

Item 12.5

**minutes**

## Board of Directors (in Public)

### Minutes of the Meeting of the Board of Directors held on 26<sup>th</sup> November 2019

<b>Present :</b>	Neil Large	Chairman
	Jane Tomkinson	Chief Executive
	Bob Burgoyne	Non-Executive Director
	Nicholas Brooks	Non-Executive Director
	Jonathan Develing	Director of Strategic Partnerships
	Julian Farmer	Non-Executive Director / Deputy Chair
	Sue Pemberton	Director of Nursing and Quality
	Raphael Perry	Medical Director / Deputy Chief Executive
	Claire Wilson	Chief Finance Officer
<b>In Attendance:</b>	Sue Hodgkinson	Interim Director of People and Culture
	Lucy Lavan	Director of Corporate Affairs
	Marga Perez-Casal	Director of Research and Innovation
	Justin Ratnasingham	Clinical Lead – Critical Care (Item 1.5)
	Frankie Morris	Deputy Chief Finance Officer (Item 1.5)
	Helen Turner	Freedom to Speak Up Guardian (Items 5.2 and 5.3)
<b>Apologies for absence :</b>	Mark Jones	Non-Executive Director
	Karen O'Hagan	Non-Executive Director
	Hayley Kendall	Chief Operating Officer
<b>Observers- Governors / Staff/ Members of the Public:</b>	Trevor Wooding	Senior Governor
	Jo Navin	Philips UK&I
	The Label 1 Film Crew were present for part of the meeting.	

**Action**

1  
Chair's  
Initials

# 1

## **Opening Matters**

The Label 1 Film Crew presented themselves to the Board and it was confirmed that Board members were willing to be filmed as part of the production of the new BBC Hospital Series which would be broadcast in early 2020.

### 1.1

#### **Apologies for Absence**

Apologies for absence were received from Mark Jones, Karen O'Hagan and Hayley Kendall.

### 1.2

#### **Declaration of interests relating to agenda items**

The Chair asked Board members if they had any interests to declare in respect of items listed on the Board's agenda. All directors declared that they had no interests.

### 1.3

#### **Patient Story**

The Director of Nursing & Quality read a patient story.

### 1.4

#### **Chair's Briefing**

The Chair welcomed Sue Hodgkinson, Interim Director of People and Culture to her first Board meeting and congratulated Dr Marga Perez-Casal on her substantive appointment to the post of Director of Research and Innovation.

It was noted that the annual 'Best of the Best' staff awards ceremony would take place at the Crowne Plaza Hotel, Liverpool on Friday 29<sup>th</sup> November 2019.

The LHCH Charity had received a generous donation of a Bentley car which was due to be auctioned in early December.

Julie Tyrer, Tissue Viability Consultant Nurse was commended for her achievement of the Chief Nurse's Silver Award for her work on moisture damage. Jackie Bird, Chief Nurse for the Northwest, NHSE/I had attended the Trust to present the award.

### 1.5

#### **New Pension Rules and Taxation Implications**

The Chief Executive advised that the impact of new pension rules had been an issue since 2015 and had been managed well but the point had been reached at which decisions to ensure capacity to deliver patient care in timely manner needed to be made.

Frankie Morris, Deputy Chief Finance Officer and Dr Justin Ratnasingham, Clinical Lead for Critical Care were welcomed to the meeting.

Frankie Morris delivered a powerpoint presentation and took the Board through an overview of the current NHS pension scheme and pension tax system. In her conclusion she noted that there were significant consequences associated with the tax rules including individuals' decisions to delay promotions and career progression and to reject take-up of additional work, over and above contracted job plans. This was impacting on operations

and patient care as well as career choices for senior managers. There had always been a reliance upon clinical staff to undertake additional paid sessions, but even non-pensionable work was no longer viable because of the taper that had been introduced in 2016 to reduce the annual allowance threshold to £10,000.

The Chief Executive advised that the magnitude of personal tax liability was such that some individuals had been forced to re-mortgage their homes, take loans or defer investment decisions linked to their families, and this was having a very significant impact on personal lives.

