

UNIVERSITY HOSPITALS OF LEICESTER NHS TRUSTMINUTES OF AN EXTRAORDINARY MEETING OF THE TRUST BOARD, HELD ON THURSDAY 22 MARCH 2018 AT 9:00AM IN THE C J BOND ROOM, CLINICAL EDUCATION CENTRE, LEICESTER ROYAL INFIRMARY**Voting Members present:**

Mr K Singh – Chairman  
 Mr J Adler – Chief Executive  
 Ms V Bailey – Non-Executive Director  
 Ms E Doyle – Interim Chief Operating Officer (from part of Minute 18/12)  
 Mr A Johnson – Non-Executive Director  
 Mr B Patel – Non-Executive Director  
 Ms J Smith – Chief Nurse  
 Mr M Traynor – Non-Executive Director  
 Mr P Traynor – Chief Financial Officer

**In attendance:**

Mr C Benham – Director of Operational Finance  
 Mr D Kerr – Director of Estates and Facilities  
 Ms C Marshall – Deputy Medical Director (on behalf of Mr A Furlong, Medical Director)  
 Mrs K Rayns – Corporate and Committee Services Officer  
 Ms L Tibbert – Director of Workforce and OD  
 Ms J Tyler-Fantom – Deputy Director of Human Resources  
 Mr S Ward – Director of Corporate and Legal Affairs  
 Mr M Wightman – Director of Strategy and Communications

**ACTION****18/9 APOLOGIES**

Apologies for absence were received from Professor P Baker, Non-Executive Director; Col (Ret'd) I Crowe, Non-Executive Director; Mr A Furlong, Medical Director, and Mr R Moore, Non-Executive Director.

**18/10 DECLARATIONS OF INTERESTS**

The Chief Financial Officer and Mr A Johnson, Non-Executive Director declared an interest in Trust Group Holdings Ltd and advised that they would withdraw from the meeting if members wished to discuss that element in any detail. In the event, this did not prove necessary.

**18/11 MINUTES AND MATTERS ARISING LOG**

**Resolved** – it be noted that the Minutes and matters arising log from the 1 March 2018 Trust Board would be presented to the 12 April 2018 Trust Board for approval.

**18/12 A NEW PARTNERSHIP TO DELIVER IMPROVED HEALTHCARE ESTATES AND FACILITIES SERVICES**

The Director of Estates and Facilities introduced paper A, seeking the Trust Board's approval of the proposal to establish a Facilities Management Partnership (FMP) as a wholly owned subsidiary of the Trust in the form of a Limited Liability Partnership (LLP) to provide healthcare estates and facilities and procurement and supplies services with effect from 1 October 2018. During his introduction, the Director of Estates and Facilities highlighted the following key issues:-

- (i) the intention to create a partnership with a commitment to continue indefinitely, providing assurance that this was not about "privatisation through the back door", or a move towards a private sector culture at the expense of a public service focus. There was no intent to move away from the "one team" ethos in respect of the way that the proposed partnership would operate or how it was recognised by the Trust going forwards;
- (ii) the proposal did not represent a 'race to the bottom' in respect of terms and conditions for staff and it was not about reducing salaries or pension payments. There were currently some 238 members of staff who were paid at below the Agenda for Change (AfC) rates and it was

intended to bring those staff onto new terms and conditions which would mirror the AfC rates, taking into account any nationally agreed changes to NHS Terms and Conditions of Service (as announced on 21 March 2018). It was hoped that the FMP would also be able to offer new and existing staff the option to join the NHS Pension Scheme by registering as an 'Independent Provider' with the NHS Business Services Authority;

- (iii) the rationale for delivering more efficient and effective FM services and the scope for re-investing these savings back into the NHS by improving the quality of services and investment in the healthcare environment. Without the proposed FMP, the delivery of FM services would continue on a weak financial footing, without additional investment and without being able to address the legacy issues surrounding pay and conditions for staff, and
- (iv) the timing of the proposal in relation to the new strategic direction in the NHS which required Trusts to support new models of service delivery, pursue system collaborations and integration, and deliver operational productivity improvements. Wholly owned subsidiaries were being increasingly used nationally to put into operation initiatives such as the 5 Year Forward View and the Carter Review. UHL's Estates and Facilities services were not considered to be sustainable in their current form and it was essential to establish the FMP in order to create an environment and services that patients deserved and that staff could be proud of.

The Chief Executive commended the clarity of the report and he endorsed the comments already made by the Director of Estates and Facilities. He briefed Trust Board members on the discussions held with Staff Side Representatives on 21 March 2018, noting that the meeting had been broadly constructive. A number of reasonable questions had been raised, but none of these appeared to be problematic. In general, Staff Side had been reassured by the key principles and had accepted the overarching commitments that had been made. It had been agreed to establish a joint working group with appropriate Staff Side representation to review the arrangements going forwards (including the potential impact upon issues such as Policies and Procedures, Trade Union recognition and Salary Sacrifice schemes). Staff Side had been slightly concerned about the lack of earlier consultation on the proposals, but they had accepted that this delay was necessary to clarify the nature of the offer to be made to staff in respect of pay and conditions in the first instance.

