

**Minutes of the Trust Board held on 25 March 2009
in the Boardroom, Royal Brompton Hospital**

Present: Sir Robert Finch (Chairman)
Mr R Bell, Chief Executive
Mr R Craig, Director of Operations
Mr N Coleman, Non-Executive Director
Mrs C Croft, Non-Executive Director
Mrs J Hill, Non-Executive Director
Mr M Lambert, Director of Finance & Performance
Professor Sir A Newman Taylor, Non-Executive Director

By Invitation: Mr R Connett, Head of Performance
Mrs L Davies, Head of Modernisation
Mr N Hunt, Director of Service Development
Ms C Johnson, Director of Human Resources
Mr D Shrimpton, Private Patients Managing Director
Ms J Thomas, Director of Communications
Ms J Walton, Director of Fundraising

In Attendance: Ms E Mainoo, Executive Assistant
Mrs R Paton (minutes)

Apologies: Professor T Evans, Medical Director
Mr R Hunting, Non-Executive Director
Ms M Hiscock, Acting Director of Nursing

The Chairman welcomed everyone to the meeting at what was a crucial time for the Trust in its application to become a Foundation Trust. He specifically welcomed Ms Sarah Isted from PricewaterhouseCoopers (PwC) who would address the Board later in the agenda.

2009/025 MINUTES OF THE MEETING HELD ON 25 FEBRUARY 2009

The minutes of the February meeting were agreed as a correct record.

2009/026 REPORT FROM THE CHIEF EXECUTIVE

1. Academic Health Science Centres (AHSC)

Mr Robert Bell, Chief Executive, reported that on 9 March the Secretary of State had announced the first five AHSCs in England as follows: Cambridge University Health Centres, Imperial College, King's Health Partners, Manchester AHSC and UCL Partners. This Trust was still awaiting the launch of the proposed collaboration discussion with Imperial College and Imperial College Healthcare NHS Trust on the future configuration of that AHSC and our potential involvement. In the meantime we would continue to focus on our FT application and decide on how we might proceed with partnerships once this was achieved. The Chairman reported that he had held three satisfactory meetings with Sir Roy Anderson (Rector of Imperial College) during which some of the concerns to be addressed by the working party had been established. Professor Newman-Taylor, Non-Executive Director, agreed that the meetings had been constructive and that Sir Roy was keen to advance the partnership.

2. 2009-2010 Payment by Results (PbR) Tariff and HRG4

Mr Bell reported that NHS London had recently given direction with respect to the application of non-mandatory tariffs under HRG4, particularly the 'unbundling' of tariffs for diagnostic services. He referred to a letter from Dr William Moyes, Chairman of Monitor, to Mr David Flory, Director General of NHS Performance and Operations at DH, setting out Monitor's view that the approach by SHAs to non-mandatory tariffs was inconsistent with the aims of the PbR regime. The proposed application of tariff would not allow the Trust to mitigate the impact of the "market forces factor" adjustment, and would result in an

adverse financial position. Mr Nick Hunt, Director of Service Development, reported that the Trust had agreed a compromise with its lead PCT (K&C) which was favourable in terms of flexibility to boost earnings in-year. The issue would be of central interest at the Board-to-Board meeting with Monitor on 30th March. Mr Hunt continued that, as a result of the London ruling, the Trust could lose £3.5m from the basecase income compared to the current year. However, the agreement with K&C showed that we would be allowed to charge for all activity, particularly the unbundled diagnostics, so it would be possible to increase earnings. This might be a non-recurrent problem (i.e. 2009/10 only) but Monitor had also adjusted projections of subsequent years' income by 50% of the impact in 2009/10. The Monitor assessors would require mitigation plans to address the impact of this.

Mrs Jenny Hill, Non-Executive Director, asked how the Trust planned to address the issue. Mr Hunt said that as a result of the London ruling, the contract signed with K&C PCT was ultimately likely to cost PCTs more than the proposal the Trust had made. Mr Lambert pointed out that the "base case" for 2009/10 was a surplus of £3.8m, which the baseline figure would consume, but the additional earnings would help to restore it. Mr Nick Coleman, Non-Executive Director, sought confirmation that the contract signed did not 'cap' the money we could earn on the activity undertaken. Mr Hunt agreed that this held true for any activity not included in the baseline.

The Chairman asked that this issue be taken to the Board seminar scheduled for Friday 27th March. The Chief Executive pointed out that the Board would have to convince Monitor that we had taken this into account in our mitigation plans.

2009/027 FOUNDATION TRUST STATUS

Mr Robert Craig, Director of Operations, updated the Board on progress with the Foundation Trust application as follows:

Assessment

The Board-to-Board meeting was scheduled for 30th March and the target FT authorisation date remained 1st May 2009 (Monitor's decision due to be taken on 29th April). Monitor had provided a copy of their 'draft' downside case and sensitivities which they planned to apply to the long-term financial model.

