We are WHH

Warrington and Halton Hospitals NHS Foundation Trust

# WHH Board of Directors Meeting Part 2

## Wednesday 231 JULY 2019
## TIMINGS 1.15pm-3.00pm
## Trust Conference Room

*Documents in this pack are confidential and whole Freedom of Information exemptions have been applied under one or more of the following sections:*

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| *Section 41:* | *Confidentiality OR* |
| *Section 43:* | *Prejudice to commercial interests OR* |
| *Section 40:* | *Data Protection* |
| *Section22:* | *Information intended for future publication* |
| *Section 42:* | *Legal professional privilege* |

We are WHH

NHS Warrington and Halton Hospitals NHS Foundation Trust

| Warrington and Halton Hospitals NHS Foundation Trust.<br>Agenda for a meeting of the Board of Directors Part 2 held in private.<br>Wednesday 31 JULY 2019 1.15pm-3.00pm<br>Trust Conference Room, Warrington Hospital | | | | | |
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| **AGENDA REF PBM/** | **ITEM** | **PRESENTER** | **PURPOSE** | **TIME** | |
| PBM/19/07/39 | Welcome, Apologies & Declarations of Interest | Steve McGuirk, Chairman | N/A | 1:15 | Verb |
| PBM/19/07/40<br>PAGE 3 | Minutes of the previous meeting held on 26th June 2019 | Steve McGuirk, Chairman | Decision | 1:17 | Encl |
| PBM/19/07/41<br><br>PAGE 8 | CEO update:<br>(a) CEO Collaboration at Scale, Strategic Outline Business case (*enclosed)*<br>(b) BCH & WHH Sustainability Plan and CiC with BCH Feedback<br>(c) UTC update<br>(d) Warrington and Halton System Recovery Plan<br>(e) Car Parking Permits | Mel Pickup<br>Chief Executive | | 1:20 | Verb |
| PBM/19/07/42 | Matters arising from Public Board | Steve McGuirk, Chairman | | 1.40 | Verb |
| PBM/19/07/43<br>PAGE 9 | Spinal Services Report | Executive Medical Director/ Deputy Chief Executive | To note | 1:45 | Encl |
| PBM/19/07/44<br>PAGE 19 | Limited Liability Partnership (LLP) | Chris Evans<br>Chief Operating Officer | | 1:50 | Encl & PPT |
| PBM/19/07/45 | One to One Midwifery Comms Plan | Pat McLaren<br>Director of Community Engagement+ Fundraising | Discuss | 2:00 | PPT |
| PBM/19/07/46 | Strategy Development and Delivery<br>• Eastern Sector Cancer Hub *(Enclosed separately)*<br>• Cheshire & Merseyside Pathology Outline Business Case, verbal update | Lucy Gardner<br>Director of Strategy | To note | 2:10 | Verbal & Encl |
| PBM/19/07/47<br>PAGE 34 | Charitable Funds Committee:<br>- Chair's Annual Report | Pat McLaren<br>Director of Community Engagement+ Fundraising | Decision | 2:25 | Encl |
| PBM/19/07/48<br>PAGE 39 | Warrington Electronic Prescribing + Medicines Administration (ePMA) | Phill James<br>Chief Information Officer | Decision | 2:30 | Encl |
| PBM/19/07/49 | Corporate Governance Arrangements | Steve McGuirk, Chairman | Discuss | 2:40 | Verb |
| PBM/19/07/50 | Any Other Business | Steve McGuirk, Chairman | N/A | 3:00 | - |
| | Date of next meeting:<br>Full Trust board 25 September 2019, Trust Conference Room | | | | |

**Warrington and Halton Hospitals NHS Foundation Trust**
**Minutes of the Board of Directors meeting held in Private on Wednesday 26th June 2019,**
**Lecture Theatre, Education Centre, Halton Hospital**

| **Present** | |
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| Steve McGuirk (SMcG) | Chairman |
| Mel Pickup (MP) | Chief Executive |
| Terry Atherton (TA) | Deputy Chair, Non-Executive Director |
| Simon Constable (SC) | Executive Medical Director/ Deputy Chief Executive |
| Margaret Bamforth (MB) | Non-Executive Director |
| Chris Evans (CE) | Chief Operating Officer |
| Ian Jones (IJ) | Non-Executive Director / Senior Independent Director |
| Andrea McGee (AMcG) | Director of Finance and Commercial Development |
| Kimberley Salmon-Jamieson (KSJ) | Chief Nurse |
| Anita Wainwright (AW) | Non-Executive Director |
| Cliff Richards (CR) | Non-Executive Director |
| | |
| **In Attendance** | |
| John Culshaw (JC) | Head of Corporate Affairs |
| Alex Crowe (AC) | Deputy Medical Director, Director of Medical Education + Clinical CIO |
| **Apologies** | |
| Pat McLaren (PMcL) | Director of Community Engagement + Fundraising |
| Phillip James (PJ) | Chief Information Officer |
| Michelle Cloney (MC) | Director of HR + OD |
| Lucy Gardner (LG) | Director of Strategy |

| *Agenda Ref PBM/19/05/* | |
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| **PBM/19/06/30** | **Welcome, Apologies & Declarations of Interest**<br>The Chair opened the meeting, and welcomed those in attendance.<br>Apologies: Pat McLaren, Director of Community Engagement & Fundraising. Phill James, Chief Information Officer. Michelle Cloney, Director of HR & OD, Lucy Gardner, Director of Strategy<br>Declarations of Interest: No declarations in relation to the agenda were noted. |
| **PBM/19/06/31** | **Minutes of the meeting held 29 May 2019**<br>The minutes of 29th May 2019 were agreed as an accurate record of proceedings. |
| **PBM/19/06/32** | **My Choice Update**<br><br>MP advised the Board that both her and the Chair had received letters from Rosie Cooper MP in relation to the Trust's 'My Choice' service, following the recent media interest.<br><br>MP reminded the Board of the services offered and purpose of My Choice and previous discussions that had been held ahead of the launch. MP reiterated that the launch had taken place in a transparent manner, including communications with CCGs and local MPs and it had been met favourably by CCG and GP colleagues.<br><br>MP explained that following the media interest, a conversation had taken place with the |

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| | Regional Director, the Regional Communications Team and the Chairman. Subsequently the decision was taken to pause the My Choice service.<br><br>AMcG commented that in relation to waiting lists, capacity had not been taken out to allow the MY Choice procedures to take place, it was to use existing spare capacity that the Trust must use or it would be taken away.<br><br>SC explained to the Board that the CCG guidance document was published in November 2018, after the launch of My Choice. With reference to waiting lists, SC advised that case mix was very important. The smaller procedures would take place at the end of a list which would allow 4 not 3 procedures to take place for example. SC further explained that many of the smaller procedures are currently being lost to the private sector.<br><br>The Board discussed if other providers we undertaking similar work, and it was confirmed that some other Trusts undertook procedures in a private wing. AMcG commented that under Use of Resources, the Trust was ranking poorly on the private income metric.<br><br>The Board held further discussion about the My Choice service and agreed that it was the correct decision to pause the service and further evidence should be gathered from other similar service provisions<br><br>**The Board discussed the My Choice service, agreed to pause it until further notice and that a further update should be brought to the September Board meeting.** |
| **PBM/19/06/33** | **BCH & WHH Committee in Common Terms of Reference**<br><br>The Board received the draft BCH & WHH Group Committee in Common (GpCiC) Terms of Reference.<br><br>SMcG updated the Board that the current Chairman of Bridgewater Community Healthcare NHS FT (BCH) was standing down and that an 18 month fixed term replacement was being sought.<br><br>SMcG explained that comments on the terms of reference had been taken on board following the last Trust Board and a legal review had also taken place.<br><br>TA advised that all the comments he had made on the ToR had been taken in to account; however, TA suggested that the term 'agreed' be added to section 1.3 of the dispute resolution process.<br><br>MP advised the Board that from an Executive Director perspective, MC and SC would attend the (GpCic) in their joint roles along with Lynne Carter, Chief Nurse & COO at BCH and Andrea McGee, DoF at WHH.<br><br>The Board discussed the decision making process, acknowledged the need for closer working with the Executive Teams, and recognised that the details of the Scheme of |

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| | Delegation were yet to be confirmed<br><br>**The noted, discussed and approved the BCH and WHH Group Committee in Common Terms of Reference.** |
| **PBM/19/06/34** | **One to One update**<br><br>TA explained following an update at the Finance and Sustainability Committee, he had asked that the Board was fully informed of risks and assurance of mitigations in place relating to operational, financial and reputational risks following formal notice served tpo the provider that WHH will no longer take referrals subject to receiving payment by the end of June 2019. TA highlighted that the current financial risk was approximately £800k.<br><br>The Board received a presentation from AMcG detailing the current level of debt and how it was increasing and information on One to One's unaudited financial statements. The presentation also highlighted three possible future scenarios and the potential impact of each.<br><br>The Board discussed the possible impacts of each scenario and how the Trust could and would respond. KSJ confirmed that based on the current information available, the Trust could accommodate the number of women affected.<br><br>CR asked any concerns had been raised in relation to the quality of the service offered by the provider.<br><br>KSJ advised that there had been initial concerns about pathways; however these had subsequently improved.<br><br>TA stated that in terms of next steps, a communications plan was both urgent and vitally important.<br><br>MB voiced concerns that about the potential reputational damage to the Trust, particularly in light of recent negative media coverage.<br><br>SMcG queried if extending the deadline could be an option, whilst still being aware of the financial implications.<br><br>TA commented that the deadline was set, mindful of the future 9 month period.<br><br>The Board discussed the requirement for an urgent communications plan on PMcL's return and also discussed the implications of extending the deadline, to ensure that there is minimal impact on the women who would be potentially affected.<br><br>TA stated that he felt that One to One had been given enough opportunity to pay what they owed; however, he would support an extension to allow a communications plan to be put in place to help support the women affected and protect the Trust's reputation. |