Mr M Traynor, Non-Executive Director and Finance and Investment Committee Chair commented upon the proposals, noting that the enabling legislation to establish wholly owned subsidiaries in the NHS had been introduced in 2006. They represented a credible alternative to outsourcing: retaining ownership and funding within the NHS and providing a recognised tool for Trusts to operate a significant part of their organisation in a different way to its clinical services. The subsidiary company would have legal and organisational form with a precise purpose, method of operation and defined functions to be discharged. The Estates and Facilities function was a large and complex function employing over 1,700 people, with a turnover in excess of £100m, managing a backlog maintenance programme of £80m and expecting to oversee a £400m capital investment programme over the next 5 years. However, the Director of Estates and Facilities was not a member of the Trust Board and the Trust Board spent comparatively little time discussing issues relating to Estates and Facilities Management. For this reason, he suggested that the Estates and Facilities function needed to be uncoupled from the overall management of the three hospital sites and he recommended the proposed LLP as the way forward.

In further discussion on the proposals:-

- (a) Mr B Patel, Non-Executive Director queried whether Secretary of State (SoS) approval was required (as referenced in the March 2018 briefing issued by NHS Providers). In response, the Director of Corporate and Legal Affairs confirmed that legal advice had been sought on this point and it had been clarified that SoS approval was not a formal requirement. He noted that the Trust's Pharmacy subsidiary had been established without formal SoS approval and he provided assurance that NHS Improvement had been briefed on the Trust's proposals and had not raised any formal objections;
- (b) the Deputy Medical Director commended the proposed investment in improving the patient environment. She sought and received additional information regarding the ways in which the subsidiary company would be held to account in respect of the quality of its service delivery, noting in response that there would be a separate governance structure put in place to manage the FMP and monitor its performance. The detail of this governance structure was still being finalised, but this would be included in the Full Business Case (FBC) when it was submitted to the

Trust Board for approval in August 2018. Performance would be measured against explicit KPIs within the framework of a Service Level Agreement. The Chief Executive provided assurance that the monitoring mechanism for measuring performance against the KPIs and the SLA would have a high level of visibility within the organisation;

- (c) the Chief Financial Officer noted that the arrangements for holding the Pharmacy subsidiary company to account were working effectively and there may be some opportunity to replicate some elements of these arrangements within the FMP. He welcomed the separation between the FMP Board and the Trust Board, but he advised that some Reserved Matters would be put into place which would prevent the FMP Board from undertaking key actions without the agreement of the Trust Board, and these would be set out in the FBC in August 2018;
- (d) Mr A Johnson, Non-Executive Director advised that the proposed FMP Board membership, governance structure and Reserved Matters would lead to more robust governance arrangements going forwards, but there would need to be a balance maintained between holding the FMP to account and providing them with the commercial freedom to operate;
- (e) Ms V Bailey, Non-Executive Director commended the clarity provided in the paper and the opening statements above. She particularly welcomed the engagement with Staff Side and she queried whether there had been any further meetings with staff since the proposals were first published on Monday 19 March 2018. In response, the Director of Estates and Facilities briefed the Trust Board on the programme of briefing sessions already held earlier that week, including his initial briefing with the Senior Management Team and the arrangements for them to cascade the communications within their respective teams. Since then, 7 staff road shows had been held and arrangements had been made to roll these out into the Community Hospital sites. The Communications Team had circulated an email to all staff, information had been published on the Trust's website and a press release had been issued. All Estates and Facilities staff would be receiving a letter with their next payslip outlining the proposal and a series of one-to-one drop in clinics would be taking place, and
- (f) the Chief Nurse commented upon the welcomed proposal to mirror the Agenda for Change (AfC) terms and conditions of employment. She requested that the full business case be drafted to include an explicit narrative regarding the proposed improvements to service quality and the patient environment, using language which all staff would be able to relate to and readily understand.

