BRIEF 1

THE VERITA BRIEF

GOVERNANCE

VERITA

INVESTIGATIONS – REVIEWS – INQUIRIES

FOREWORD

Why would anyone want to become a chair or non-executive director of a health organisation? Do boards really have the power to govern their trusts in the interests of their patients, or are they endlessly responding to accumulating demands for 'accountability' from a system that often doesn't appear to understand what life is like at the sharp end? When I became chairman of an acute trust I was horrified at the clutter around the issue of governance in the NHS; in my view the mass of 'guidance' only served to conceal the wood from the trees. Although things have improved, being in charge is still a daunting task – and there is a heavy responsibility on all of us to get it right.

Governance in this context is about being in control without controlling. No board can hope to be aware of everything that goes on in its name, but it certainly needs to be confident that its organisational purpose is clear, that robust processes are in place at all levels, and that people are both empowered to do a good job and know they will be held to account for their performance. There are many different models of governance and none of them is perfect. Every board has to work out what delivers safe, cost-effective, quality care in its own context, and what system of assurance allows it to be confident it is succeeding. My own yardstick is to keep it simple, have faith in your own judgment, but don't be shy of seeking help where you feel you need it. No-one will blame you for asking questions – but you deserve to be criticised if you haven't worked out the right questions to ask.

Mike Aaronson

Sir Mike Aaronson

Chairman of Frimley Park Hospital NHS Foundation Trust
and advisor to the independent review into the board leadership of Maidstone and Tunbridge Wells NHS Trust following the Healthcare Commission's report into an outbreak of *Clostridium difficile*

PEOPLE AND PROCESS: TAKING THE BROADER VIEW OF PATIENT SAFETY

This paper examines the benefits health organisations can gain from taking a broad and proactive view of their corporate priorities, their responsibilities to patients, and their capacity to deliver them. It summarises some of the general governance issues often uncovered during investigations of specific problems, and describes an approach to benchmarking good practice, identifying areas that require attention, and taking a broad view of patient safety.

INTRODUCTION

When something goes badly wrong in an organisation responsible to the public for patient safety, the focus naturally falls upon the reasons for the particular event or incident in question. People demand to know what the problem is – who or what failed, when and how? Was it the people, or the process? Was it individual error or (in the age of the Corporate Manslaughter Act[1]) was the corporate body responsible?

In serious cases of failure – such as homicides within a care setting, deaths from inappropriate treatment or lack of care, or long-term abuse – an external investigation, review or inquiry will normally be set up to establish what went wrong and suggest ways to prevent a recurrence.

> "…there is normally a point when the focus shifts from the event or incident itself to the wider workings of the organisation."

Learning from experience in this way is essential if health and social care organisations are to provide safe and effective services for patients. Indeed, one of the Healthcare Commission's standards[2] requires staff to be able to manage serious untoward incidents and to learn from them.

Verita has conducted or managed many investigations, reviews and inquiries on behalf of public organisations with the aim of pinpointing underlying problems and helping them improve service delivery, performance and accountability.

Investigations, reviews and inquiries will normally result in an action plan to resolve specific failings identified – the original problem, or the symptom of it – and there will be a commitment made by the responsible organisation to ensure that the overall process surrounding the problem improves.

However, there is normally a point when the focus shifts from the event or incident itself to the wider workings of the organisation. The problem becomes one of process as much as one of people. Not so much who did what at the time, as rather who didn't do what before the event.

[1] The Corporate Manslaughter and Corporate Homicide Act 2007.

[2] *Standards for better health*. Department of Health, 2004 updated 2006 (see core standard C1).

Incident-focused action plans alone are often not sufficient to ensure improvement and progress. An organisation with a specific problem on the frontline cannot expect to prevent or resolve this through multiple, conflicting or absent layers of guidance and management. Organisations are increasingly finding that they need to address their entire corporate approach to patient safety, that they need to test their whole system of governance, and that they need to take a broad and proactive view.

Health organisations are working in an era of mounting external scrutiny. The accountability arrangements for NHS foundation trusts include a role for a wider body of local governors, and there is continuing political debate about making primary care trusts (PCTs) more accountable to local people. In 2007 the NHS Confederation[3] publicised managerial concern about the increasing amount of regulation in the NHS. National newspapers reported the confederation's list of 56 bodies with a right to inspect or regulate NHS organisations. The message was that regulation and inspection is accepted as an important part of NHS democracy and it is welcomed where helpful but unwelcome where it is bureaucratic or unhelpful. However, the first question is whether PCTs and NHS trusts, which have limited resources to feed the many regulatory systems, are optimising the resources, advice and support they do have.