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| | SMcG remarked that the matter had been discussed extensively and that by extending the deadline to 31st August 2019, it would provide many helpful benefits; including ensuring the Trust had all the necessary information at its disposal to allow sufficient planning to take place.<br><br>**The Board noted, discussed the One to One update and agreed to extend the deadline to 31st August 2019.** |
| **PBM/19/06/35** | **UTC Decision**<br><br>CE explained to the Board that following the decision by Halton CCG to put the UTC services out to tender (one in Runcorn and one in Widnes, both 5 year contracts); the Trust submitted two bids, one for each UTC. On 7th June the Trust received notification that we had not been successful for either bid and informed that the process had entered a stand still period until 17th June. Following challenge and request for information via the Trust's solicitors the stand still period has been extended to 5th July 2019.<br><br>The Board subsequently discussed potential next steps, for example issuing court proceedings should the procurement process undertaken by the CCG be shown to have been conducted unfairly, or decide to withdraw from any such legal challenge.<br><br>SMcG queried if it would be financially justifiable to challenge if the outcome come ultimately be the same.<br><br>AMcG explained that much would depend on the content of the information requested from the CCG.<br><br>**The Board discussed the options and agreed to wait until the information requested had been received in order that an informed decision could be made. An extra-ordinary meeting of the Board was arranged to take place on 5th July 2019 if required.** |
| **PBM/19/06/36** | **Spinal Services**<br><br>SC provided the Board with a brief update in relation to the two remaining Consultants and their position with the Royal Liverpool and Broadgreen University Hospitals Trust<br><br>SC advised that he would bring a further update to the next Trust Board.<br><br>**The Board noted the update** |
| **PBM/19/06/37** | **CQC Draft Report / Next Steps**<br><br>KSJ advised the Board that the factual accuracy exercise following receipt of the draft CQC report had to be completed and submitted by Friday 28th June 2019.<br><br>SMcG remarked that following all the work that had taken place, it felt like a new hospital and wished to pass thanks to all those who had contributed. |

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| | SMcG also stated that following the receipt of the final CQC report, the Board would need to understand what was required to take the Trust to the next level and what support the Board could provide the Executive Team.<br><br>TA commented that the Trust should be cognisant of what the potential effect of greater collaboration with BCH could be.<br><br>**The Board noted and discussed the update.** |
| **PBM/19/06/38** | **Any Other Business**<br><br>**No other matters were raised.** |
| | **Next meeting to be held: Wednesday 31st July 2019, Trust Conference Room** |

Signed ……

Chairman ……

Date ……

Approved ……

**PBM/19/07/41 a**

**Subject: Draft letter to CEOs**

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Dear colleague,

At last week's Provider CEO Forum we received, discussed and approved the Strategic Outline Case for Corporate Functions Collaboration at Scale (CaS) across Cheshire & Merseyside Providers.

You will recall we commissioned this piece of work so we could define credible options for how we might make the best use of our collective resources while ensuring quality of services, how this might align to our developing thinking on our ICS journey, and perhaps most importantly to identify priorities for delivery in 2019/20 that we will not have any risk of regret as our broader 5 year strategy is defined.

This SOC sets out some really exciting options for our future state and contains indications of really significant value we can unlock through collaboration at scale as we seek to return to financial balance. It also identifies some tangible projects that can deliver this year and help us achieve the financial plans we have submitted and committed to. There is more work to be done with our Directors of Finance to further refine the estimates for future years as we develop more detailed proposals, and to triangulate year 1 benefits with extant CIPs/QIPPs. And of course, there is plenty of work to be done to turn the potential into results through our collective action.

I would ask that you support the delivery of next steps by taking this SOC to your Boards, in Private given the content, to connect your Board to the potential this work offers us all. I would also ask that you discuss this with you Executive Teams to determine how each of our Trusts will maximise the benefits available and at the same time, prioritise participation from colleagues in the delivery of the enabling work.

The SOC has been distributed via Trusts' CaS Board members, and also via the Provider CEO Forum.

If you have any questions or would like any support with your Board / Exec Team discussions, please do contact either Sam Proffitt or Terry Whalley.

Kind Regards,

We are WHH

NHS Warrington and Halton Hospitals NHS Foundation Trust

**REPORT TO BOARD OF DIRECTORS**

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| **AGENDA REFERENCE:** | **PBM/19/07/42** |
| **SUBJECT:** | **Spinal Surgery Service Suspension Update Report – Quarter 1 2019/2020** |
| **DATE OF MEETING:** | **31st July 2019** |
| **ACTION REQUIRED** | **For discussion** |
| **AUTHOR(S):** | Prof Simon Constable Executive Medical Director and Deputy Chief Executive |
| **EXECUTIVE DIRECTOR SPONSOR:** | Prof Simon Constable Executive Medical Director and Deputy Chief Executive |
| | |
| **LINK TO STRATEGIC OBJECTIVES:** | SO1: To ensure that all care is rated amongst the top quartile in the North West of England for patient safety, clinical outcomes and patient experience |
| **LINK TO BOARD ASSURANCE FRAMEWORK (BAF):** | BAF1.1: CQC Compliance for Quality |
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| **STRATEGIC CONTEXT** | Complex/specialised spinal surgery is commissioned by NHS England. Non-complex/non-specialised spinal surgery is commissioned by local commissioners. |
| **EXECUTIVE SUMMARY** (KEY ISSUES): | This is an updated report to those previously presented to Trust Board.<br><br>The report sets out the current position and the action being taken to reinstate access to a safe and cost effective spinal surgery service for the population of this part of the Cheshire and Merseyside. There were three key milestones to be achieved in 2019/2020:<br><br>1. Conclusion of the remaining coronial process for one of the deaths as one of the index cases leading to the service suspension.<br><br>2. The outcome of the CQC investigation.<br><br>3. Development of the clinical, operational and financial model for a future hub and spoke clinical model in partnership with RLBUHT and potentially subsequently with all spinal surgery |

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| | providers across Cheshire and Merseyside.<br><br>The service remains suspended. The CQC have concluded their investigations under the Health and Social Care Act without any further action; the final Coroner's Inquest was concluded in March 2019 without a Regulation 28 Report – Prevention of Further Deaths being issued.<br><br>The Trust continues to work with other spinal surgery providers in Cheshire & Merseyside regarding a developing the clinical model for a future safe, effective and sustainable service. Some progress has been made but this is slow and the Trust continues to retain the significant employment liabilities for our two remaining consultant spinal surgeons without being able to provide them with job-planned spinal surgery activity at WHH. Honorary contracts have been provided at the Royal Liverpool and Broadgreen University Hospitals NHS Trust. | |
| **RECOMMENDATION:** | The Board is asked to consider the current situation and discuss the options available at this time. | |
| **PREVIOUSLY CONSIDERED BY:** | **Committee** | Not Applicable |
| | **Agenda Ref.** | |
| | **Date of meeting** | |
| | **Summary of Outcome** | |
| **FREEDOM OF INFORMATION STATUS (FOIA):** | Partial FOIA Exempt | |
| **FOIA EXEMPTIONS APPLIED:** ***(if relevant)*** | Section 22 – information intended for future publication | |

**TRUST BOARD**

| SUBJECT | Spinal Surgery Service Suspension Update Report – Quarter 1 2019/2020 | AGENDA REF: | PBM/19/07/42 |
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## 1. BACKGROUND/CONTEXT

1.1 Complex spinal surgery was first commissioned at Warrington & Halton Hospitals NHS Foundation Trust (WHH) by NHS England in 2014. Subsequent concerns emerged with regards to the waiting time for those patients undergoing complex/specialised spinal procedures. In response to this, an external review was undertaken by Mr Ashley Cole (Chair of NHS England's National Clinical Reference Group) who put forward various recommendations in May 2015 to assist with the integration of a 'hub and spoke' partnership arrangement between the Trust and The Walton Centre NHS Foundation Trust (TWC). The aim of this partnership was to ease the waiting time burden of those patients awaiting complex surgery and to better develop the means and processes necessary to be able to safely perform complex procedures at Warrington.

1.2 On 22nd September 2017, following an executive safety review panel, the Trust took the decision to voluntarily suspend spinal surgery at WHH pending completion of a comprehensive internal investigation (including Root Cause Analysis methodology – RCA). The decision was taken following four serious unrelated incidents. The incidents involved different pathologies, different indications for surgery, different operations and subsequently different post-operative complications. The index cases involved three lead consultant surgeons. All index cases had been subject to an MDT process.

1.3 On 27th September 2017 NHS Warrington CCG issued a formal suspension notice to include all outpatient activity, with a short term exemption to allow patients requiring follow up appointments to be seen by their surgeons, pending a safe transfer to alternative providers. Alternative providers were sought and their care safely transferred.

