

28 March 2019

Baroness Dido Harding  
Chair, NHS Improvement  
Wellington House  
133-155 Waterloo Road  
London SE1 8UG

Dear Dido

### **Kark Review Recommendations Next Steps**

Thank you for our recent meeting on the Kark Review recommendations when I shared provider sector views and made some requests on the next steps. We agreed I should write a letter for you to consider.

#### ***General approach***

The recommendations have triggered a range of strong views. We believe there may be greater common ground than the current polarised debate suggests but the NHS needs a process to find that common ground. Our request is that you lead such a process before deciding on your recommendations to the Secretary of State and we set out below our suggestions on how such a process might be run.

The recommendations are potentially far reaching and they need to be considered carefully and deliberately, in a structured way, using evidence based policy making principles, including looking at possible alternatives. Any process must be fully inclusive, open, and transparent and ensure that all relevant views are properly aired and considered. Those who are affected need to be properly consulted.

The workforce implementation plan work has rightly focused on how we need to change NHS culture and invest in its leadership. It will therefore also be important to consider the recommendations in this broader context and the wider actions in the soon to be published interim report.

#### ***An open opportunity to respond to the recommendations***

We were disappointed that the government chose to accept two of the recommendations without properly consulting those affected. We believe that the logical first step of any deliberative process should be to encourage anyone with views on the recommendations to submit these to you and for you to publish them, to encourage debate. This should be an open process, unless there is particular, good, reason to withhold submissions. This element, which should be set up as a formal consultation, can be done relatively quickly and will establish the areas for debate and who has an interest.

#### **NHS Providers**

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Given the need to consult on other elements of the workforce implementation plan, you will want to consider how these different consultations align.

### ***Reference Group***

Building on the success of the recent exercise you have led around the workforce implementation plan, we believe you should establish a balanced reference group of those with an interest in the recommendations. It will be easy for you to identify relevant statutory organisations and representatives of the trust and managerial perspective – for example ourselves, NHS Employers and Managers in People. We would also like to suggest a couple of frontline trust board directors whose names we can share. We think it will be important for you to find appropriate representatives of the patient/whistleblower perspective and the submissions from the consultation exercise suggested above should help here. You might also wish to look at whether a reference group could benefit from the input of those who have tackled similar issues in other sectors.

### ***Topics to explore***

We believe that the reference group should help create, and then participate in, a series of expert policy roundtables to discuss the issues and seek to identify common ground. The reference group should determine format and topics but I attach a list of topics, with brief reasoning, that we would like to see covered. On format, we think one option is a debate of papers prepared in advance by a balanced secretariat (see below).

We note there are some who feel they have been excluded from offering their views face to face and you/the reference group will want to consider whether this process should offer them an opportunity to express their views in person before you decide your recommendations.

### ***Bringing deliberations to a conclusion***

We would hope that the combination of responses to the recommendations and the output of the roundtables will then create the content for a report. Hopefully most of its content will be common ground but, where there is a difference of opinion, the report could set out the options, the one you recommend and the reasons for your recommendation. We think it would be helpful for the report to cover a fair amount of detail, for example the critical success factors for successful implementation of the proposed recommendations. If there is still significant disagreement or concern, there is likely to be a strong case for further consultation on these emerging recommendations.

### ***Secretariat and process oversight***

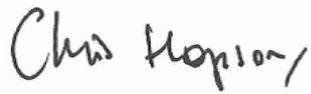
Assuming this work would be done at pace, it would require significant expert input from a secretariat. We assume this would be led from NHSI as it is in the best place to “hold the ring” between the differing interests. But we think it might help if those with strong interests were also able to contribute to this detailed work – again it would be important to find the right balance of input here. We would be happy to offer detailed support on the trust perspective if that would help.

Given that you have the task of making the recommendations to the Secretary of State it will be important for you to have ultimate oversight of the process. However, as we discussed, given NHSI’s evidence to Kark and your recent evidence to the Select Committee, it will be important for you to demonstrate that you are genuinely prepared to consider the evidence offered and the discussions.

I hope this is helpful. We, and the trusts we represent, are keen to contribute to an open and deliberative process that seeks to find common ground on what is a complex and

important set of issues. In that spirit, we have copied this letter widely, will release it to the Health Service Journal and will place a copy on our public website.

Yours sincerely

A handwritten signature in black ink that reads "Chris Hopson". The signature is written in a cursive style with a trailing slash at the end.

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Chief Executive

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cc

DHSC, NHSI, NHSE, CQC, HEE, GMC, NMC, PSA, NHS Employers, Managers in Partnership, FMLM, NHS Confederation, NHS Clinical Commissioners, Protect, AVMA, FTSU Guardian, Peter Homa, Steve Hart, LGA, NHS Partners.

enc.

## POSSIBLE TOPICS A DELIBERATIVE PROCESS COULD COVER

Set in a possible chronological order of consideration

### **What problems are we trying to solve and how widespread and serious are they?**

Those advocating greater regulation say they are seeking to address a range of problems. These include, and this list is far from exhaustive:

- The Fit and Proper Persons Test has failed to work and the NHS needs something reformed/different/better
- The NHS has been unable to properly hold board directors to account in instances of trust-wide serious failures of care
- The NHS has inappropriately “recycled” board directors who have been involved in instances of trust wide serious failures of care – there is no means of formally disqualifying such directors, there is no formal register (either of such directors or trust board directors as a whole) and the system of NHS references at this level is flawed
- It is wrong that trust board directors are able to avoid giving evidence to inquiries into serious trust-wide failures of care
- The absence of a system of managerial professional regulation means there is no public and transparent means of determining whether a board director is a fit and proper person, unfairly exposing good board directors to unreasonable questions about their competence
- The level of responsibility exercised by a trust board director requires a more proactive approach to specifying a set of core competences, assessing a director against them and supporting them to reach the required level of competence
- NHS trusts have inadequate, insufficient or inappropriate processes to perform due diligence on trust board directors or are not applying those processes appropriately, effectively or consistently
- Clinicians are subject to professional regulation and it is inappropriate that managers are not subject to an equivalent regime

For some, “trust board director” is too restrictive a definition of those to whom these issues apply, and they would seek to extend the definition to a wider group of leaders.

It would be helpful to collectively define, with appropriate precision, exactly which problems need to be addressed and how serious and widespread each problem actually is.

### **The means of addressing the agreed problems and how others have addressed them**

Having identified what problems need solving, it would then be helpful to identify how they might be addressed. There is a consistent presumption in the NHS that problems in this general area are best addressed through additional regulation. The evidence does not consistently support this presumption. It would be helpful to identify:

- What current means are in place to address the identified problems
- How effective these are and where they need improvement or a different/additional approach
- An examination of the options for addressing the problems and the advantages/disadvantages of these

It will be helpful to learn from the experience of others – for example the financial services industry.

### **Detailed consideration of the issues around professional regulation**

If, as you argued to the Select Committee, the NHS should head towards professional regulation of managers, we will need detailed discussion of how this is to be done. The Kark Review sets out the terrain – what organisation will be required, how it will work etc.

### **Testing the emerging solutions**

Once a set of solutions starts to emerge, it will be important to test these for the following:

- Their likely effectiveness in addressing the problems identified
- Their cost and implementation burden
- Their proportionality and whether they are appropriately risk based and targeted
- Their alignment or misalignment with existing legislation and regulation (e.g. employment law and the ability of a trust board/director to perform their other duties)
- The wider impact they will have, thinking of issues such as the impact on the attractiveness of trust board director roles