In *Safety first: a report for patients, clinicians and healthcare managers*[4] the Department of Health put "safety at the core of the 2008 NHS priorities", and called on all NHS boards to lead a change in culture on patient safety. The follow-up report, *Safety first: one year on*[5], makes it clear that boards of health organisations are responsible for assuring patient safety, and that "under proposals for the regulation of health and adult social care, healthcare providers in both the NHS and the independent sector may be registered against a set of requirements focusing on safety and quality. Providers who fail to meet these requirements would need to improve their quality of care or face action."

> "*…it is important that organisations find ways to better analyse and assure themselves of their adequacy in the area of governance…*"

The Corporate Manslaughter and Corporate Homicide Act 2007 has made it easier for the police to investigate patient safety incidents where corporate liability is suspected. The act underlines the need for all NHS trusts and PCTs to have proper risk assessment and risk management systems in place, and to regularly review procedures to ensure compliance.

For all these reasons, it is important that organisations find ways to better analyse and assure themselves of their adequacy in the area of governance – that is, the systems, processes and actions by which they lead and control their functions in order to meet their obligations and to achieve their objectives. They also need to put systems in place to record improvement.

3 *The bureaucratic burden in the NHS*. NHS Confederation, March 2007.

4 *Safety first: a report for patients, clinicians and healthcare managers*. Department of Health, December 2006.

5 *Safety first: one year on*. National Patient Safety Agency, December 2007.

PROCESS ISSUES AND PROBLEMS

In the case of a major failing, it is inevitable – and right – that there should be a review designed to cover the questions about what went wrong, and whether the problem was caused by people, or the process, or both.

In Verita's experience, most specific incidents reveal wider governance issues in an organisation. Whatever individual failings there may have been, untoward incidents tend to have their roots in weak systems and processes (see examples opposite).

These processes typically extend beyond an individual organisation, and it is increasingly the case that the success of one public body depends upon its relationship with its partners.

The importance of partnership working was highlighted in successive waves of governance guidance to the NHS, and particularly in guidance on integrated governance in 2003 and 2006[6]. Partnership and boundary governance has again recently come under the spotlight with the March 2008 paper *Developing inter-organisational governance*[7]. This highlighted concern at all levels:

- patient level – inter-organisational failure in continuity of care that compromises patient safety and comfort
- partnership level – a need for greater clarity, effort and accountability
- national level – a lack of mutual commitment to plan the handling of major threats to public health and safety.

The Healthcare Commission recently reported in relation to service failure, in *Learning from investigations*[8], that "problems often occur at the borders between one organisation or team and another." And in *Governing partnerships*[9], the Audit Commission made clear that "in the absence of formal governance arrangements, responsibility for supporting the governance of partnerships falls to partners' own corporate governance mechanisms." This is particularly true of mental health services where effective working relations with other agencies need to exist. Multi-agency public protection arrangements, and systems for the protection of vulnerable adults and for child protection, provide some infrastructure but are each limited to particular groups.

This all reinforces the responsibility of boards to gain assurance that systems and processes are good enough not to compromise patient safety.

> *"Whatever individual failings there may have been, untoward incidents tend to have their roots in weak systems and processes."*

NHS bodies need an effective governance framework providing a structure through which the delivery of all their responsibilities can be assured. The activity of governance by an organisation is both necessary and important. Governance is not limited to aspects of basic internal structure, audit and performance review; it is fundamental to the success of all of an organisation's activities, and it extends into areas of public involvement, accountability and partnership.

[6] ***Integrated governance handbook*. Department of Health, 2003 reissued February 2006.**

[7] ***Developing inter-organisational governance*. Brian Stoten and Michael Deighan, March 2008.**

[8] ***Learning from investigations*. Healthcare Commission, 2008.**

[9] ***Governing partnerships*. Audit Commission abstract, October 2005.**

Examples of specific reviews by Verita that revealed wider governance issues

A directorate in an NHS trust manipulated its data on waiting lists so that it appeared to meet activity levels that had been set too high.

The wider governance issues were the lack of realism in preparing delivery plans and the lack of challenge at appropriate points in the system.

A mental health patient murdered an elderly woman in the community.

Mental health services, the probation service and the police all knew the risk the patient posed and had made individual risk assessments. The wider governance issue was the lack of a combined risk assessment that would have identified a higher level of risk.