1.4 The Trust, NHS Warrington CCG and NHS England Specialist Commissioning jointly commissioned an independent expert review from the Royal College of Surgeons through the *RCS Invited Review Mechanism*. A desktop review of documents and interviews were undertaken over two days by the RCS team on 2nd and 3rd November 2017, followed by subsequent further document reviews. The report arrived in February 2018 and was finally published in June 2018 and been shared with all stakeholders.

1.5 In conjunction with having the Royal College of Surgeons Invited Review Mechanism, the Trust's Clinical Governance Department also undertook a look back exercise of the previous three years of those patients who had spinal procedures at the Trust. This involved reviewing incidents, complaints and claims and a review of all peri-operative deaths was also undertaken.

1.6 Since the Royal College of Surgeons review concluded, spinal services have remained suspended within the Trust. We have worked with commissioners and partner organisations

to ensure that Warrington and Halton patients requiring spinal procedures are treated in other Trusts.

1.7 The Trust has full membership of the Executive Steering Group of the Cheshire and Merseyside Spinal Surgery Group, chaired by NHS England. An options appraisal for the future configuration of the region's spinal surgery service is in development in the context of the recently published Getting It Right First Time report into spinal surgery across England, authored by Mr Mike Hutton, consultant spinal surgeon and national GIRFT spinal lead. The Trust has been in close contact with Mr Hutton since the service suspension at WHHFT. However, a number of the Steering Group Meetings have been cancelled, with the next meeting planned for September 2019.

## 2. CARE QUALITY COMMISSION INVESTIGATION

On 13th November 2017, the Trust was made aware that the Care Quality Commission was undertaking an initial assessment of one of the index cases, in order to determine if there was a potential offence of failing to provide safe care and treatment resulting in the patient sustaining actual harm or being exposed to a significant risk of exposure to avoidable harm (Regulations 12 and 22 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014).

On 29th March 2018, the Care Quality Commission informed the Trust that they were commencing an investigation and the Trust made written representations to the Care Quality Commission, specifically addressing the key lines of enquiry.

On 3rd December 2018, the Care Quality Commission wrote to the Trust to inform us that, as well as looking at the original case, they were now going to look at all seven cases, in order to explore all lines of reasonable inquiry in relation to the investigation in accordance with Criminal Procedure and Investigations Act 1996 (section 23(1)) Code of Practice section 3.5 "In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect".

As previously reported to Trust Board, on 29th April 2019 the Care Quality Commission wrote to the Trust to confirm that having extensively reviewed the evidence, and with legal advice, it was not their intention to proceed any further. The matter has theerfore been closed.

## 3. HM CORONER

The final Coroner's Inquest was concluded in March 2019 without a Regulation 28 Report – Prevention of Further Deaths being issued. No inquests into the other three deaths included in the index cases and retrospective review have been re-opened.

## 4. FUTURE VISION

1. The Trust is actively contributing to further developments in partnership with the wider spinal surgery service community of providers in Cheshire and Merseyside (The Walton Centre NHS Foundation Trust and The Royal Liverpool and Broadgreen University Hospitals NHS Trust, alongside Aintree University Hospital NHS Foundation Trust as the site for the Major Trauma Centre and partner for the proposed merger with the Royal Liverpool).

2. However, the Trust continues to have employment responsibility for two senior consultant spinal surgeons without any spinal surgery activity within the organisation. The annual cost of this is circa £320k, clearly without any associated income. Neither consultant surgeon has had their clinical practice restricted aside from the service suspension nor have any fitness-to-practice proceedings been undertaken by the General Medical Council, nor has this ever been recommended. Indeed, all cases as well as the Royal College of Surgeons report have been subject to significant external scrutiny by external experts (including the RCS), NHSE, NHSI, CQC, GMC and NCAS (now Practitioner Performance Advice at NHS Resolution) as well as our independent processes through Maintaining High Professional Standards and the monthly Responsible Officer Triangulation Meetings.

3. We have been working specifically with the Royal Liverpool and Broadgreen University Hospitals NHS Trust (RLBUHT), as the largest orthopaedic spinal surgery unit in Cheshire and Merseyside on facilitating honorary consultant contracts for the two remaining spinal surgeons, permitting therefore a phased and supervised return to full NHS practice (Phase 1). It should be noted that the service has remained suspended at WHHFT for over 20 months. RLBUHT is keen to pursue a wider collaboration in terms of access for their spinal service to our CMTC for simple spinal surgery procedures, given their capacity challenges arising from increasing demand, the new hospital build and the merger with Aintree which will see orthopaedic surgery move to the Aintree campus (Phase 2). Outpatient activity is likely to precede surgical activity.

4. The RLBUHT spinal service deals with capacity and demand issues; this is especially with the unplanned demand on the service after spinal services were placed on hold at WHHFT. RLBUHT and services at the Walton Centre have reported increases of patients from the wider Cheshire & Merseyside catchment areas. Difficulties encountered on the RLH site such as critical care can hinder theatre throughput, resulting in cancellations that affect demand, which often results in patients waiting prolonged periods. This difficult situation could be eased by working collaboratively with WHHFT. The RLBUHT care group manages these issues; however the collaborative work with WHHFT presents an opportunity to increase non-complex activity.

5. It is also proposed that any re-commissioning of a Spinal Service at WHHFT will be through the RLBUHT Spinal Hub with Honorary Contracts and a Service Level Agreement in place to facilitate the use of capacity at CMTC where non-complex spinal surgery would be performed.

6. The WHHFT has been working with local commissioners, specialised commissioners and other spinal service providers in the development of a single spinal service for Cheshire and Merseyside, overseen by NHS Improvement's Getting It Right First Time (GIRFT) team. As a result of this discussion it has been agreed that the RLBUHT Spinal team will provide direct clinical governance to the WHHFT spinal surgeons who will work under the direction of Mr Marcus DeMatas, RLBUHT clinical lead.

7. The aim is the development of a specialised hub (or hubs) in Liverpool with local access preserved for the people of Cheshire through spoke sites for non-complex activity. As part of that discussion, the joint team from the RLBUHT and WHHFT have identified a strategy for the RLBUHT to provide a spinal service for WHHFT and the people of the Cheshire and Merseyside area. This requires utilising the WHHFT spinal clinicians and the currently underutilised capacity at CMTC.

8. It is considered by RLBUHT that the benefits of this collaborative working arrangement is profound. This was discussed at RLBUHT Trust Board in June 2019. The RLBUHT currently conducts complex spinal surgery including spinal trauma, cancer and deformity work on the RLH site both electively and in an emergency capacity. This work with the RLBUHT current consultant team is nationally respected and where the capacity for conducting such complex cases at the Royal Liverpool Hospital is not in doubt, the ability in being able to also conduct non-complex work is hindered in an overstretched theatre environment. This is where the vision of utilising the purpose built CMTC comes to fruition. There is an abundance of non-complex surgery that often succumbs to cancellations caused by reasons that are multi-factorial. However non-complex surgery can be carried out under RLBUHT clinical governance at WHHFT giving more capacity for complex work to be carried out on the RLH site. If non-complex work can be conducted at CMTC the complex capacity would grow allowing the growing reputation of the spinal service which in turn enables further potential complex work from the wider region and ultimately increases financial growth.

9. There is a real opportunity for a 'hub and spoke' arrangement with WHHFT and as RLBUHT being the senior partner organisation. It is an opportunity to restore the provision of a spinal surgery service in this part of Cheshire and Merseyside with simple spinal procedures and outpatient clinics, restoring access to our population.

10. NHS Warrington CCG have been encouraged by progress that RLBUHT and WHHFT have made with regard to RLBUHT working as a spinal hub with WHHFT and their spinal surgeons, ensuring that RCS recommendations have been addressed. This also has agreement from Liverpool CCG.

11. The NHS Warrington CCG has already agreed to the following:

    - The lead surgeon for the spinal service covering WHHFT and RLBUHT will be the clinical lead for spinal services at RLBUHT.
    - The two current WHH spinal surgeons will remain under the employment of WHHFT and Simon Constable as the WHHFT Responsible Officer under the governance arrangement of RLBUHT. (This has to be regarded as only a short-term arrangement only if a stand-alone WHH does not exist; TUPE may apply).
    - Outpatient services for NHS Warrington CCG patients will be based at both WHHFT and RLBUHT with the activity commissioned under the NHS Warrington CCG through their contract with RLBUHT.
    - When appropriate, non-complex spinal surgery will be reinstated at the CMTC where WHHFT will assist RLBUHT surgeons.
    - Commencement of independent operating by WHHFT surgeons will be determined by the RLBUHT clinical lead for spinal services.

12. There will be a joint business case around additional spinal clinicians required to make this model work and at present financial representatives from both RLBUHT and WHHFT are scoping draft SLAs.

## 5. CURRENT SITUATION

1. Interim job plans for the two surgeons have been constructed, with a phased return plan to full independent practice being agreed and overseen by RLBUHT and WHHFT working in concert. One of the consultant surgeons had been employed on a locum contract since 2013 and as part of the above process with RLBUHT and bearing in mind full employment liability since 2015,

following legal advice, this appointment was made substantive through an Appointments Advisory Committee on 12th March 2019. There was representation on the panel from RLBUHT.