Due Diligence

PricewaterhouseCoopers had begun the second stage of their due diligence review, focusing primarily on working capital and financial reporting procedures. An extraordinary meeting of the Board would be required in early April to review the Board Memorandum and PwC's opinion – date to be confirmed.

Board Statements

The assessment required that the Board endorsed a series of statements on the Trust's capability to meet its obligations. This would be covered later on the agenda.

Governors' Council

A constructive meeting had been held on 9th March when it had been agreed that proposals for induction and orientation of Governors should be drawn up, and work was in progress on this.

Membership

Work was underway to update the membership database and to renew recruitment efforts. Ms Jo Thomas, Director of Communications, reported all members had been sent a Patient Focus Newsletter recently and the Communications Department would soon be contacting 2,000 new patients. Data 'cleansing' of the membership database was also underway. Mr Craig explained the membership total was in line with the draft membership strategy, which would need to be adopted by the governors. We would like to grow this membership over time, but Monitor had indicated that our membership total appeared acceptable (and compared reasonably with other FTs). It was known that DGHs serving a discrete geographical area customarily had higher memberships.

Mr Craig then tabled an updated version of Monitor's "Assessor" and "Downside" cases (received shortly before the meeting), although he felt this might still not be the final position for the Board-to-Board meeting. Under the Downside case the sensitivities had become more severe, the greatest impact being on income from Private Practice, FSP slippage, Agenda for Change and European Working Time Directive (EWTD) "drift" and HRG4.

Mr Craig reminded members that Monitor's key financial tests were

- whether the Trust would have a risk rating of 3 in its first year (which it still did); and
- whether the Trust had a sustainable surplus under a reasonable set of downside risks in year 3 and beyond (which would now require further measures to be achieved).

Monitor's tests of the financial model focused on the FSP slipping, and some elements not being achieved at all; the benefit from R&D income reducing by £0.5m per annum; and some "daytime-only" primary angioplasty centres affecting volumes at HH. In mitigation, there was scope for additional FSP measures in year 3 of the plan and beyond, and Monitor had accepted that higher PP income had been secured than they anticipated. Mr Craig said that the net effect was that the bottom-line figures in the downside case were between break-even and a deficit of £1m in years 3, 4 and 5.

Mr Lambert confirmed that plans for mitigations would be discussed before the Board-to-Board meeting. Mr Coleman said that measures should be in place such that mitigations would be available even if the downside case appeared to have been addressed.

The Board discussed the issue of EWTD "drift" and Mr Lambert confirmed that the DH made an annual assumption of its effect. Mrs Christina Croft, Non-Executive Director, said it equated to approx 1% per annum. In relation to Agenda for Change (AfC), the DH assumed that the cost of staff moving up the band was 1.5%. Internal analysis showed that the profile of the Trust's workforce did not follow this profile. We would be making this case to the assessment team.

2009/028 2009/10 ANNUAL BUDGET

Mr Lambert updated the Board on progress with the 2009/10 budget. The budget needed to be agreed but until the discussion on HRG4 and the implications for tariff were finalised, this would not be possible. However, a budget based on the £3.8m "base case" had been prepared.

Mr Coleman asked if this would prejudice our ALE rating. Mr Lambert replied that the budget had been keyed into the general ledger but it might have to be altered. Mr Coleman asked if external audit should be consulted. Mr Bell said that as an NHS trust, we had had our proposed budget approved by NHS London. If it changed in the future, it would have to be reset.

At this juncture Sarah Isted gave an update on work being undertaken by PwC: following completion of their 'phase 1' report, work was now being undertaken on 'phase 2' which focused on finance and governance, the results of which would be reported back to the Board. Work was focusing on working capital, the base case and some sensitivities, but only on the first two years of the 5-year plan. She outlined their processes which would be similar to those of Monitor, particularly with regard to the FSP. She thought Monitor's focus would be on the financial position, particularly in the current economic climate and in the light of information from NHS London.

2009/029 2009/10 CAPITAL PROGRAMME BUDGET

Mr Lambert explained the need to approve a Capital Budget for each year. The Trust's proposed capital budget for 2009/10 was approximately £20.4m. A large part of this was carried forward and £8m is already ring-fenced for large, pre-committed works for the BRUs. The report appendix outlined which areas were committed and which were not.

Even where sums were uncommitted, expenditure proposals existed. A contingency would also be maintained.

Mr Coleman remarked on the total of uncommitted funds (at approx £1.2m). Mr Lambert said that the Capital Working Group would decide on items for the 2009/10 programme which were not yet allocated to existing projects, based on schemes in development.