The senior management team of a care unit admitted more challenging clients than was normal practice without fully considering the environmental, staffing and therapeutic implications.

The full extent of the risk posed by the change presented itself when there was a serious disturbance. Warning signs were not spotted and acted on. There was no emergency plan, which impeded the management of the incident. The wider governance issue here was the lack of review of organisational objectives and the lost connection between development plans and the organisation's capacity and capability to deliver these.

An NHS organisation habitually took a combative stance with its neighbours and regulators and was not willing or able to be assisted by its partners when a public health problem emerged.

The wider governance issue here was the lack of real commitment to or understanding of the importance of partnership working and the organisation's wider responsibility to local people.

An NHS board considered that the day-to-day business of caring for patients was purely an operational responsibility of clinicians and managers, despite being aware of long-standing concerns about cleaning, nursing standards and infection control.

The wider governance issue was the board's lack of oversight and assurance about the quality of care, and the loss of focus on the basics of organisational purpose.

GOVERNANCE PRIORITIES AND PRACTICE

The leaders of NHS organisations have to face the reality that at best most health staff – clinical professionals and others – are committed to caring for the patient in front of them, but they are not committed to the organisation in anything other than a general way. The things that preoccupy the Department of Health, the strategic health authority (SHA), the trust, or even their own directorate may be an irrelevance or a nuisance to them.

> *"…the issue becomes one of effectiveness; maximising the understanding within an organisation…"*

Communication about the organisation and an explanation of why its objectives and processes are neither irrelevant nor a nuisance is therefore vital, not least because the concerned professional may not in any case be doing his or her best for the individual patient (such as the psychiatrist who does not liaise with the GP or other agencies if the systems don't prompt them).

At an organisational level, we can take as read that all NHS trusts and PCTs, including the most criticised ones, engage with the governance agenda to a reasonable extent, even if only because they cannot avoid it. So, the issue becomes one of effectiveness; maximising the understanding within an organisation and optimising the effort, efficiency and outcomes from the work the staff and their board put into governance activities.

When a PCT or trust is reviewing its governance arrangements, its organisational and partnership structures, or how it rates on 'fitness for purpose' generally, it will need to look both internally and externally for assurance that the structure is set up to deliver:

- what the board needs – assurance that processes are in place and delivering
- what managers feel works – something that is clear to all, and do-able
- what operational staff need – systems that are relevant and helpful
- what the SHA wants – foresight, responsiveness and confidence
- what other regulators want – delivery and co-operation
- what partners need – openness, clarity and integrated purpose
- what patient and public representatives will appreciate – simplicity, effectiveness and focus.

The governance priorities of a PCT or trust at any particular time will fall into two categories. First, there are the basic, ongoing priorities of any NHS organisation.

These include the efficient and effective use of resources (financial, human, estate, information), compliance with regulations such as health and safety and with health check standards, good clinical governance and quality improvement, observance of partnership duties and patient and public involvement, and development of the board and the organisation.

Secondly, there are the additional priorities linked to the flavours of the moment. These will include local interpretation of emerging central and local priorities. In the case of PCTs, these include delivering an enhanced commissioning role, meeting higher expectations about control (such as setting up patient safety action teams) and central expectations about provider outsourcing, delivering a strategy for managed year-on-year health improvements, and ensuring momentum in the whole local NHS system. In the case of NHS trusts, their additional priorities might include achieving or cementing foundation trust status or taking on the responsibilities of another organisation. Foundation trusts have their own further range of basic and additional priorities, and a further concurrent range of governance issues and responsibilities.

> "…there are varying approaches to the often under valued activity of control and co-ordination of corporate governance…"

There are typically three types of governance activity in and around any NHS organisation.

- *Internal governance activity*. This includes board-level setting and updating of standing orders and delegation of functions, audit committee activity (and other committees including clinical governance), preparation of responses to the Healthcare Commission and other regulators, and internal audit – focusing on financial and systems audits against agreed national and local audit priorities.

- *Partnership and shared governance*. This includes forging and developing effective partnerships and hosted service arrangements with other NHS bodies and with partner agencies, maintaining clearly agreed and effective processes and steering activities at senior executive and board level. In mental health, these relationships are often central to delivering safe and effective care.

- *External governance review*. This includes public and clinical engagement, visits and inspections by regulators, and external audit – focusing on financial and systems audit, particularly covering agreed national priorities for the year in question.