2. It is recognised that organisational development intervention including individual and team coaching is required for the integration and effective functioning of the teams, especially if there is also progression of collaborative work with the neurosurgical unit at The Walton Centre (Phase 3). A joint meeting between both clinical teams reading the future vision and collaboration for service improvement was held at the CMTC on 4th June 2019. Coaching for specific individual consultants as well as resilience training for the teams has been established and is part of the organisation development intervention.

3. Both spinal surgeons have continued with a limited private practice in spinal surgery since the service suspension at WHH. It is not considered that a period of "re-training" is required. The process during Phase 1 of the above process is about integration of the two clinical teams, alongside rehabilitation following the outcome of the service suspension and RCS report. Trust and confidence between individuals, the two teams and organisations needs to be established.

4. A number of logistical issues have presented during this period of integration at RLBUHT, not least of which capacity constraints in clinic and theatre in a teaching hospital environment with competition for clinic rooms and operating experience. This is especially challenging for the two WHH senior surgeons.

## 6. SUMMARY AND CONCLUSIONS

The above sets out the current position and the action being taken to reinstate access to a safe and cost effective spinal surgery service for the population of this part of the Cheshire and Merseyside.

Having concluded the remaining coronial process for one of the and the CQC investigation, the outstanding issue is that of the future service provision for this part of Cheshire and Merseyside, and specifically for WHHFT, the significant employment liabilities of employing two consultant spinal surgeons without a WHHFT spinal surgery service to deliver.

## 7. APPENDIX 1: RLBUHT – SEPTEMBER 2018

21.9.18 letter of intent.pdf

## 8. APPENDIX 1: NHS WARRINGTON CCG – JANUARY 2019

2019 01 29 Letter to Mel Pickup Aiden Kehc

Royal Liverpool & Broadgreen
University Hospitals NHS Trust

NHS

Royal Liverpool University Hospital
Prescot Street
Liverpool
L7 8XP

Tel: 0151 706 2000
Fax: 0151 706 5806

Mel Pickup
Chief Executive
Warrington and Halton Hospitals NHS FoundationTrust
Kendrick Wing
Warrington Hospital
Lovely Lane
Warrington
WA5 1QG

21September 2018

To whom it may concern

The MSK Care Group at the Royal Liverpool and Broadgreen University Hospital Trust (RLBUHT) is submitting this letter of intent to support a collaborative working model and clinical governance support for spinal services at Warrington and Halton Hospitals NHS Foundation Trust (WHH).

We can confirm that we (RLBUHT) have reviewed the Royal College report into the historical service at WHH. We believe that the recommendations within the report can be fulfilled by joint working and enhanced governance structure implementation between the trusts. The care group management teams from both trusts have met and made positive plans as to how this could be achieved but the exact mechanisms would be dependent upon service level agreements, honorary contracts and an option appraisal of the best model to adopt in conjunction with the relevant commissioning bodies. To complement this progress the clinical teams are already engaging with each other in a positive manner. The WHH consultants already attend the weekly MDT at RLBUHT and are gaining honorary contracts to allow clinical visitation on RLBUHT site.

We hope this letter of intent will provide a positive background for discussions to commence on how a spinal service for the people of the Warrington and Halton area can be delivered safely and effectively. We would be very keen to be involved with any discussions/meetings at an early stage.

This letter is not an official offer and all details would need to be negotiated and executed through a formal Service Level Agreement with commissioning arrangements, contracts and finances agreed.

Yours sincerely

Aidan Kehoe
**Chief Executive**

Warrington
Clinical Commissioning Group

☎ 01925 843681
Please Ask For: Dr Andrew Davies
E-mail: andrewdavies@nhs.net

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110 Birchwood Boulevard
Arpley House
Birchwood
Warrington
WA3 7QH

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Our Ref: AD/jsm

4 February 2019

**By Email**

For the attention of:
Mel Pickup, Chief Executive, Warrington and Halton Hospital NHS Foundation Trust, WHHFT
Aiden Kehoe, Chief Executive, Royal Liverpool Broadgreen University Hospitals NHS Trust, RLBUHT
Jan Ledward, Accountable Officer, Liverpool Clinical Commissioning Group, LCCG

Dear Colleague

**Re: Governance and WHHFT Spinal Surgeons**

I am writing to confirm the outcome of the meeting on 28th January 2019 between my Chief Commissioner, our Head of Contracts and both the Trust's specialist surgery care group management teams. NHS Warrington CCG were encouraged with the progress that RLBUHT and WHHFT have made with regard to RLBUHT working as a spinal hub with WHHFT and their spinal surgeons, ensuring that the RCS recommendations had been addressed. In principle, NHS Warrington CCG agree to:-

- the lead surgeon for the spinal service covering WHHFT and Royal Liverpool and Broadgreen University Hospitals NHS Trust (RLBUHT) will be Mr Marcus Dematus, currently clinical lead for spinal services at RLBUHT;
- the two Warrington Hospital Spinal Surgeons will remain under the employment of Warrington and Halton Hospitals NHS Foundation Trust (WHHFT), with Simon Constable as responsible officer under the governance arrangements of RLBUHT and Mr Dematus as Lead Surgeon;
- outpatient services for NHS Warrington CCG patients will be based at both WHH and RLBUHT, with the activity commissioned via NHS Warrington CCG through their contract with RLBUHT; and
- that, when appropriate, non-complex spinal surgery will be reinstated at Cheshire and Merseyside Treatment Centre, where WHHFT Surgeons will assist RLBUHT surgeons. Commencement of independent operating by WHHFT surgeons will be determined by the RLBUHT lead surgeon for spinal services. Non-complex spinal surgery is defined as :-
    - Lumbar Discectomy and non-instrumental Decompression
    - Anterior Cervical Discectomy and Fusion
    - Single and up to 2 level fusion surgery
    - Spinal injections as per NICE guidance

NHS Warrington Clinical Commissioning Group

NHS Warrington CCG would require regular updates on the progress of the spinal hub arrangements to report through its internal governance meetings which can take place through the provider contract meetings.

The teams also discussed the 34 disc replacement surgery patients awaiting follow-up at WHHFT. It was agreed that NHS Warrington CCG would investigate the feasibility with Walton Centre NHS Foundation Trust to transfer these patients to the RLBUHT spinal service.

Please do not hesitate to contact me if you require any further information in this matter.

**Dr Andrew Davies MB ChB**
**Clinical Chief Officer**
**NHS Warrington Clinical Commissioning Group**

# REPORT TO BOARD OF DIRECTORS

| | | | | |
|---|---|---|---|---|
| **AGENDA REFERENCE:** | **PBM/19/07/44** | | | |
| **SUBJECT:** | Limited Liability Partnership (LLP) – T&O | | | |
| **DATE OF MEETING:** | 31st July 2019 | | | |
| **AUTHOR(S):** | Fiona Wheelton | | | |
| **EXECUTIVE DIRECTOR SPONSOR:** | Chris Evans, Chief Operating Officer | | | |
| | | | | |
| **LINK TO STRATEGIC OBJECTIVES:** | SO3: We will .. Work in partnership to design and provide high quality, financially sustainable services | | | |
| | | | | |
| | | | | |
| | | | | |
| **EXECUTIVE SUMMARY** (KEY ISSUES): | Warrington and Halton Hospitals NHS foundation Trust (WHH) has maintained no waiting list growth throughout the financial year 2018/19 which was the delivery standard set by NHSI/E. However since April there has been an 8.5% (132 patients) T&O waiting list size increase due to a number of issues for which some mitigations have been developed. One issue however currently without mitigation is the increasing reluctance of the consultant body to undertake additional WLI activity that would usually be undertaken to mitigate gaps in workforce. This is due to tax contributions and effect on pension.<br><br>In order to deliver the elective plan and achieve the Referral To Treatment (RTT) target, the CBU must implement an activity recovery plan for the remainder of this financial year. | | | |
| **PURPOSE: (please select as appropriate)** | Information | Approval ✓ | To note | Decision |
| **RECOMMENDATION:** | It is recommended that the Board approve procuring an LLP to support the delivery of plan within T&O at the value of £130k. | | | |
| **PREVIOUSLY CONSIDERED BY:** | **Committee** | Finance + Sustainability Committee | | |
| | **Agenda Ref.** | | | |
| | **Date of meeting** | 24th July 2019 | | |
| | **Summary of Outcome** | FSC support the proposal in principle however require | | |

| | | |
|---|---|---|
| | | more detail that will be provided at Private Board meeting. |
| **FREEDOM OF INFORMATION STATUS (FOIA):** | Whole FOIA Exemption | |
| **FOIA EXEMPTIONS APPLIED:** ***(if relevant)*** | Section 43 – prejudice to commercial interests | |

**EXECUTIVE PROPOSAL**

**Limited Liability Partnership (LLP) – T&O**

| | |
|---|---|
| **Area/CBU: MSK** | **Owner: Fiona Wheelton** |
| **Date: July 2019** | **Lead Executive: Chris Evans** |

## 1.0 Purpose

This paper proposes the use of an LLP model to support the elective delivery of plan within Trauma and Orthopaedics (T&O).