The Medical Director noted that there was a perception that the tax rules affected only very high earners, but in fact a significant range of staff were affected, with younger staff members affected by the annual allowance, as opposed to older staff who were also impacted by the lifetime allowance.

The Board discussed this further, noting that staff who opted to leave the scheme to mitigate tax penalty would lose out on the scheme's wider benefits such as those relating to death in service.

The Chair invited Dr Justin Ratnasingham to speak and the Board heard that there was a national shortage of anaesthetists which was prohibiting the recruitment of additional medical staff. The flexibility to use additional sessions was essential for managing the ebbs and flows of clinical work and to ensure patients were managed in the most optimal way. Dr Ratnasingham advised that the tax problem was only starting to impact in the last 12 months and was causing significant financial hardship with some colleagues receiving bills in the region of £20-30k. There had been no clarity from HMRC about how to forecast the impact or how much additional work could be undertaken without incurring penalty and the situation was now impacting significantly on consultant morale and a reluctance to offer additional hours. The majority of LHCH consultants were working in excess of 10 PAs and the response nationally had been that consultants should defer to a 10 PA contract, leading to significant shortfalls in operational capacity. Some consultants were working extra time without pay or providing additional hours at a lower rate, but this could not be sustained in the long term. Whilst the team had tried to operate a time off in lieu (TOIL) scheme this had still impacted upon capacity.

Dr Ratnasingham acknowledged the NHSE/I letter of 22.11.19, noting that this provided a short-term solution but other measures, including the 'recycling' of pension contributions required urgent consideration.

The Medical Director confirmed that most consultants were working to 12 PA job plans and had demonstrated exceptional goodwill, regularly working over their sessional commitment with no pay. There was a real risk that more consultants would seek

to defer to a 10PA contract and workforce supply was very limited especially in the specialisms of anaesthesia, critical care and radiology. It was projected that in the next calendar month, at least 40 consultant sessions would not be covered, meaning patients would be subject to cancellation and longer waits.

The Board discussed the national picture and noted that there was evidence showing that where consultants had withdrawn from additional work, this was hard to retrieve as individuals became accustomed to an improved work-life balance; therefore timing was crucial. It was noted that the issue was particularly difficult for the Board as it related to personal taxation.

The Interim Director of People and Culture took the Board through her paper, noting the late announcement set out in the NHSE/I letter dated 22.11.19, advising Trusts to publicise the 'Scheme Pays' offer which would mitigate tax penalties for clinical staff for the remainder of the current tax year and therefore support the NHS operationally over the winter period. A consultation process would commence with further guidance on a longer term solution expected by April 2020.

The Board discussed the impact of the 22.11.19 letter, noting that this could be subject to legal challenge as it singled out clinical staff; further it did not address the lifetime allowance (LTA) issues and actions put forward could in turn adversely affect the LTA. It would be important for individuals to make an informed decision after taking independent financial advice which would itself come at a further personal cost.

A discussion followed about how payment for private patient activity might impact upon personal taxation and whether this might impact upon the willingness of staff to participate in delivery of the private patient strategy. It was noted that this matter was referenced in the published FAQs and that individuals had a responsibility to account fully for all earnings.

It was noted that the NHS Pension Scheme did not allow retention of membership and associated benefits to those who opt out; although it was possible to opt back in to the pension scheme.

The Board confirmed its support for publicising the technical 'Scheme Pays' option but noted that it was uncertain what the uptake would be and what difference it would make. It was also noted that there were publicised questions over the veracity of this offer and concerns from clinicians that it might subsequently be withdrawn.

The Board acknowledged the range of flexibilities set out in the NHSE/I letter of 5.11.19 and the need for serious consideration of these. In particular the 're-cycling' of saved pension contributions would be cost-neutral to the Trust and whilst this would not resolve the problem in its entirety, it would be a positive first step

and send a favourable message to clinical staff. The Board supported this concept in principle, subject to fully understanding the legal advice which had been received during the course of the Board meeting but would take time to review and fully understand. There was no consistency in how other local Trusts had responded and the focus on only clinical staff raised an issue of equity for other staff groups. Therefore, any flexibilities offered by the Trust would need undergo equality impact assessment. It was accepted that an early decision for the clinical body was imperative with further work to understand the application to the wider workforce.