Having an optimal flow of corporate activity and output is important to the smooth and effective running of a trust or PCT. To achieve this, an organisation should have a clearly identified, and sufficiently senior and independent, formal corporate secretary role that fulfils the requirements of the various codes of conduct and good practice that exist. There is no standard way in which organisations make up their director-level portfolios, and there are varying approaches to the often under valued activity of control and co-ordination of corporate governance.

BENCHMARKING THE FUTURE

In delivering good governance, an NHS organisation does not lack for technical guidance. This guidance is readily available, but each part of it is lengthy and capable of being interpreted and applied differently and in varying depth.

The guidance includes model organisational constitutions, codes of conduct, openness and accountability, integrated governance handbooks and guidance from the Appointments Commission. Added to these are the public services governance standards, audit guidance, foundation trust guidance, accountable officer guidance, the combined governance code and many others.

"Crucially, the guidance very rarely helps resolve whether the arrangements an organisation has put in place actually work."

While there is no shortage of advice, guidance or instruction on the governance of health organisations, Verita has found that there is often no shortage of confusion either.

Crucially, the guidance very rarely helps resolve whether the arrangements an organisation has put in place actually work. Guidance cannot define whether the individual people responsible for running a system or process are sufficiently trained, focused or even capable of doing so. These are areas where organisations have found Verita's experience and approach helpful.

While conducting incident reviews in the health sector, Verita has found it worthwhile to develop a set of benchmarks across the whole range of corporate governance. These are used in each review that has a governance element.

The seven benchmarks of good governance devised by Verita cover:

1. organisational purpose, board roles and business structure
2. performance analysis and assessment
3. assurance and risk
4. organisational development
5. partnership working
6. public accountability
7. adapting to change.

Each of these benchmarks contains a number of key areas where Verita looks to find whether particular arrangements, approaches, attitudes and documentation are in place.

For instance, within benchmark one (concerning organisational purpose, board roles and business structure) are all the areas described in the box opposite.

In each of the areas within benchmark one, Verita looks for both documentary and interview evidence of the existence of appropriate controls, their actual usage, their adaptability for the future, and the ways in which they link together within and beyond the organisation. In this way, Verita helps organisations to identify the main issues they would do well to address, and to focus on the areas of internal, external and partnership governance that are vital for them.

The other six benchmarked areas are approached in the same way, looking at all aspects but focusing differently in each case according to the nature of the organisation and its problems. The areas covered in these benchmarks are shown on page 12.

The use of these seven benchmarks was central to Verita's recent review of board leadership at the Maidstone and Tunbridge Wells NHS Trust, where a particular set of clinical incidents relating to healthcare-associated infection led ultimately to a wider review of organisational and partnership governance.

BENCHMARK 1

Organisational purpose, board roles and business structure

- Agreed and published statements of organisational purpose and strategy, service strategies and annual objectives
- Clear roles for all board members including coverage of all statutory aspects
- Executive directors with roles and objectives agreed by the board and who understand and contribute to collective corporate business
- Non-executive directors who challenge the executives constructively, scrutinise management, ensure they have accurate and relevant information, act with collective responsibility, and act in the public interest
- Clear, up-to-date and statutorily compliant board-level structure, including standing orders, standing financial instructions, scheme of delegation, committee structure, annual reviews of these, and an established corporate secretary and compliance role
- Business control that includes a clear annual rolling business programme, clear individual and group roles at and below board level, and integrated reporting and review of performance

BENCHMARK 2

Performance analysis and assessment

- Systems to enable the organisation to identify its actual achievements over a defined period against objectives and roles
- Systems to enable all clinical and professional staff to engage with the purpose and aims of the organisation
- Systems to ensure that the organisation delivers safe and effective clinical services

BENCHMARK 3

Assurance and risk

- A clear assurance framework
- An up-to-date and active risk register
- An integrated approach to risk and controls assurance

BENCHMARK 4

Organisational development

- Clear roles for all board members
- Agreed culture, behaviours and rules understood and followed throughout the organisation
- Regular and effective staff consultation and involvement arrangements
- Effective induction, training and appraisal systems for all clinical, professional and management staff
- Evidence of active review of national and local staff surveys and opinion

BENCHMARK 5

Partnership working

- Active and appropriate whole-system working within the NHS
- Good governance arrangements in partnerships
- Active and appropriate joint working with other public agencies including local authority overview and scrutiny committee

BENCHMARK 6

Public accountability

- Active and effective working relationships with regulators
- Publicised and effective annual statutory meetings
- Clear, timely and well-disseminated annual reports
- Allowance of public questions after board meetings
- Existence of other means of keeping contact with local opinion and input
- Working relationships with local MPs and councillors