## 2.0 Background and Overview

In November 2018 a new Clinical Business Unit (CBU) Manager was appointed to Musculoskeletal (MSK) CBU. A number of challenges existed within the T&O department that needed to be addressed:

1. Cost pressures
2. Cost Improvement Programme (CIP)
3. Cancelled Ops
4. Theatre utilisation
5. Gaps in workforce
6. Waiting List Growth

### 2.1 Challenges and Progress to Date

The CBU Manager has worked over the last eight months to progress a number of initiatives that have led to improvements within a number of those challenge areas:

#### 1. Cost pressures

The CBU has worked closely with their management accountant to significantly improve their cost pressures by:

- Carrying out full review of CBU budget
- Ceasing agency staff
- Restricting additional hours
- Monitoring zero days
- International recruitment

As a result of work to date, in month 3 the CBU has mitigated £422k of their original £737k pressure.

**Table 1: Month 3 position Unfunded Pressures**

| CBU | Unfunded Pressures £'s | Mitigation £'s | Revised Unfunded Pressures £'s |
|---|---|---|---|
| MSK | 737,402 | -422,161 | **315,241** |

#### 2. Cost Improvement Programme (CIP)

The CBU has worked with their transformation support staff to make significant progress in delivering the CIP target. At 30 June 2019 the CBU is ahead of target and has delivered £106k against the YTD CIP target of £600k. Table 2 shows the CBU's performance against its CIP target for 2018/19 and 2019/20 to 30 June 2019.

**Table 2: CBU CIP Performance**

| | CBU | CIP Target for Year | In Year CIP | Best case In Year CIP as % of CIP target | Recurrent CIP | Best case Recurrent CIP as % of CIP target |
|---|---|---|---|---|---|---|
| **2018/19 CIP performance** | MSK | £826,878 | £676,552 | 82% | £556,285 | 67% |
| **2019/20 CIP performance at 30 June 2019** | MSK | £688,197 | £526,271 | 76% | £535,672 | 78% |

A number of CIP schemes including the introduction of the biosimilar (Adalimumab) in Rheumatology and the removal of spinal costs have been delivered and the CBU is in a strong position to deliver its CIP target for 2019/20.

## 3. Cancelled Ops

Non-Clinical cancelled ops are closely monitored and supported by the CBU management team. A 'pre admission call check' process was introduced in November to support the reduction of patient DNA cancelled ops rates for T&O at CMTC. This process has proved successful in supporting the cancelled ops target despite a slight dip in March and May due to staff sickness.

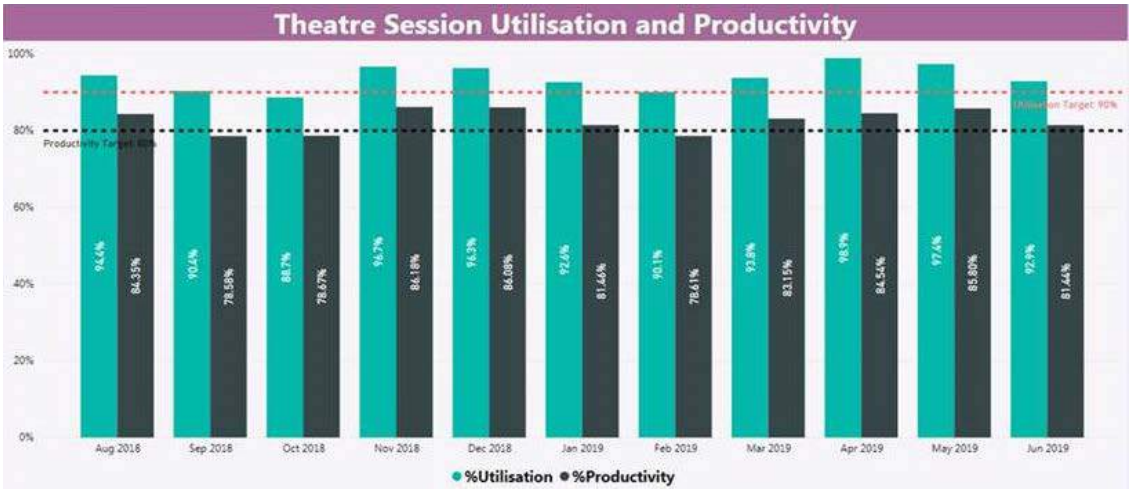
| CMTC | Dec | Jan | Feb | Mar | Apr | May | Target |
|---|---|---|---|---|---|---|---|
| **Patient & DNA** | 1.12% | 1.32% | 1.65% | 2.63% | 0.00% | 2.84% | 2.50% |

## 4. Theatre utilisation

A number of small adjustments to processes such as 9am start times have been actioned to maximise theatre utilisation and productivity.

The speciality continues and consistently meets both productivity and utilisation standards as indicated in Graph 1.

**Graph 1 – T&O Theatre Utilisation and Productivity Aug 2018 – Jun 2019**




**Productivity Target (80%) -----** **Utilisation Target (90%)-----**

## 5. Gaps in Workforce

There have been gaps in workforce resulting from sickness and long term vacancies that have created pressures within T&O. The CBU has secured one consultant and one locum for Upper limb (full capacity from July) and a 1 x locum (from mid-August) which will support the recovery plan for the specialty, as highlighted in Table 3.

**Table 3: T&O Consultant Workforce**

| Consultant | WTE | Specialty |
|---|---|---|
| Mr A Acharya | 1.00 | Lower Limb |
| Mr C Robb | 1.00 | Lower Limb |
| Mr D Atkinson | 1.00 | Lower Limb |
| Mr Gareth Stables | 1.00 | Lower Limb |
| Mr N Pradhan | 1.00 | Lower Limb |
| Mr P Chandran | 1.00 | Lower Limb |
| Mr R Sanger | 1.00 | Lower Limb |
| Mr N Shah | 1.00 | Upper Limb |
| Ms S Prasad | 1.00 | Foot and Ankle |
| Mr G Williams (Locum) / substantive Consultant Starts August 2019 | 1.00 | Foot and Ankle |
| Mr R Badge | 1.00 | Upper Limb |
| Mr W Marlow (started May 2019) | 1.00 | Upper Limb |
| Vacancy (Locum starts 12th August) | 1.00 | Upper Limb |
| **Total No. of Consultants** | **13.00** | |

There is one area of challenge that remains a significant risk to the delivery of the elective plan and achievement of Referral To Treatment (RTT) target, that requires an innovative solution:

### 6. Waiting List Growth

The Trust maintained no waiting list growth throughout the financial year 2018/19 which was the delivery standard set by NHSI/E. However since April there has been an 8.5% (132 patients) T&O waiting list size increase due to reluctance of the consultant body to undertake additional WLI activity to mitigate workforce gaps due to tax contribution and effect on pension (detail included in Appendix 1).

MSK CBU is funded for 18 Waiting List Initiatives (WLI's) a month to support the delivery of plan and achievement of RTT targets. To date the speciality is **69** elective and 154 day case cases behind plan in month 3 which is forecast to continue potentially at a faster rate unless further actions are put in place to mitigate this deterioration.

**2.2 National Context and Penalties**

There is increasing recognition Nationally that tax contributions and the effect on pension for consultants will have a detrimental effect resulting in waiting list growth. This is coupled with messages to Trusts from NHS Improvement/England that waiting lists and RTT targets must be achieved. WHH has contributed to Regional return (submitted 12th July) detailing current and potential impact of the pension change upon activity.

WHH has consistently maintained the zero tolerance approach to 52 week wait breaches to date. However the continuing pressures of waiting list growth could increase the organisations risk of patients breaching the 52 week wait standard. In particular for T&O there are 55 patients waiting between 32 - 46 weeks who are at biggest risk of increasing in waiting time. Of the 55, 42 are dated and the longest undated is at 38 weeks as of 19th July. The long term plan suggests that at 26 weeks patient choice will need to be introduced.

The penalty for both the Trust and the CCG for patients that breech the 52 week wait target is £2,500 per patient.

**3.0 Options and Financial Appraisal**

In order to address the WLI growth the CBU would like to implement an activity recovery plan until the end of the financial year. Progress will be assessed periodically and the maximum that will be spent is £130k which is the remaining balance of the funded WLI budget (£65k T&O WLI medical staff and £65k Anaesthetics WLI).

There is funding for 16 WLI's per month in T&O (plus 2 to support Rheumatology activity). These WLI's are used to support theatre and outpatient activity. The below modelling is based on all 16 WLI's being used to support theatre sessions, on the basis of 2 cases per session covering August 2019 to March 2020 (8 months).

**Option 1: Do Nothing**

Since April there has been an 8.5% waiting list size (132 patients) increase due to reluctance of a number of consultants delivering WLI due to tax contribution and effect on pension. This is forecast to grow at an additional c.2% (32 patients) per month if action is not taken to mitigate this. This growth is a challenge to the zero tolerance approach to 52 week wait breaches recently reiterated by NHSI/E and increases the organisations risk of patients breaching the 52 week wait standard. The penalty for both the Trust and the CCG for patients that breach the 52 week wait target is £2,500 per patient.

