

Mr A Horne

Code A

14th November 2002

Dear Tony

Temporary Redeployment

Thank you for your letter dated 25 October 2002, which as you know I received just prior to my absence as a result of the half term school holiday. You and I have since met and discussed some of the points raised in your letter, and I am now writing as promised by way of both a confirmation of our discussion and a more formal response.

As you know it has always been, and remains, my intention that we should do everything we can to manage the extraordinary circumstances in which we find ourselves, in a way which enables the PCT to continue to function, whilst at the same time addressing the public concerns which have been expressed and fulfilling our responsibilities to you as our employee.

I have noted your comments with regard to the legal advice you have received. I do not intend to comment on that advice, except to say that we do not accept that we have acted in such a way as to provide you with grounds to pursue any legal claims against this organisation. I do feel however that it would be of benefit for me to set out in writing some of the background and what I understand to be the current position.

As you know, there are presently two formal inquiries underway in relation to Gosport War Memorial Hospital being:-

- a police investigation into allegations of unlawful death, conspiracy to pervert the course of justice and misconduct in a public office;
- an audit by Professor Baker of deaths which occurred at Gosport War Memorial Hospital between 1988 and 1998 to establish whether any deaths which occurred were inconsistent with the relevant medical histories and whether the prescribing practices at the hospital were a factor in those deaths.

The Audit by Professor Baker was commissioned by the Chief Medical Officer, and the outcome of that audit will be reported direct to him.

Both these investigations were prompted by the dossier of papers which came to light in mid September 2002, which indicated that nursing staff working at Gosport war Memorial Hospital had expressed concerns about prescribing of Diamorphine at the hospital as long ago as 1991, and that such concerns may have been made known to a number of managers responsible for the hospital at that time.

Shortly after those papers came to light, the Strategic Health Authority announced publicly that there would be an investigation into management decisions taken in the past at Gosport War Memorial Hospital, and it was as a result of the need to pursue that investigation that a decision was taken to temporarily re-deploy you to other duties. It is of course a fact that in 1991, at the time when it now appears nursing staff at the hospital were raising concerns about prescribing practices at the Hospital, you were employed as a manager in the unit team then responsible for Gosport War Memorial Hospital, and you were subsequently appointed as an executive director of Portsmouth Healthcare NHS Trust, which became responsible for Gosport War Memorial Hospital following establishment of that Trust in 1994.

I am aware that your name appears in the dossier of papers dating back to 1991 as being one of the individuals to whom such concerns may have been made known. Given the level of public concern which has been expressed about practices at Gosport War Memorial Hospital, it is essential that the NHS is able to demonstrate that a thorough investigation has taken place to determine what actions took place in the past. In deciding to redeploy you we were mindful of the fact that as Chief Executive of this PCT, which currently employs medical staff who are working or have worked in the Gosport War Memorial Hospital, the public perception might be that in such a capacity, if you remained in that post whilst the investigation was on going, you would be in a position to influence any such investigation in a way which would result in no criticism of either of you, given your past involvement in the organisations responsible for GWMH, or of any medical staff who had worked there.

I want to reassure you that the decision to re-deploy you was not taken lightly, and did not reflect any concern on my part, or on the part of my fellow directors that you might have acted inappropriately in the past. Nevertheless, as directors of a public body which is responsible for the provision of health services, where such serious allegations have arisen, we had a responsibility to act in a way which would encourage public confidence in the probity of the organisation.

We have gone to great lengths to ensure that your own position is not compromised as a result of the re-deployment, and we continue to try to ensure that you will be in a position to return to work as Chief Executive in due course. The confidence that has been expressed in you by colleagues throughout the PCT is a reassurance that this is the case.

In relation to the management investigation, as you know, there has been a slight delay in establishing the terms of reference for that investigation, as a result of the need to clarify through the Department of Health whether a public inquiry into Gosport War Memorial Hospital was to be convened by the Secretary of State for Health. My present understanding is that there is not going to be a public inquiry, although obviously the possibility of such an inquiry being convened at some point in the future cannot be ruled out. Indeed, we were advised only last week that the Commission for Health Improvement will be asked by the Secretary of State to conduct a further review of the Hospital, looking at events from 1991 up to 1998. This will add another layer of complexity to the investigations, but is a matter outside of our direct control.

