership prior to implementation*".

12.19. These represent the reasonable deployment of management resources with clear evidence that due process was followed.

Leadership, culture and behaviour at The State Hospital

12.19. The investigation found that there are issues around leadership, culture and behaviour at the hospital. This is most often linked to the issue of Bullying and Harassment. Whilst the investigation was not focussed on any specific allegation of bullying behaviour, it was, nonetheless, a running theme throughout.

12.20. There are enviable levels of awareness of both the *Board's Dignity at Work* policy and the *Zero Tolerance Campaign* that flows from it. It is my conclusion that such awareness was a factor in people coming forward to offer evidence.

12.21.

13. Recommendations

- I recommend that, alongside the review of HR Records systems currently underway following from the Audit Report recommendations, the Remuneration Committee also develops a Governance Protocol regarding MHO Status.

- I recommend that the Board urgently examines what further actions it may wish to take to ensure that tighter corporate governance is given greater priority in the Board

- I recommend that the Board gives serious consideration to the need for any further investigation or action

- I recommend that the board urgently looks to set out a corporate development programme to address the Staff Governance and Partnership issues this report raises.

- I recommend that the Board puts strong and visible leadership and support to the initiatives on the State Hospital's response the NHS Scotland's '*20-20 Vision*' and the Board's *'Culture, Values and Behaviour Group'*.

- I recommend that the Board considers existing management structures and arrangements .