**Assumptions**

- Funding for 16 T&O WLI per month, assume all WLI's used for elective activity
- Impact of 16 WLI's not delivered from 1st August 2019 and 2 procedures per session (16 WLI sessions per month multiplied by 2 procedures per session and 8 months – 256 procedures covering August 2019 to March 2020)
- Tariff rate of £5,600 used as a basis for income impact (based on hips and knees tariff)
- Anaesthetic WLI funding as the same basis
- Rheumatology continue with 2 WLI's per month
- Non Pay assume £1,500 per procedure, costs not incurred if activity not provided
- Available WLI budget from 1st August 2019 to 31st March 2020 is £65k for T&O consultants and £65k for anaesthetics

**Option 2: Recruit an Additional Consultant**

**2a. Recruitment**

Due to the complex nature of the T&O specialty with numerous sub-specialisms it is not possible to recruit a consultant that is able to operate across all areas. The pressures on the waiting list range across all the sub-specialities which are why the allocation of additional sessions across the board is more productive. Regardless, recruitment typically takes five months from advert to start date which would not be suitable for a short term solution as benefits would only be realised in quarter four. This option would require the right type of locum to be recruited and the right gaps to fall within that specialty which is unlikely.

**Assumptions**

- NHS Locum rate - 10 PA job plan, no on call starts date 1st January 2020 (5 month recruitment)
- Theatre sessions available to support locum at no extra cost
- 3 theatre sessions per week with 2 procedures per sessions based on 12 weeks
- Sub specialty area to be determined
- Delivered within available funding
- T&O WLI activity would stop (i.e. no activity during August 2019 until the consultant starts in January 2020)
- Anaesthetic WLI funding as the same basis as T&O
- Anaesthetics support either via a locum or WLI
- Funding of £63k required to support this proposal

**2b. Agency**

To counter-act lengthy lead in time for recruitment, an agency consultant could be appointed to support short term recovery. However the pressures on the waiting list range across all the sub-specialities would not be addressed. Although the same issues apply to this solution as the recruitment option this would be a speedier however more costly solution due to the agency cost.

**Assumptions**

- Agency rate of £110 per hour for T&O consultant and anaesthetic cover - 10 PA job plan, no on call only able to provide 3 months of cover within available funding
- Theatre sessions available to support locum at no extra cost
- 3 theatre sessions per week with 2 procedures per sessions based on 12 weeks
- Sub specialty area to be determined
- T&O WLI activity would stop (i.e. no activity during August 2019 until the agency consultant starts in January 2020)
- Anaesthetic WLI funding as the same basis as T&O

- Delivered within available funding of £130k (only able to support 3 months of cover)

**Option 3: Outsourcing**

WHH has previously had the need to outsource activity to neighbouring providers to deliver to plan and achieve RTT targets. There is a relationship with Spire Hospitals who has previously supported WHH and would be an option to support T&O. The identified patients would be transferred to Spire along with the activity and 100% of the procedure tariff plus MFF. This model would purchase 32 procedures within the £130k envelope.

**Assumptions**

- 100% of tariff including MFF, assumed average tariff of £5,600
- WHH only able to release WLI and non-pay budget to fund
- Non Pay costs per procedure of £1,500
- Assume Anaesthetic WLI funding the same as T&O
- No WHH WLI activity from August 2019 to March 2020
- Delivered within available funding of £130k for WLI and £48k for the non pay element
- Unable to release other support costs including nursing, theatre staff and radiology

**Option 4: Limited Liability Partnership (LLP)**

There has been and is a growing trend for NHS consultants to set up a vehicle in the form of a Limited Company or an LLP to deliver clinical services in addition to their NHS substantive role. Locally, neighbouring Trusts such as St Helens and Knowsley Hospitals and Royal Liverpool and Broadgreen University Hospitals, have historically and continue to use an LLP to support the delivery of their plan.

The activity can be carried out within hours however in sessions that are over and above the current contracted activity for that consultant. This is a flexible model that could purchase 66 procedures within the £130k envelope.

**Assumptions**

- Based on LLP providing T&O consultant, anaesthetist and theatre staff
- Based on 35% of tariff of £5,600 – LLP would charge £1,900 per procedure
- WHH only able to release medical staff WLI budget
- Assumes no WHH WLI activity from August 2019 to March 2020
- Assume Anaesthetic WLI funding the same as T&O
- Delivered within available funding of £130k (August 2019 to March 2019)
- Non Pay costs per procedure of £1,500
- Unable to release theatre staff funding
- Delivered within available funding of £130k

**3.1 Options Appraisal Summary**

Table 4 provides a summary of the options using the parameters of best value and deliverability. A surplus is reflected as a + and a deficit reflected as (-)

**Table 4: Options Appraisal Summary**

| Options | | | Deliverability | | | |
|---|---|---|---|---|---|---|
| | No. of Procedures Delivered* | Shortfall in Procedures | Timeley solution | Decrease Waiting List | Support 52 WW Delivery | Responsive to Sub-Specialties |
| 1. Do Nothing | 0 | (256) | x | x | x | x |
| 2a. Recruit consultant | 72 | (184) | x | ✓ | ✓ | x |
| 2b. Agency | 72 | (184) | ✓ | ✓ | ✓ | x |
| 3. Outsource | 32 | (224) | ✓ | ✓ | ✓ | ✓ |
| 4. LLP Model | 66 | (190) | ✓ | ✓ | ✓ | ✓ |

**within £130k envelope*

Assumptions:
Based on activity delivered for £130k WLI budget available
256 procedures used as baseline

## 4.0 Proposed Development

The two options that meet all the basic requirements are options 3 and 4. Of these, option 4 represents best value for money with 66 procedures being delivered within budget. Therefore it is proposed that Option 4 – LLP, is used to support the delivery of plan within T&O until the end of the 2019/20 financial year.

### 4.1 Rules of Engagement

Each month the CBU manager will forecast the variance of activity for the following month against plan which will help predict how many additional sessions or cases will be required by via the LLP model to achieve the activity position. This will be broken down per sub-speciality and by CCG.

Before sessions are agreed with the LLP the CBU manager cross check job planned NHS sessions against the following criteria:

- Delivered elective sessions in month against job plan
- Maintenance of productivity and utilisation rates
- ACPL (Average Case Per List per Consultant)
- Number of non-clinical cancellations on the day

If the sub-specialty Consultant is not achieving the KPI's for the above criteria LLP sessions will not be agreed.

It is essential that the above KPIs are robustly monitored to ensure that NHS sessions do not become under utilised and that the LLP does not become a substitute for NHS contracted activity and time.

The MSK CBU manager will be the accountable officer for analysing the data to provide assurance that the above KPIs have been agreed before confirming the LLP sessions. The current WLI approval process will apply to LLP activity.

**4.2 Governance**

Governance and HR leads have been consulted with and agreed that a bespoke Service Line Agreement (SLA) with elements of an honorary contract, will be produced to govern the agreement with the LLP.

Governance of workforce will be clearly defined in the SLA with the LLP including specific issues such as:

- How conduct/capability issues will be addressed
- Mandatory training compliance
- Competencies and ongoing monitoring
- Local onsite inductions

A 'portfolio' for the LLP including copies of all relevant indemnity insurance, accreditations and appraisal detail of the consultants will be filed and kept up to date to support this.

**4.3 Procurement**

The total anticipated expenditure for the short term duration of the LLP vehicle falls outside of the EU Regulation Thresholds and is governed by the Trust's Standing Orders and Standing Financial Instructions. The procurement team will consider the best approach for a sustainable procurement exercise if the Trust deems LLP provision beneficial for long term approach.

**5.0 Risks and Mitigation**

Benefits and risks have been fully considered by Operational, HR, Governance and Procurement colleagues:

| Risks | Mitigation |
|---|---|
| **1.** Governance of workforce | **1.** SLA to be agreed to ensure all potential workforce issues are managed appropriately and liabilities are clearly defined and agreed |
| **2.** Tax rule compliance – IR35 | **2.** Comprehensive IR35 assessment taken place and IR35 certificate attached as Appendix 2 |
| **3.** Reduction in NHS activity and increase in LLP activity | **3.** CBU Manager to manage job plan and incentivise LLP time (as per section 4.1) |
| **4.** Potential media interest in Trusts deemed supportive of LLP | **4.** Prepare communications team and ensure governance and audit processes are followed |

**6.0 Recommendation**

It is recommended that the Board approve procuring an LLP to support the delivery of plan within T&O at the value of £130k.

**Appendix 1 – Tax contribution and effect on pension**

## Annual Allowance

Annual allowance is the amount of pension savings an individual can make in one year without paying tax. If an employee builds up pension savings that exceed the annual allowance, a tax charge is due on the value of the excess benefits. For members of the NHS Pension Scheme, the amount of pension savings over the year is not based on the value of employee and employer contributions paid into the scheme; it is based on the increase in the value of the member's pension benefits over the year.

The standard annual allowance limit is set by HMRC and is £40,000 for the 2018/19 tax year. The value of the annual allowance has fallen over time, meaning that a wider range of NHS staff may now earn benefits that exceed the allowance.

Employees may have a lower tapered annual allowance, depending on their taxable income. If an individual is subject to a tapered annual allowance, their annual allowance of £40,000 is reduced by £1 for each £2 of adjusted income above £150,000, to a minimum annual allowance of £10,000.

## Lifetime Allowance

Lifetime allowance is the amount of pension savings an individual can make over a working lifetime without paying tax. All pension benefits, except the state pension, count towards the lifetime allowance. This includes pension benefits in the NHS Pension Scheme, other workplace pension schemes and personal pension arrangements. If an individual's total pension savings exceed the lifetime allowance, a tax charge is due on the excess benefits.

The lifetime allowance is £1,030,000 for the 2018/19 tax year and will increase to £1,055,000 in line with consumer price index from 6 April 2019.

