

# Report to the Health Overview and Scrutiny Committee

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## The role of the local authority Health Scrutiny Committee: Lessons from the Francis Inquiry Report



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### Introduction

A public inquiry into the Mid-Staffordshire NHS Foundation Trust (MSFT) and allegations of poor care and higher than average mortality rates at Stafford Hospital was announced by the then-recently elected Coalition Government in June 2010. The Inquiry began work in November 2010 chaired by Robert Francis QC. The Inquiry heard from a number of key witnesses and considered around a million pages of evidence before publishing its findings and recommendations in a report<sup>1</sup> in February 2013. The 'Francis Report' included a range of references to the role played by local authority overview & scrutiny committees (predominantly those of Staffordshire County Council and – most relevant to this Council - Stafford Borough Council) between January 2005 and March 2009. The Report asked the question "what improvements are required to local scrutiny and public engagement arrangements [in light of the experiences of the events in the MSFT]" (p.14<sup>2</sup>). The overall conclusion from the Inquiry was that "the local authority scrutiny committees did not detect or appreciate the significance of any signs suggesting serious deficiencies at the Trust. The evidence before the Inquiry exposed a number of weaknesses in the concept of scrutiny, which may mean that it will be an unreliable detector of concerns, however capable and conscientious committee members may be." (p.47). This report looks at the issues relating to this conclusion in more detail and sets out some analysis for this authority in terms of potential lessons to be learnt and also questioning the capacity of this committee to scrutinise similar institutions (most notably University Hospital of North Staffordshire UHNS).

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<sup>1</sup> *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*(House of Commons, February 2013)

<sup>2</sup> All page number references are from the 'Francis Report' (see above for full details)

## **Background**

Following concerns raised publically in 2007 by some members of the public (most notably Julie Bailey CBE) over a range of issues relating to care at Stafford Hospital (run by the MSFT), an investigation was launched by the Healthcare Commission (HCC) between March and October 2008 into the operation of the Hospital. The HCC was also responding to statistics which showed relatively high mortality rates amongst those cases admitted as emergencies.

The report from the HCC, published in March 2009, severely criticised the MSFT's management and detailed the appalling conditions and related inadequacies at the Hospital. As a result, the Trust's CEO and Chair resigned, and a further independent inquiry was launched by the then Secretary of State for Health in July 2009. This report (published in February 2010) was also highly critical of the Trust and the care provided at the Hospital.

In June 2010, the newly-elected Coalition Government launched a public inquiry into the MSFT under the chairmanship of Robert Francis QC. As its terms of reference, the Inquiry was "to examine...the culture and systems of those organisations in relation to their monitoring role of MSFT between January 2005 and March 2009 and...examine why problems were not identified sooner and appropriate action taken" (p.10). These terms of reference included the role of local authority health scrutiny committees within its remit, most notably those of Staffordshire CC and Stafford BC. The Inquiry's report was published in February 2013 and contained a number of issues raised about the ability of local authority scrutiny committees to scrutinise effectively the operation of hospitals and the activities of parts of the NHS.

## **Issues**

The Francis Report makes a number of references to the role of local authority scrutiny committees. These references are mainly found between pages 519-557 of the Report, and provide a range of detail on the role of scrutiny committees (including the legislative framework which underpins them); their approach to scrutiny; their terms of reference and the resources available to them. The Report also includes a set of recommendations, which includes "what improvements are required to local scrutiny...arrangements" (p.14). The overall conclusion reached by the Report is set out in the introduction to this note (p.47), and it is useful to look at why this conclusion was reached in order to learn from the experiences of others.

### *Legislative and related frameworks*

As Members are aware, County Councils are required by statute to have an overview and scrutiny committee (OSC<sup>3</sup>) with the power to “review and scrutinise...matters relating to the health service...in the authority’s area, and to make reports and recommendations on such matters” (p.519). These committees also have other powers including reviewing any matter relating to health services in its area and can also require officers of the NHS to appear before it. This is not an exhaustive list of powers and responsibilities, but, as a general comment, committees can be reactive (responding to referrals) or proactive (determining their own subject matter). A range of terms of reference apply to these committees and, in Staffordshire, a scheme was devised in 2002 allowing the County Council and the eight district/borough councils to have their own overview and scrutiny committees. In 2003, the local authorities in Staffordshire agreed that functions with a countywide theme would be the preserve of the County Council and those with a local focus would be performed by the borough/district council.