In summary, the Trust Chairman commended the paper and the direction of travel it represented in terms of establishing a Facilities Management Partnership, increasing the quality of service provision and investing in the Trust's workforce and the patient environment. He particularly highlighted yesterday's announcement regarding the 2018 refresh of NHS Terms and Conditions of Service and sought assurance that this national development would be incorporated appropriately into the proposals accordingly. The Chief Executive confirmed that the proposal to match AfC terms and conditions would be adapted to incorporate (and overlap with) any nationally agreed changes arising from the 2018 refresh of NHS Terms and Conditions of Service. Taking each of the recommendations contained on page 2 of the Executive Summary in turn, the Chairman invited the Board to:-

- (1) approve the establishment of the Leicester, Leicestershire and Rutland Healthcare Facilities Management Services as a wholly NHS owned subsidiary of the Trust in the form of a Limited Liability Partnership;
- (2) support the approach to identifying the additional investment requirements and areas for performance improvement, subject to clarity being provided within the Full Business Case for Trust Board approval in August 2018;
- (3) support the proposals to transfer existing staff who were paid below the AfC band 1 pay scale to the equivalent of AfC band 1 with effect from the date of the transfer (proposed as 1 October 2018);
- (4) support the approach to developing the offer for new terms and conditions for new employees which were exactly the same as AfC;
- (5) support the proposals for Board Composition and governance;
- (6) agree the approach in respect of communicating the intention of the Trust to retain the subsidiary in NHS ownership;
- (7) agree that the necessary action could be taken to register the partnership by 31 March 2018, and
- (8) agree that the Trust Board would be content to receive monthly updates on this initiative in

advance of the 'go live' on 1 October 2018, including a FBC at the August 2018 meeting.

The Trust Board supported the recommendations set out in points (1) to (8) above, subject to appropriate clarity being provided in the Full Business Case in relation to identification of additional investment and areas for performance improvement. Recommendations (3) and (4) above were supported subject to the incorporation of any nationally agreed changes arising from the 2018 refresh of NHS Terms and Conditions. In respect of recommendation 8, the Trust Chairman requested that subject to any commercial considerations, all reports be considered in the public domain (wherever possible).

Finally, the Director of Corporate and Legal Affairs highlighted the requirement for the UHL Trust Board to formally consider the rights and responsibilities of the Trust as a consequence of becoming a designated member of the LLP and to execute a 'consent to become a member form' in this respect. He also highlighted a requirement for the Trust Group Holdings Board to undertake the equal and corresponding actions accordingly.

DCLA  
TGH Chair

**Resolved – that (A) the proposal to establish the Leicester, Leicestershire and Rutland Healthcare Facilities Management Services as a wholly NHS owned subsidiary of the Trust in the form of a Limited Liability Partnership (LLP) be approved;**

**(B) appropriate action to be taken to formally register the new LLP at Companies House by 31 March 2018;**

CFO

**(C) the UHL NHS Trust Board to become a designated member of the above LLP;**

**(D) any Director be and is hereby authorised to do all such acts and things as they may in their discretion deem to be necessary or desirable in connection with the Trust becoming a member of the LLP and to agree to execute the 'consent to become a member' form for and on behalf of the Trust;**

DCLA

**(E) the TGH Board be requested to consider the rights and responsibilities of the Company as a consequence of becoming a designated member of the LLP and be requested also to consider, agree and execute the 'consent to become a member form' before the end of March 2018;**

TGH  
Chair

**(F) the proposal to match Agenda for Change (AfC) pay and conditions for new and existing staff be approved and adapted to incorporate (and overlap with) any nationally agreed changes to NHS Terms and Conditions of Service (as per the national announcement made on 21 March 2018);**

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**(G) the Full Business Case to be presented to the Trust Board on 2 August 2018, setting out the detailed proposals in respect of workforce issues, quality improvement, investment in the estate, service level agreements, performance management arrangements, governance structure, and any reserved matters, and**

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**(H) updates on the development of the Facilities Management Partnership to be provided to the Trust Board on a monthly basis between April 2018 and July 2018 (to be considered in the public domain wherever possible).**

18/13 **QUESTIONS FROM THE PRESS AND PUBLIC ON BUSINESS TRANSACTED AT THE MEETING**

A member of the public commented upon the wide-ranging discussion held at today's Board meeting, but he requested Board members to be mindful of the current arrangements between UHL, Property Services and the Leicestershire Partnership NHS Trust (LPT) for joint provision of Estates and Facilities Management services.

In response, the Trust Chairman recognised the value of the current partnership with LPT and confirmed his aspiration to reach an agreed position with each of UHL's healthcare partners in the near future. However, he advised that each organisation had its own free-standing Board and was entitled to make its own decisions based on the information provided and their own particular circumstances. The Chief Financial Officer added that the Trust was proud to be the provider of County-wide Estates and Facilities services. He provided assurance that the Trust was actively engaging with the Senior Leadership Team at LPT and it was hoped that the outcome of their decision would be to continue this partnership going forwards.

**Resolved** – that the position be noted.

**18/14 ANY OTHER BUSINESS**

There were no items of Any Other Business.

**18/15 DATE OF NEXT TRUST BOARD MEETING**

**Resolved** – that the next Trust Board meeting be held on Thursday 12 April 2018 from 9am in the Board Room, Victoria Building, Leicester Royal Infirmary.

The meeting closed at 9.37am

Kate Rayns  
**Corporate and Committee Services Officer**