## Appendix 2 – IR35 certificate

IR35 CERTIFICATE TO Surgery LLP.pdf

**Name of the person that completed this check**
Helen Dixon

**End client's name**
Warrington and Halton NHS Foundation Trust

**Engagement job title**
Trauma and Orthopaedic surgery

**Reference (for example, worker's name or contract number)**

# The intermediaries legislation does not apply to this engagement

## Why are you getting this result

You have told us that the worker's business could arrange and pay for a substitute to work on this engagement, and that the end client would accept it. This suggests that the end client is engaging the worker on a business to business basis, rather than on a personal service basis.

**If HMRC investigate this engagement, the end client will need to confirm that they would accept substitution. They may also be asked to demonstrate that they have accepted substitution during this, or a similar engagement.**

It is important to demonstrate that it is the worker's business that will pay, and provide the substitute, not the agency, and not the end client

## About the people involved

### Which of these describes you best?

The end client is the public body, corporation or business that the worker is providing

services to.

> The end client

## Has the worker already started this particular engagement for you?

> No

## How does the worker provide their services to you?

> As a limited company

# About the worker’s duties

Workers that perform office holder duties for the end client are classed as employed for tax purposes.

## Will the worker (or their business) perform office holder duties for you as part of this engagement?

Being an office holder is not about the physical place where the work is done, it’s about the worker’s responsibilities within your organisation. Office holders can be appointed on a permanent or temporary basis.

This engagement will include performing office holder duties for you, if:

- The worker has a position of responsibility for you, including board membership or statutory board membership, or being appointed as a treasurer, trustee, company director, company secretary, or other similar statutory roles
- The role is created by statute, articles of association, trust deed or from documents that establish your organisation (a director or company secretary, for example)
- The role exists even if someone is not engaged to fill it (a club treasurer, for example)

**If you are not sure if these things apply, please ask your management about your organisational structure.**

> No

# About substitutes and helpers

We ask these questions to find out if the worker is being engaged as a business or on a personal service basis. If the end client has not or would not agree to the worker's business arranging for a paid substitute to work instead of them, it suggests that they are being engaged on a personal service basis.

## If the worker's business sent someone else to do the work (a substitute) and they met all the necessary criteria, would you ever reject them?

The criteria would include:

- Being equally skilled, qualified, security cleared and able to perform the worker's duties
- Not being interviewed by you before they start (except for verification checks)
- Not being from a pool or bank of workers regularly engaged by your organisation
- Doing all of the worker's tasks for that period of time
- Being substituted because the worker is unwilling or unable to do the work

**We need to know what would happen in practice, not just what it says in the worker's contract.**

> No - we would always accept a substitute who met these criteria

## Would the worker's business have to pay the person who did the work instead of them?

**If the substitute would be paid by an agency, it will not count as substitution.**

> Yes

# You should now do the following:

If you are the worker your business should be paid a gross amount and follow this guidance (https://www.gov.uk/browse/business/business-tax) about your taxes.

If you are the fee payer you can pay the worker's business a gross amount without deducting tax or National Insurance.

## About this result

# About this result

The intermediaries legislation will apply to this engagement where the worker's business (the intermediary) satisfies these specific conditions of liability (https://www.gov.uk/guidance/ir35-what-to-do-if-it-applies) .

HMRC will stand by the result given unless a compliance check finds the information provided is not accurate.

HMRC will not stand by results achieved through contrived arrangements designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance with associated higher penalties.

HMRC can review your taxes for up to 20 years.

**HMRC will not keep a record of this result.**

Date of result: 4 July 2019, 13:44:03 (UTC)

Decision Service Version: 1.5.0-final

We are WHH

Warrington and Halton Hospitals NHS Foundation Trust

# REPORT TO BOARD OF DIRECTORS

| | | | | |
|---|---|---|---|---|
| **AGENDA REFERENCE:** | **PBM/19/07/47** | | | |
| **SUBJECT:** | **Charitable Funds Committee Chair's Annual Report** | | | |
| **DATE OF MEETING:** | 31 July 2019 | | | |
| **AUTHOR(S):** | Pat McLaren, Director of Community Engagement + Fundraising | | | |
| **EXECUTIVE DIRECTOR SPONSOR:** | Pat McLaren, Director of Community Engagement + Fundraising | | | |
| | | | | |
| **LINK TO STRATEGIC OBJECTIVES:** | All | | | |
| | All | | | |
| | All | | | |
| | | | | |
| **EXECUTIVE SUMMARY** (KEY ISSUES): | The Charitable Funds Committee Chair's Annual Report sets out the Charity's achievements and issues presented to the Committee in year.<br><br>This report seeks to deliver assurance to the Corporate Trustee of WHH Charity that the Charitable Funds Committee has met its Terms of Reference, has overseen the deployment of the 2018-19 strategy and has met the legal and governance requirements set out by the Charities Commission. The guidance for Trustees checklist has also been monitored periodically and reported to the Corporate Trustee. | | | |
| **PURPOSE: (please select as appropriate)** | Information | **Ratification** ✓ | To note | Decision |
| **RECOMMENDATION:** | **The Board, as the Corporate Trustee, reviews the document, ensure it meets its purpose and ratifies the Charitable Funds Committee Chairs Annual Report.** | | | |
| **PREVIOUSLY CONSIDERED BY:** | **Committee** | Charitable Funds Committee | | |
| | **Agenda Ref.** | **CFC/19/06/23** | | |
| | **Date of meeting** | 6 June 2019 | | |
| | **Summary of Outcome** | Approved | | |
| **FREEDOM OF INFORMATION STATUS (FOIA):** | Whole FOIA Exemption | | | |
| **FOIA EXEMPTIONS APPLIED:** ***(if relevant)*** | Section 22 – information intended for future publication<br>Section 43 – prejudice to commercial interests | | | |

## Charitable Funds Committee

| SUBJECT | Committee Chair Annual Report | AGENDA REF: | CFC 19/06/22 |
|---|---|---|---|

## 1. CONTEXT

The Charitable Funds Committee is required to report annually to the Board outlining the work it has undertaken during the year, and where necessary, highlighting any areas of concern. This paper presents the Charitable Funds Committee Chair's Annual Report which covers the reporting period 2018-19.

The Board is the Corporate Trustee of charitable funds, registered together under charity registration 1051858 and the Committee is appointed as the Trust's agent in accordance with s16 of the NHS Trusts (Membership and Procedures) Regulations 1990.

The Charitable Funds Committee (the Committee) is accountable to the Corporate Trustee, for providing oversight and assurance on all aspects of its fundraising practice – this includes strategy development, financial forecasting and monitoring, risk strategy and management and Charitable Funds governance relating to internal operations and compliance with regulatory standards/guidance and registrations.

This report details the membership and role of the Committee and the work it has undertaken during the reporting period.

During the reporting period, the Committee was composed of all independent Non-Executive Directors (excluding the Chairman), one of whom was appointed as Chair of the Committee. Dr Jean-Noel Ezingeard assumed Chair-ship of the Committee replacing Mr Ian Jones (SID) as interim Chair. Quorum is achieved with two (2) members ie two non-executive directors.

During the reporting period, there were 4 meetings (June, August, November 2018 and March 2019.)

**Terms of Reference**

The Committee's Terms of Reference were reviewed during the year, as was the business cycle, to ensure there was a focus on integrated systems of quality and assurance.

The Terms of Reference was refreshed in the year following a benchmarking exercise of other NHS Charities in the region and now makes provision for Executive (voting) directors to be included in the membership, with a requirement for the Director of Finance & Commercial Development plus one Clinical Executive director to be in attendance (or their nominated deputies). Membership now comprises:

- All the non-executive directors of the Trust (with the exception of the Trust Chairman) one of whom will be appointed as Chair of the Committee by the Trust Board
- Up to (three) voting Executive directors to include the Director of Finance and Commercial Development or their nominated deputies

In addition to the membership further attendees include:

- Director Community Engagement and Fundraising
- Deputy Director of Finance
- Head of Financial Services
- Nominated Governor (Public Constituency)
- Any Senior Trust employees with clinical and operational expertise as nominated by the Trust Board at the invitation of the Committee

**Charities Commission**

The Committee reviewed and approved the draft WHH Charity Annual Report and Accounts for the 2018-19 financial year for presentation to the Corporate Trustee.

The Committee reviewed the Charities Commission Checklist for Trustees, which was subsequently shared with the Trust Board. We remained compliant with all areas of the checklist in year.

## 2. Strategic, Governance and Operational Activities/Issues of Note

**Overview**

2018-19 was another challenging year for WHH Charity, as it was for the whole charities sector.

The Charities Aid Foundation (CAF) report for 2019, the largest study of giving behaviour in the UK, noted: *'…yet again the key measures of giving are on a downward path. For the third year running significantly fewer people say they are giving money. The overall estimate of household giving in the UK is relatively stable in cash terms at £10.1bn, but that is a result of a smaller group of dedicated donors giving more. Meanwhile, trust in charities is down once again, a trend reflected in both this research and that of others. The scale of this study, interviewing around 12,000 people across each year, suggests that these trends are to be viewed with concern. The decline of trust in institutions is a global phenomenon, affecting all sectors. But it is something we in civil society should take seriously. People are not obliged to give. They give because they are inspired, because they are touched and because they know they can make a difference*.

The Committee received and closely scrutinised the financial plan throughout the year and elected to adopt a 'conservative' forecast in June 2018.