In the case of Stafford BC, it was felt by the Borough Council that the terms of reference were unclear (p.525) as to which council was responsible for scrutinising the hospital(s) in the area. Despite this, it was implicitly accepted that the Borough Council would scrutinise the MSFT and the minutes of the Borough Council’s OSC referred to these delegated powers. At no point, however, did the County Council divest itself of its responsibility in this area of activity (p.526). The Francis Report therefore concluded that there was a lack of clarity in terms of the allocation of responsibility (p.526), which “was clearly undesirable... [but]...there is no evidence that this uncertainty played any part in hindering scrutiny by either [the County or Borough Health Scrutiny] committee” (p.526).

### *Resources*

A further point was noted by the Report that, whilst the County Council was supported by a large infrastructure in terms of its “Health Select Committee”, the Borough Council had one scrutiny officer to serve all its scrutiny committees (not just health). This imbalance of resources undoubtedly had a part to play in the issues faced by Stafford BC (see below).

### *Issues – Stafford BC Health Overview & Scrutiny Committee (OSC)*

The Francis Report notes that the minutes from the Stafford BC OSC were “brief to the point of being uninformative” (p.527); with no summary of the debate or formal questions put; and many decisions “to note”. The Report states that “it was widely accepted by witnesses that this style of minute taking was inadequate as it gives little

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<sup>3</sup> The Francis Report routinely refers to Overview and Scrutiny Committees as ‘OSC’, as do practitioners and others throughout the health service as a whole.

idea what members...actually contributed" (p.527). In addition, the OSC relied on the Trust to give information about the Trust.

Although the meetings of the Stafford Health OSC were open to the public who could also ask questions, these questions could not be asked unless they had been submitted seven days in advance (thus potentially restricting their impact) - having said that, the public rarely attended meetings anyway (p.528).

The OSC did undertake a number of activities regarding its scrutiny of the Trust, including visiting the Trust's facilities and also were given presentations on the Trust's Foundation Trust application in 2007 (p.529). In the case of the latter issue, however, support for the application was provided by the OSC without any time for reflection or thought, according to the Francis Report.

The Report stated that the OSC did not challenge the Trust, even when financial deficits were reported and also when the Trust lost its 'star rating' (p.531). This lack of challenge is noted by the Report on a number of occasions, such as around the FT application mentioned above.

When issues were raised by Julie Bailey in the form of a letter to the Borough Council, the Report describes the response as being "dismissive" (p.537) in saying that these concerns were not a matter for the Stafford BC OSC (although it is noted that individual Councillors, when written to by Ms Bailey, did respond more sensitively). The Francis Report also states that it seemed to take some time for the OSC to take Ms Bailey's issues on board (p.538). Even after this point, members of the OSC did not ask questions of the Trust when provided with the opportunity to do so, although increasingly information from the Trust was "being treated with scepticism" (p.540).

In terms of its conclusions on Stafford BC's role, the Francis Report made a number of observations, including: -

- There appeared to be no prior cause for concern from Stafford BC's perspective until Julie Bailey's initial letter (see above) (p.543)
- Stafford BC accepted there are limits in terms of what a small overview and scrutiny committee with limited resources can do (p.543)
- Members of the OSC accepted that they did not get "underneath what representatives of the Trust were telling us" (p.544)
- The OSC did not have the expertise to challenge Trust representatives
- There was no challenge of the Foundation Trust application – the process was described as "meaningless" (p.544)

- Stafford BC did not hear of any public concerns about the Hospital prior to Julie Bailey's letter and there is no evidence of challenge before this letter (p.545)
- Insufficient priority seems to have been given by the OSC to information from the public and there seemed to have been a lack of understanding of what scrutiny of an acute hospital entailed
- More could have been done in terms of the role played by the OSC (p.546) including seeking out information about the Trust or information from other sources such as the public
- The OSC never considered asking the County Council to exercise its powers to submit a report (or, indeed, the Secretary of State)
- Minutes were uninformative as to discussions at the OSC (p.547) which did not help matters

#### *Issues – Staffordshire CC Health Select Committee (HSC)*

Although this scrutiny note focuses to a greater extent on the role played by Stafford BC, the Francis Report did also examine issues relating to the Staffordshire CC Health Select Committee (HSC) during this period, and offered a number of further observations, including:

- There was limited training available for the Chair of the Staffordshire CC HSC (p.547)
- There was a deliberate ploy on the part of the HSC not to seek out the views of the public
- No procedure was in place for members of the public to ask the HSC questions
- As was the case with Stafford BC, the Trust's management team was the principal source of information

The County Council did play a role during the period covered by the Francis Report, and did – in some cases – offer greater challenge to the Trust than the Stafford BC OSC (p.550), but there were also areas where the same weaknesses were evident in terms of the HSC including little or no reaction to issues prior to the Julie Bailey intervention; and almost automatic support for the Trust's application for Foundation Trust status in 2007. It should be said that, after July 2009, a series of measures were introduced by the County Council including joint accountability sessions with the Borough's OSC to examine hospital issues; a draft joint code of working and a clear decision to make scrutiny of the Trust the responsibility of the County Council.