The Board noted the challenges in meeting performance targets and recognised the need to plan for the longer term, beyond the current tax year.

After considerable debate the Board resolved to:

- i) Implement the NHSE/I instruction set out in the letter dated 22.11.19, by publicising the 'scheme pays' short term solution to clinicians, and the need for them to proceed with this in accordance with independent financial advice;
- ii) Convene an extraordinary private Board meeting within the next two weeks to consider more fully the range of flexibilities set out in the NHSE/I letter of 5.11.19 and in the context of legal advice, in order to quickly offer further longer term mitigations to clinical staff; this discussion would be informed by action taken by other local Trusts and flexibilities could be subject to review and update in accordance with future policy updates.
- iii) Undertake an equality impact assessment of each option offered to clinicians and agree a timeframe for considering applicability to the wider workforce. Where executive directors were conflicted, the Nominations and Remuneration Committee would need to be convened. The wider workforce implications would be informed by the ongoing stakeholder consultation which was expected to report by April.

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It was agreed that an extraordinary meeting of the Board of Directors would be convened on Tuesday 3<sup>rd</sup> December at 9.00am with a view to enabling a clear response to clinicians by no later than 10<sup>th</sup> December 2019.

The Chair thanked colleagues for their presentations and Frankie Morris and Dr Ratnasingham left the meeting.

## 2

### 2.1

#### Targets and Financial Performance

##### Board Dashboard – period ended 31<sup>st</sup> October 2019

The Director of Nursing & Quality presented the report and noted that the Trust was experiencing some significant operational pressures. She highlighted the following:

- Compliance with the 6 week diagnostic target had

improved in line with the revised trajectory but fell significantly short of the national standard at 72.17%. The new scanners were now operational, providing greater capacity and the Trust was expected to return to full compliance with this target by the end of Quarter 1, 2020/21.

- The surgical activity plan continued to present a significant challenge for a number of reasons, including low take-up of additional sessions, particularly by anaesthetists who were experiencing personal financial loss due to the pension taxation rules. A recovery plan had been put in place and a deep dive of surgical performance had been undertaken, to consider challenges and constraints at sub-specialty level and the impact of variance from plan in relation to case-mix. The Associate Medical Director for Surgery was to address the Board and discuss the action plan further later in the day.
- Cardiology was also seeing greater numbers of referrals and pathway delays arising from the radiology backlog. This was now impacting on the Trust's aggregate RTT position and there was significant risk that the Trust would breach the RTT target at Month 8. A deep dive at sub-specialty level in Medicine had been undertaken by the new Divisional Head of Operations who would present to the Executive Team the following day, 27.11.19. The Chief Operating Officer would continue to review the operational of all three Divisions on a weekly basis to ensure that improvement trajectories were realistic and on track.
- Sickness absence remained a significant pressure, although there had been some improvement in Surgery. A strong focus by Divisions, Executive Team and Operational Board would support the improvement plan. This was also a key area of focus for the new Interim Director of People and Culture.
- Overall activity was 3.77% behind plan with a shortfall in capacity of approximately 40 clinical sessions in Month 7. It was anticipated that the shortfall in capacity would be mitigated through the provision of pensions flexibilities.

The Board discussed and noted the strength of governance arrangements, including the recent Divisional Reviews and the 'Supporting Attendance' improvement work which would be reviewed in detail at the People Committee in December 2019.

The impact of operational pressures on patient safety and experience was discussed and it was noted that the radiology backlog was being managed through a process of clinical review and prioritisation.

The Board noted that the key risks in relation to the Provider Oversight Framework and 2019/20 segmentation related to RTT compliance at specialty level and the impact of the backlog of diagnostic testing.

The Board noted the report.

**2.2 Strategic Objective Quarterly Update**

The Director of Strategic Partnerships took the Board through the paper, highlighting progress against each of the Trust's strategic objectives.