BENCHMARK 7

Adapting to change

- Analysis of in-year changes in external demands
- Regular forward look at likely new demands

THE BROADER VIEW OF A CRITICAL FRIEND

Regardless of whether it uses its own in-house resources or involves others, a PCT or trust will want the following from its investment in governance:

- assurance that its structure and corporate activities can deliver its objectives and meet external demands efficiently
- to be able to identify bad practice and good practice, distribute advice on improving practice, and reduce recurrence of adverse incidents
- to be able to link up issues where appropriate
- to be able to feel comfortable about, and to react knowledgeably to, criticism of any aspect of its organisation
- to save money or to forestall future costs.

Organisations that are well resourced can and do pick their own way through the 56 varieties of guidance and regulation available to them. Others have found that an alternative is to employ a 'critical friend' who will help them diagnose areas for attention, provide a health check in advance of formal health checks, a whole system check in advance of partner and public scrutiny, and to optimise the effectiveness and results of managerial and board-level work.

When Verita performs this function, the aim is to synthesise and smooth rather than aggravate the burden of regulation and inspection. The emphasis is placed on optimising governance and corporate efficiency and effectiveness, quality assurance, heading off unwelcome surprises, and doing things expertly so that the organisation can save in-house costs as well as addressing partnership and shared governance. (For more information about how Verita can help, see page 15).

> *"Organisations that are well resourced can and do pick their own way through the 56 varieties of guidance and regulations available to them. Others have found that an alternative is to employ a 'critical friend'…"*

These are some of the ways in which organisations can pursue the challenge set in the NHS chief executive's annual report 2007[10]: "We have to focus on delivering safe and effective care in every place, every time."

[10] *The year 2007/08: NHS chief executive's annual report*. Department of Health, June 2007.

> “…it is important to learn equally from unusual incidents and from what people and organisations do routinely every day.”

CONCLUSION

Verita’s view is that it is important to learn equally from unusual incidents and from what people and organisations do routinely every day. There is an element of ‘pre-incident’ review that should be in place to minimise the need for external investigations and inquiries. Organisations need to ensure they have access to sufficient expertise and understanding of human factors and of organisational issues in healthcare.

To go back to the questions at the top of this paper – what was the problem and who or what failed, the people or the process, individual error or corporate responsibility? The answer is that it is a matter of both people and process, but that often the questions are asked too late.

The right questions come at an earlier stage: have we done all we should do to have robust governance in place throughout our organisation; have we looked ahead sufficiently to be ready for changing circumstances; have we taken the broader view of patient safety? V

ACHIEVING GOOD GOVERNANCE: HOW VERITA CAN HELP

Verita works with PCTs and trusts to deliver all or part of a package of governance review, analysis, advice, support and education along the following lines:

- review of the seven benchmarked areas of good governance
- analysis of how particular roles have been performed against their purpose
- education and training in areas identified for improvement
- advice and assistance preparatory to external inspections
- review of achievement against agreed auditors' recommendations, regulators' required actions, and other external requirements
- regular continuing updates on Verita's initial review, report and recommendations.

The work is undertaken at different levels, and with more or less formality, depending upon whether the organisation requires background work towards advising one or more senior individuals, or work that is geared to the formal governance output of the organisation.

There are several situations in which an organisation might find all or part of the Verita governance review of use to them. For those that have identified generic problems through a specific inquiry, it is a way of ensuring that necessary change and learning occurs throughout the organisation. For others, without a specific issue to trigger a review, it is a forward-looking way of keeping fundamental processes at the forefront of the organisation.

Governance reviews in provider services, whether a PCT, a trust or a private provider, can also give assurance to commissioners. Such reviews can give assurance about readiness for change, whether it be handling prison healthcare, trust readiness for foundation trust status, or just a prospective analysis for chief executives or boards who want a snapshot of their organisation and of what they need to address at their level.

Social care organisations also may find Verita's experience in applying the social care equivalent of the NHS governance benchmarks helpful, and this is an area of work under development within Verita.

To find out more, please contact Ed Marsden on 020 7494 5670.

BRIEF 1

VERITA

INVESTIGATIONS – REVIEWS – INQUIRIES

77 SHAFTESBURY AVENUE • LONDON W1D 5DU

www.verita.net

020 7494 5670

© Verita 2008

Copies are available from the above address at £3.00 each.