In addition, the Strategic Health Authority have been liaising with the police to ensure that they have no objection to the management investigation getting underway whilst their criminal investigation is on going, and the terms of reference for the management investigation will be shared with the police (and CHI) as soon as they have been finalised.

The Strategic Health Authority have also been taking the lead in identifying a suitable person to conduct the management investigation. I understand from speaking to Gareth Cruddace that an individual has been identified (Mike Taylor, former Chief Executive of Oxfordshire Health Authority) who will be able to undertake the investigation as soon as the terms of reference have been finalised. My hope is that instructions will be issued to the investigator by the end of this week.

I am enclosing herewith a copy of the draft terms of reference for the management investigation. Obviously we have not met the timescale you had sought in your letter, but I hope you will appreciate the reasons why it has not been possible to do so, given my comments above.

It is the intention of both the Strategic Health Authority and this organisation that the management investigation will be concluded as quickly as possible, and that has been conveyed to Mike Taylor. It is not possible, however, for me to confirm that the investigation will have been concluded within the timescale you have suggested, since the length of time it will take to conclude the investigation will inevitably depend on the amount of information the investigator has to review.

As soon as the management investigation report is available, then we will need to consider at that point whether or not any disciplinary action is necessary. If not, then we will also need to consider whether it would be appropriate to bring the redeployment arrangements to an end at that point. The considerations we will take into account at that point will include what stage has then been reached in the other investigations underway, in particular the police investigations, but as you will appreciate I cannot pre-judge now, what the outcome of our deliberations then, may be. I do wish to make it clear, however, that no decision has been taken by this organisation that your redeployment will automatically continue until all the current investigations have been concluded. Rather, our view is that we must keep your position under regular review, with the intention

being that you should return to your duties as Chief Executive of the PCT as soon as possible.

I can confirm that whilst your redeployment continues, and as you would expect, this Trust will continue to provide you with full pay and benefits in accordance with your contract, as indeed we have done since your redeployment began.

In relation to your other requests my comments are as follows:

Provisions of papers

As discussed when we met, I have given instructions that you should be provided with copies of minutes of both public and private board meetings, minutes of sub committee meetings (other than those of the Remuneration Committee where they refer to you), as well as minutes of the meetings of executive committee, the senior management team and the LIFT project team, in order to keep you informed of developments within this organisation. As you yourself acknowledge, I cannot allow you to receive copies of any papers which relate to the investigation into Gosport War Memorial Hospital, and if it is necessary to withhold or amend any of the documents I have already referred to as a result then you will be notified accordingly.

National documents

Many of these documents are available on the internet, and I would expect them to be available to you wherever you undertake your redeployment. To the extent that you are not able to access any such documents whilst on redeployment, however, then I will ask Paula to ensure that copies are made available to you.

Meetings with the acting Chief Executive

My view is that, since Paula is fulfilling the role of Chief Executive on an acting basis, it is for her to decide when she needs to discuss with you any issues arising within the PCT. I will not be asking her to conduct weekly update meetings with you, since I believe that such instructions would undermine her authority as acting chief executive, but I have made it clear to her that she should feel free to contact you where she believes it would be beneficial to do so.

Meetings with me (the Chairman)

Again, I am happy to meet with you whenever you or I feel it would be appropriate to do so, but I believe it would be better to arrange the frequency of the meetings around the circumstances at the time rather than to formalise that arrangement into a regular weekly meeting. The position is and has always been that if you have any concerns about your position you should raise them with me, as indeed you have already, and I hope our arrangements for contact will continue as they have to date.

Meetings with the Executive Committee chair

I do not feel it is appropriate for me to ask John Hughes to have regular weekly meetings with you. As Executive Committee chair, John's working relationship is with the Chief Executive, and since Paula Turvey is the acting Chief Executive, John will be liaising with her primarily. I hope you will appreciate that for me to instruct John to have regular weekly meetings with you would inevitably undermine her position as Acting Chief Executive. I have informed both Paula and John, however, that should they feel it would be beneficial for either John or both of them to meet with you to discuss any issues in relation to the PCT, then they should feel free to do so.

Meetings with Gareth Cruddace, Chief Executive of the Strategic Health Authority

It is not for me to regulate your discussions with Gareth, as he is the Chief Executive of an entirely separate organisation. I know that Gareth has received a copy of your letter and no doubt he will discuss with you directly how discussions between the two of you will continue.