The Board noted the report.

The Label 1 film crew left the meeting.

**3 Strategy and Development**

**3.1 Quality Strategy Update and Progress Report**

The Director of Nursing and Quality took the Board through her paper, noting the development of an Improvement Strategy, signalling a renewed focus and commitment to improvement work. An update on the Excellent, Efficient, Compassionate and Safe (EECS) Framework was provided with a number of wards and departments now achieving 'gold' status. Divisional progress against the quality strategy priorities was noted and sustained improvement achieved in many areas.

The Board noted the report.

**3.2 NHS Interim People Plan**

The Interim Director of People and Culture took the Board through the key themes of the Interim People Plan and described how the Trust's People Strategy was being developed to align with these themes. This would be reviewed at People Committee and brought to the Board for approval at the end of March 2020.

Key priorities would be the development of strategies for recruitment and retention; leadership, education and talent management; staff engagement and wellbeing; equality and inclusion; and strengthening workforce intelligence.

The Board discussed the potential impact of political changes on the People Plan and determined that future workforce supply would be the key issue irrespective of politics.

The Board noted the report.

**4 Patient Safety and Quality**

**4.1 Learning from Deaths Q2 Dashboard**

The Medical Director presented the dashboard, noting that in Q2 there had been 50 deaths and of these 45 had been through the mortality review process, with one death found to have some evidence of avoidability.

It was confirmed that the Trust continued to comply with national guidance for review of deaths, including inviting relatives to give their views as part of the investigation and learning process. Duty of Candour was routinely discharged in all cases where the RCP

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methodology score was 1, 2 or 3.

The Board noted the report.

#### **4.2 Review of CQC Insight**

The Director of Research & Innovation took the Board through the areas of exception within the CQC Insight Report and actions being taken where there was scope to improve.

In relation to the new 'Never Event' at Item 18, the Director of Nursing and Quality confirmed that Duty of Candour had been discharged and advised that two members of the senior nursing team had visited the patient and his parents at home to receive feedback direct and to identify significant learning. The patient had written a letter to explain how he had felt and this had been widely shared with clinical staff; he also intended to make a video which would provide a powerful message to aid learning further.

The Board noted the report.

#### **4.3 Director of Infection Prevention and Control – Q2 Report**

The Medical Director presented the report, noting that reviews of patients with MSSA bacteraemias had been undertaken but did not indicate an overall theme or common cause relating to source of infection. Action plans had been put in place in response to the incidences where lapses in care were found to have occurred and in particular, work was underway to review the processes and documentation linked to cannula insertion.

Two patients had developed Clostridium Difficile infection during Quarter 2 and full reviews had been undertaken. There was no evidence of cross-infection between the two patients.

There had been an improvement in management of sepsis.

The Board discussed efficacy of the VRE screening process, noting that the majority of new isolates were from patients on critical care. As this was the only area that tests routinely for VRE colonisation, it was not always possible to identify where and when the patients had acquired VRE. As this was not a reportable infection, it was not possible to benchmark the Trust's data with any accuracy but the numbers had halved in the current quarter and monitoring would continue to check for any adverse trend going forward.

The Board noted the report.

#### **4.4 Emergency Preparedness Resilience Response (EPRR) Core Standards Self-Assessment**

The Director of Research & Innovation took the Board through the report, advising that the Trust had demonstrated full compliance with all relevant Emergency Preparedness Resilience Response (EPRR) core standards. In relation to the deep dive review of preparedness for severe weather, it was noted that the



absence of air conditioning throughout, meant that the trust would need to hire mobile air conditioning units at times of severe heat. Otherwise, the Trust's contingency arrangements were satisfactory.

The Board approved the self-assessment for submission to NHSE/I.

**4.5\* *LHCH Monthly Staffing Reports for September 2019 and October 2019\****

The Board noted the reports.