## *Overall Conclusions*

In terms of its analysis of the role of overview and scrutiny committees, and their role in uncovering the issues affecting the MSFT and Stafford Hospital, the Francis Report offered a number of overall conclusions, including:

- An acceptance that the overview and scrutiny committees involved in this process did not uncover the deficiencies of the Trust due to the lack of a challenging culture; lack of clarity as to the role of scrutiny; and a lack of information from sources other than the Trust (pp. 555-556)
- A lack of clarity in terms of guidance to the committees
- Scrutiny should have done more than merely passively accepting reports from the Trust (p.552)
- Following the interventions by Julie Bailey and the HCC, Members did display the ability to ask more challenging questions, but before this the Report found that scrutiny was deficient in a number of areas, including those listed in this note

The Francis Report did acknowledge that Councillors are not necessarily expected to be experts but should make themselves more aware of the concerns raised by those who elected them (p.557). In addition, more use should have been made of the powers of overview and scrutiny committees to summon people to their meetings to answer questions.

As a final statement on local authority scrutiny, the Francis Report notes a number of weaknesses in the system of scrutiny in relation to health issues (p.582), including:

- Responsibility for scrutiny of performance and also representing people is a demanding one for councillors with limited or no expert support;
- Councillors are more likely to respond to concerns raised with them by constituents than to be able to undertake proactive inquiry;
- Councillors have to deal with a conflict between their duty to offer criticism/challenge and their need to support local institutions; and
- The distribution of powers for scrutiny is confusing and inhibits effective performance

The Report does make some recommendations for this area of work including giving overview and scrutiny committees the power to access complaints (p.281) and allowing for local authorities to pass over funds to local Healthwatch organisations. Also, overview and scrutiny committees should have the power to inspect providers.

## Questions to be Addressed

Given the information contained in the previous section, and the range of areas focused on by the Francis Report, it is recommended that the existing system of health scrutiny by NULBC is focused on, especially given the stated desire by the Committee to scrutinise University Hospital of North Staffordshire (UHNS) in the future. The areas for possible analysis, therefore, could include (these questions all relate to scrutiny of UHNS/other relevant hospitals): -

- Should this area of scrutiny (of hospitals) be undertaken solely by Staffordshire CC (or Stoke on Trent CC) or should there be a division of responsibilities (in the case of Staffordshire) or joint working (in the case of Stoke on Trent) with the relevant district/borough council(s)?
- Where does the NULBC Health Overview & Scrutiny Committee get its information from in relation to UHNS/other hospitals?
- Are the existing resources dedicated to the NULBC Health OSC adequate, both in terms of committee/scrutiny support and also the provision of expert advice (other than that from UHNS)?
- Are the existing methods of recording meetings adequate?
- Is there sufficient clarity in terms of the respective roles of the SCC Healthy Staffordshire Committee and the NULBC HOSC?
- Are Members of the NULBC HOSC challenging enough in terms of their questioning and analysis of UHNS?
- Do Members feel they receive sufficient training to undertake this role?
- Is information from the public both sought and responded to?
- What role does the public play at meetings of the NULBC HOSC?
- Do the proposed constitutional changes relating to Health Scrutiny at NULBC help in terms of scrutinising UHNS (see Appendix A)?

## Outcomes

- That the Committee considers the findings from the Francis Report in relation to Health O & S
- That the Committee use these findings to apply analysis to how Health Scrutiny is undertaken at NULBC
- That this analysis assists in helping NULBC to avoid making the same mistakes as previously made by other local authorities in this area of work

- That issues are flagged up sooner and steps taken more quickly to deal with these issues

### **Supporting Information**

Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (February 2013)

### **Invited Partners/Stakeholders/Residents**

None at this stage

### **Constraints**

As indicated in the note, this will form part of the analysis

### **Conclusions**

This report sets out the background and findings (related to local authority overview and scrutiny) of the Francis Report into the MSFT and Stafford Hospital.

These findings are listed in the report.

The report goes on to pose a series of questions designed to focus on the role played by the NULBC Health O & S Committee

Members are asked to consider responses to these questions in order to provide a context to the future role of the Committee in relation to the scrutiny of hospitals and other related parts of the NHS.

### **Relevant Portfolio Holder(s)**

Cllr John Williams, Portfolio Holder for Planning & Assets

### **Local Ward Member (if applicable)**

N/A