Professional Development

We have agreed that you should continue to have the opportunity to attend appropriate national events and courses targeted at those holding PCT Chief Executive posts or the equivalent, subject only to my approval in the usual way. In order to avoid any confusion, for as long as you are redeployed, I think it would be preferable if you were to attend any such events or courses as a representative of either the Strategic Health Authority or the organisation in which you are then redeployed, rather than as a representative of this organisation.

Legal Costs

I am aware that the Strategic Health Authority have provided some funding for you to take legal advice on your position. I must make it clear that this organisation cannot provide you with any funding towards any legal costs you may incur. As you know, as a publicly funded body we are accountable for the proper use of public funds, which must be applied in the discharge of our functions. The advice I have received is that it is not part of our functions to provide funding for any employees to obtain legal advice, save where such advice is required in connection with the defence of a claim against the organisation. We do not provide funding for legal costs any of our employees may choose to incur in taking advice about their own position. I do not believe it would be right for us to make an exception in your case, and I hope you will understand why.

Redeployment opportunities

I am aware that Gareth has been discussing with you the options open to you in terms of the duties you might undertake whilst on redeployment. I am happy to assist in whatever way I can in any discussions you are having in that regard, but Gareth is much better placed than me to provide you with details of what is available and as a result I envisage

my involvement in those discussions to be limited. I am aware that some options have been identified which would be consistent with your experience and status and I would urge you to finalise the details of your redeployment in agreement with Gareth Cruddace as soon as possible, since in that way I believe you will have the opportunity to keep your skills and knowledge up to date, and that will be an equally important step to being able to return to duty as Chief Executive of this organisation.

Regular contact with staff in the PCT

I have noted your comments in this respect. I hope that what is set out above will reassure you about the contact you may expect to have with your colleagues during your redeployment. What these arrangements are designed to achieve is a position in which those with day to day responsibility for running the organisation can get on with their duties until such time as you are able to return, using you as a resource, as and when necessary; and at the same time keeping you up to date with the business of the PCT so that you will be in a position to return to your Chief Executive duties when your redeployment comes to an end. Inevitably there must be seen to be some distance between yourself and the organisation whilst you are on redeployment, if we are to be seen to meet the objective behind the redeployment, i.e. to demonstrate that you have not had the opportunity to influence the investigation into Gosport in any way. Nothing has been said or done to give any impression to our staff that you have been redeployed for any other reason, and I am confident that such will remain the case.

I am conscious of the fact that I have not been able to respond in the way you would have liked to all of the reassurances you have sought, but I hope you understand that we have endeavoured to meet as many of them as we can, and that there are valid reasons why we cannot agree to the remainder.

I know that these last few weeks have been extremely difficult for you, but I hope you are aware that you are fully entitled to access the Corecare service if this would be of any help to you. I also hope you know that I am doing everything within my power to ensure that we find a way through this situation.

Yours sincerely,

Margaret Scott
Chairman

Draft Terms of Reference

To seek to establish:

- whether or not any concerns were raised about any of the following:
 - the use of diamorphine [or any other opiate substance] ; or
 - prescribing regimes; or
 - the use of syringe drivers to administer medication;
 in relation to the treatment of patients at Gosport War Memorial Hospital (“the Hospital”) at any time between 1988 and 1998;
- If so, the way in which any such concerns were raised, by whom, to whom and when;
- What action (if any) was taken (and by whom) as a result of any such concerns and when;
- The effect (if any) that any action taken had, on any of:
 - the use of diamorphine [or any other opiate substance]; or
 - prescribing regimes; or
 - the use of syringe drivers to administer medication;
 within the Hospital in that period.
- Whether any action taken **at the time** was justified, in all the relevant circumstances;
- Whether any failure or omission to act **at the time** was justified in all the relevant circumstances;
- Whether any events at the Hospital (such as but not limited to patient deaths, untoward incident reports or complaints) during the period in question should have prompted those with management **and/or clinical management** responsibility for the Hospital at the time to take any steps, and if so, what steps and whether such steps were in fact taken;
- Whether any individual working at the Hospital or working in a post which involved responsibility for either clinical or administrative matters at the Hospital during the period in question either :
 - acted; or
 - failed to act; or
 - omitted to act; or
 - neglected to act
 in an appropriate manner in response to any such concerns or events, given their level of knowledge, seniority, experience and responsibilities at the relevant time.