The Director of Nursing and Quality commented that there were currently 28 nursing post vacancies, despite recent recruitment events. Work was underway to review training numbers, explore apprenticeships in nursing and develop Associate Nurse roles. Improvement work had also focussed on recruitment with work underway to film staff stories about working at LHCH and these would be used in social media campaigns from January 2020, along with a full day event dedicated to student nurses in February 2020. As 2020 had been designated 'Year of the Nurse', nursing recruitment would remain a focal point throughout the next 12 months.

**46\* *Guardian of safe Working – Q2 Exception Report\****

The Board noted the report.

**4.7\* *Deprivation Of Liberty (DoLs) Report Q2\****

The Board noted the report.

**5 *Governance and Assurance***

**5.1 *Consultant Appointments***

There were no new consultant appointments.

**5.2 *Report of Freedom to Speak Up Guardian***

Helen Turner, Freedom to Speak Up Guardian was welcomed to the meeting and took the Board through the report which highlighted 3 FTSU concerns raised in Quarter 2, all of which had been investigated.

National data had shown that feedback about FTSU processes nationally had indicated a need to focus on timescales and process linked to investigations.

The Board noted the findings of the North West Regional Ambulance Service case review and the letter issued by Dido Harding around Improving People Practices.

The positive feedback received from one of the three staff members who had spoken out was noted and the Board acknowledged that feedback tended to be offered only where those who had raised a concern had seen positive action in their favour – those where investigations had found that the concern was unfounded, did not generally result in any response to

feedback requests.

The Board noted that there seemed to be a decline concerns being raised via the FTSU network and it was noted that the forward work plan included a focus on refreshing the FTSU Champions Network with the aim of identifying champions who would specifically support BAME and LGBTQI groups; and providing champions with better training and support such that they could raise awareness and be more active in promoting FTSU within their areas of work.

The Board noted the report.

### 5.3

#### **Freedom to Speak Up Review of New Guidance**

The Director of Corporate Affairs, as Executive Lead for Freedom to Speak Up took the Board through the new national guidance for Boards that had been published in July 2019, and invited the Freedom to Speak Up Guardian to join the discussion.

The Board took time to self-reflect and review the examples of evidence in support of each theme and suggested areas for further action.

It was emphasised that the behaviours of the Board, and particularly the executive team set the tone of the organisation and that the purpose of self-reflection was to ensure that the right conditions were in place to support a positive speaking up culture based on compassionate and inclusive leadership.

A discussion followed in relation to 'Civility' and national work focussing on 'Civility Saves Lives'. The Director of Nursing and Quality described the impact of a video she had seen on this subject which had demonstrated powerfully that the way in which people were spoken to influenced their behaviours and that negative messaging could have significant implications for safety in the healthcare setting. The Board agreed that it would commit to exploring this subject further as part of the Board Development Plan and also that it would be important to share this learning with clinical staff, including the consultant body.

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In relation to evidence of behaviours of executives and the impact on culture, it was noted that walkarounds by Governors provided a good source of triangulation; and also that the regular insight provided by staff governors was a useful measure of how staff were feeling.

It was concluded that whilst FTSU was well embedded there was further work to do to continually check on culture and this was supported by recent staff engagement work to review the Trust's values. A detailed action plan was also being progressed by the Interim Director of People and Culture that would support the rollout learning packages to support managers to have difficult conversations and to further promote speaking up and the Trust's values.

The Board noted the national guidance and supported the evidence, with the addition of input and feedback from Governors as discussed above. The actions outlined in Section 3 of the report were accepted and progress would be reported via the FTSU annual report and twice-yearly thereafter. The Board supported a follow-up self-reflection exercise by the end of 2021 which would be repeated at least every two years as recommended in the guidance.

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Helen Turner left the meeting.

#### 5.4

##### **Annual Equality, Diversity and Inclusion Update**

The Interim Director of People and Culture took the Board through the paper summarising the key workforce developments and work underway to demonstrate compliance with the Equality Act 2010 and delivery of the Trust's 3 year Equality and Inclusion Strategy.