WHH Charity's growth in real terms was good year on year, exceeding plan by £0.8K (excluding legacies) however overall income was almost £100K less than the previous year, demonstrating the major, but unpredictable, impact of legacies.

In year WHH Charity focused on containing its overheads which were £119K, against a plan of £131K, a slight increase on previous year of £109K – but this included the recovery of monies disbursed on staff awards in previous years in error.

**Notably, WHH Charity disbursed £199.8K to wards, depts. and services on furtherance of charitable objectives in year, an increase of £143K on the previous year (£ 56.5K).** It has been especially pleasing to see two capital campaigns finally reach their targets in year the Dementia garden and the Children's Outdoor play area.

Looking forward to 2019-20, WHH Charity has a realistic work plan with identified opportunities for income growth, this is being deployed. As well as income growth, focus remains on reducing running costs/overheads so the maximum possible proportion of donated funds are deployed on direct patient benefit as donors intended.

**Key items of note**

- WHH Charity assumed costs for the retail premises at Warrington Hospital main entrance in year which are included in overhead. The Halton office is provided by the Trust without charge.
- Staffing increased marginally from wte 1.4 to 1.5 and once again went to market to recruit a fundraising assistant following the return to USA of the post holder. Recruitment commenced immediately on notice of resignation however there was still a gap of some weeks during our busiest time before a new staff member joined.
- Gift Aid claims were made as part of 'business as usual' made considerably easier thanks to the embedded Harlequin system and improved training and awareness of gift aid opportunities which allow 25% enhancement to taxpayers' donations.
- The Charity prepared effectively for the new GDPR regulations which came in to force in May 2018, this remains an area under continual review
- Risk Strategy – key risks and mitigations are reported on periodically in year, a new risk register has been set up on the Trust's Datix system.

**Furtherance of Charitable Objectives**

In year WHH Charity spent over **£199.8K** on direct patient benefit including the following:

| | |
|---|---|
| Bid 7 1819: The Reader Volunteer led initiative | 11,600.00 |
| Bid 16 1819: 2x comfortable recliner chairs Ward C20 | 1,394.40 |
| Bid 46 1819: Amazon Echo show (Deafness) | 339.98 |
| Bid 61 1819: Construct new partition wall-B18 | 2,630.40 |
| | |
| Bi Monthly ICU family and former patients meetings (ongoing) | 461 |
| | |
| ICU Patient transfer scale | 1,970 |
| ICU Critical Care Outside space | 25,000 |
| ICU Delirium aides | 4,574 |
| ICU MOTMED | 11,622 |
| Mural and interactive poster for ICU | 665 |
| General items ICU | 1,159 |
| ICU Rehabilitation items for patients recovery | 969 |
| Children's outdoor play area | 46,032 |
| Children's Ward Shower Room for Parents | 7,737 |
| Neonates 8 Clinical Reclining chairs | 3,160 |
| Neonates 12 Apnoea monitors | 9,600 |
| Neonates Digital camera for baby diary | 89 |
| Neonates Blinds and Curtains | 4,838 |
| Maternity Acupuncture Training | 695 |
| Scrub hats | 950 |
| Redecoration of Maternity Unit | 550 |

**Sustainability**

As noted in the previous year, the Committee remains concerned about the longer term viability of WHH Charity, however it is confident that every effort is being made to increase donations, develop high value corporate partnerships and maximise digital giving opportunities with limited resources. At the same time, good efficiencies are being made which are freeing up resources to focus on fundraising and good progress has been made to reduce overheads by planning to relocate within the hospital.

The Committee is further assured that in the event of WHH Charity no longer being a going concern that the refreshed reserves policy now encompasses all potential 'wind up' costs.

**Summary**

This has been another extremely busy year for the Charity and the Committee has closely monitored activities and developments.

I would like to thank all members of the Committee, along with directors, staff, internal and external advisors for their responses, support and contributions during the year.

Most of all, on behalf of the Committee, I would like to formally record our thanks to particular supporters who have gone 'above and beyond' in the year to raise funds/provide support for our Dementia Garden and Children's Outdoor Play area. These are: Sellafield Ltd, COOP, Assura, Asda, The Cheshire Youth system, Nottcutts Garden Centre and our very special young ambassadors whose efforts were recognised at the Houses of Parliament in year with a National Citizen's Award: twins Ruben and Elena.

We recognise and applaud the tireless support we have enjoyed from all of our fundraisers, volunteers and donors who, despite tough economic conditions and a crowded charitable sector, continue to support their local hospitals.

Ian Jones
Senior Independent non-executive Director
For past Chair, Jean Noel Ezingeard.

We are WHH

NHS Warrington and Halton Hospitals NHS Foundation Trust

**REPORT TO BOARD OF DIRECTORS (PART 2)**

| | | | | |
|---|---|---|---|---|
| **AGENDA REFERENCE:** | **PBM/19/07/48** | | | |
| **SUBJECT:** | **Warrington ePMA – Proposed Delay** | | | |
| **DATE OF MEETING:** | 31st July 2019 | | | |
| **AUTHOR(S):** | Phillip James, Chief Information Officer | | | |
| **EXECUTIVE DIRECTOR SPONSOR:** | Phillip James, Chief Information Officer | | | |
| | | | | |
| **LINK TO STRATEGIC OBJECTIVES:** | SO1: We will .. Always put our patients first through high quality, safe care and an excellent patient experience | | | |
| | Choose an item. | | | |
| | Choose an item. | | | |
| | | | | |
| **EXECUTIVE SUMMARY** (KEY ISSUES): | Delaying the Warrington site deployment to March 2020 is proposed due to outstanding project dependencies, unfulfilled floor walking resource requirements and time sensitive project resource conflicts. | | | |
| **PURPOSE: (please select as appropriate)** | Information | Approval ✓ | To note | Decision |
| | | | | |
| **RECOMMENDATION:** | The Trust Board is requested to approve the delay on the basis of the outlined rationale. | | | |
| **PREVIOUSLY CONSIDERED BY:** | **Committee** | Trust Operational Board | | |
| | **Agenda Ref.** | TOB/19/04/079 | | |
| | **Date of meeting** | 24th June 2019 | | |
| | **Summary of Outcome** | Resource review to enable ePMA deployment plan to table at next TOB meeting | | |
| **FREEDOM OF INFORMATION STATUS (FOIA):** | Release Document in Full | | | |
| **FOIA EXEMPTIONS APPLIED:** ***(if relevant)*** | None | | | |

## 1.0 Purpose

This paper describes a proposed delay to the deployment of the electronic prescribing and medicines administration **(**ePMA) solution (parts 1 & 2 of 4; enhanced prescribing) across the Warrington Hospital site.

## 2.0 Background

ePMA enables safe patient care as recognised by the Lord Carter Hospital Pharmacy Transformation Programme (HPTP) in 2017 and NHS England Long Term Plan in 2019. Whilst the former required e-prescribing and administration functionality deployment by April 2020, the latter has extended this deadline by 5 years.

On the 6th June the Executive Team supported a proposed delay of the planned June deployment of ePMA across the Warrington site. The situation was subsequently discussed at the Trust Operational Board of 24th June 2019.

## 3.0 Dependencies

An assured plan relies upon a resolution to two key dependencies:

- embedded Temporary Access Card (NHS Registration Authority cards referred to as TACs) process for Nurses and Doctors respectively, with the latter no longer able to prescribe;
- assured Pharmacy processes and support.

The former is at an advanced stage of resolution whilst the recruitment to resolve the latter will require up to 4 months.

## 4.0 Deployment Plan

Table top exercises assessed the deployment plan requirements from a clinical, patient safety and resource perspective, benefiting from:

- lessons learnt from Morecambe Bay and Sheffield Lorenzo ePMA Trusts and more recently our Halton Hospital
- Clinical Practitioner preferences, Medical Cabinet views and Medicines Governance meetings
- consideration of the necessary Floor Walking and Project Management resources to robustly deploy the solution and the timing of the deployment.

In respect of the latter point:

- The preferred 2 week big bang approach, to limit patient risks of mixed electronic / paper working, requires time to secure 73 temporary resources
- Profiling of incumbent Lorenzo expertise to avoid the doctors rotation window and safely cater for the competing Lorenzo core build schedule, additionally funded and time sensitive innovations and the high profile LDE programme, has directed the decision to propose a March 2020 window.

The delay will also delay ePMA parts 3 & 4 (Dose Range Checking & Closed Loop Administration), forfeiting supplier support beyond March 2020. A Halton only deployment maybe considered if circumstances allow, subject to a further business case.

## 5.0 Risk

The following Datix risk has been recorded to capture the impact and mitigation of any proposed delay:

- 980 - Failure to comply with regulatory requirements caused by not implementing electronic prescribing and medicines administration (EPMA Parts 1-4) as a quality and safety medication prescribing and administration improvement and resulting in a failure to reduce EPMA preventable medication incidents – **Current rating of 16.**

  The following Quality & Safety mitigations have been actioned by the Pharmacy Department:
  - Staff training
  - Incident reporting
  - Policy and SOPs.

## 6.0 Recommendations

The Trust Board is recommended to:

- approve a delay to the deployment of ePMA Parts 1 & 2 across the Warrington site on the basis of:
  - dependencies
  - patient safety and
  - demands upon Lorenzo expertise.