The Board discussed the Workforce Race Equality Standards (WRES) data, noting that indicators showed that a higher proportion of BAME staff reported that they had experienced bullying and harassment or abuse from both patients and public and other staff in the last 12 months; also a higher proportion of BAME staff believed they had experienced discrimination at work; whilst a lower proportion believed the Trust provided equal opportunities for career progression. It was noted that the percentage of BAME respondents was relatively low and therefore absolute numbers should be included in future reports in order to better understand the magnitude of this issue.

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The Board heard that a conversation with BAME staff had recently taken place and although this had not been well attended it had provided very useful insight. In particular it was clear that BAME staff did not want to be targeted for BAME Group discussions, but would instead welcome an Inclusion Group that was open to any member of staff who wished to positively influence the equality and inclusion agenda. It had been agreed that this would be taken forward.

In relation to the new Workforce Disability Standard (WDES), it was noted that there was a sizeable gap in the data available and that a programme of continuous improvement was in place to support the experiences of both patients and staff with disabilities.

Monitoring and review of all equality related activity would continue via the Equality and Inclusion Steering Group with regular updates to People Committee.

The Board noted the report.

#### 5.5

##### **Learning Lessons to Improve People Practice**

The Interim Director of People and Culture presented her paper,

highlighting the actions for Boards that had arisen following inquiry into the tragic death of a staff member of a London Trust who took his own life following a prolonged investigation and disciplinary process that was hampered by serious procedural errors.

The Board supported the 18 point action plan, subject to amendment to the terminology used to describe serious harm suffered by an individual as a result of disciplinary action. It was determined that such an event should not be described as 'never event' as this caused confusion with the recognised categorisation of serious incidents.

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It was noted that the actions comprised a significant piece of work which would require extensive engagement and therefore timelines were indicative. The People Committee would receive regular assurance on progress with twice-yearly updates to the Board.

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**5.6\* Integrated Complaints, Claims and Incidents Report\***

The Board noted the report.

**6 Board Assurance**

**6.1 BAF Key Issues Reports and Approved Minutes of Assurance Committee Meetings:**

**6.1.1\* Audit Committee:**

**BAF Key Issues**

The Chair of the Audit Committee highlighted that the Audit Committee had successfully completed informal mid-year reviews of the Board Assurance Committees and noted that there had been good progress in the management review and follow up of internal audit recommendations.

The Board received and noted the approved minutes of the Audit Committee meeting held on 16<sup>th</sup> July 2019.

**6.1.2\* Integrated Performance Committee\***

**BAF Key Issues**

Bob Burgoyne presented the report and highlighted that the Integrated Performance Committee had scrutinised the Surgical Division's activity performance and trajectory.

The Board received and noted the approved minutes of the Integrated Performance Committee meeting held on 29<sup>th</sup> July 2019.

**6.1.2\* Quality Committee\***

**BAF Key Issues**

The Chair of the Quality Committee updated on improvement work in relation to medication errors and sepsis management; and provided assurance that quality impact assessment of CIPs was up to date.

The Board received and noted the approved minutes of the

Quality Committee meeting held on 9<sup>th</sup> July 2019.

**7 Board Calendar 2020/21**

The Board approved the calendar of Board and Committee meeting dates for 2020/21.

**8 Minutes of the Board of Directors Meeting held on 24<sup>th</sup> September 2019 (in public)**

The minutes of the meeting of the Board of Directors held on 24<sup>th</sup> September 2019 (in public) were reviewed for accuracy and approved by the Board.

**9 Action Log (public) from previous meeting**

The action log was reviewed and updated as follows:

Action 2 – closed;

Action 4 – timeframe extended to January 2020 to allow for wider engagement on performance indicators to support the new 5 year Research & Innovation Strategy;

Action 5 – closed pending receipt of LHCH Strategic Plan in private session.

All actions not listed above would carry forward per designated review dates.

**10 Legality of Board Documentation and Decisions**

Board members confirmed that the conduct of the meeting and decisions made by the Board, to the best of their knowledge, complied with the law. Board members confirmed they were satisfied with the format of the meeting.

**11 Date and Time of Next Meeting:**

Tuesday 28<sup>th</sup> January 2020 at 9.00 am.

**12 Resolution**

The Board resolved to exclude the public at this point by reason of the private nature of business to follow.