The Board approved the Capital Programme.

2009/030 FINANCIAL PERFORMANCE REPORT FOR MONTH 11: FEBRUARY 2009

Mr Lambert reported the month of February had not been a good month financially, with a loss of £67k in month 11 following a surplus of £404k in January (caused by PP income being down and blockages in ITUs at both sites). Mr Craig emphasised that activity overall was lower than in January, reflecting the slow-down in critical care throughput on both sites, i.e. patients staying longer and delay in throughput of cases upon which our profitability depends. Critical care areas needed attention, which was planned over the coming months.

Mrs Croft remarked that, against plan, elective activity was over-performing and non-elective underperforming and asked if this would continue and whether emergency cases were being sent away. Mr Craig explained that both elective and non-elective activity were affected in such circumstances, but that non-elective admissions certainly suffered. Professor Sir Newman Taylor confirmed this; he stressed it was critical that the pipeline of activity flowed. Workloads were planned to increase in the coming years, so there needed to be confidence in critical care working properly. Mr Craig said there was an unpredictable element involved and that there had always been such episodes. However, more work needed to be undertaken to secure better scheduling, particularly at Harefield. Critical areas on both sites were to be re-modelled, with a change to the medical model for these patients at RBH.

Mrs Hill referred to agency spend and wondered if it would be helpful to include some of the performance data in the Performance Report in future. Mr Lambert confirmed that rates for bank pay had been increased in December and that the Trust had been spending more in the last 12 months. The Chairman requested a monthly report to come to the Board on the result of the FSP, with proposals on how to 'dig down' into key FSP measures. Mrs Hill said that the FSP was about our business and how it should develop, and she would like to see key indicators. Mr Craig agreed that the FSP was the means by which the Trust would make itself as cost-effective an organisation as possible. We had seen an enormous growth in clinical activity in recent years, but this had been done expensively, i.e. via agency and 'cross-cover' expenses. The FSP sought to make this part of mainstream activity, and the indicators ought to reflect this.

Professor Sir Newman Taylor was concerned the Board should have early indication of any problems from the Trust running at near maximum capacity. He suggested 3 indicators could be: infection rates, number of cancelled operations and increase in sickness absence."

In relation to the current year's FSP, Mr Lambert said the Trust was on track to deliver £11.2m of the £11.6m – approx 97%. Mr Coleman referred to the analysis of savings by Directorate and noticed some areas were showing underperformance and asked what had gone wrong, and were there lessons to be learned for the coming year? Mr Lambert agreed that there had been some slippage, but that in some areas savings plans had been based on reduction in agency and bank staff usage, but increases in activity had overturned these plans. Mr Craig said the level of review and reiteration of the schemes for 2009/10 suggested we had a greater level of confidence in these initiatives than for the current year. This was all about preparation.

Mr Lambert said that with regards to working capital, as an NHS trust we had been managed to a year-end cash target, which had been met through various methods. He continued that there were certain minimum levels of spend of exchequer capital. The Capital Working Group was very aware of this and had been accelerating purchase of items of medical equipment. He was confident we would exceed the minimum target.

2009/031 OPERATIONAL PERFORMANCE REPORT FOR MONTH 11 FEBRUARY 2009

Mr Lambert introduced the report and commented on the following points:

- Clinical Outcomes: Mortality. The YTD rate was 0.94 deaths per 100 admissions (compared to 5-year average of 1.06)
- Healthcare Acquired Infections: MRSA. There were no cases of MRSA in February, giving 2 cases YTD.
- C.difficile: There were 18 attributable cases YTD against a trajectory of 27 (a positive variance of 9). Mr Coleman had spotted an upward trend in the last three months and Mr Richard Connett, Head of Performance, reported that organisms were still being checked. Professor Newman Taylor felt that because the numbers were so small, any fluctuation would make a big difference to the statistics. Mr Lambert confirmed he would bring full year results to the April Board.
- Cancelled Operations: position at M11 is 1.26%, a slight increase on M10. The rate is 'underachieved', but is settling down. Mrs Croft requested a repeat of the report on why operations were cancelled on a monthly basis and Mr Lambert agreed to arrange this. Mr Coleman said he was pleased to see Action Plans had now been added to the Performance Report.
- Staff Sickness: rate is 3.16% and is underachieved against the target, however the Trust remained comfortably in the top quartile for the country.
- 18-week Wait. Mrs Lucy Davies, Head of Modernisation, reported that results had continued to improve in February for non-admitted patients with 99.05% being treated within 18 weeks. The total for admitted patients had also improved to 95.9%, despite problems in the month of bad weather and blockages in HH ITU. These difficulties had caused the cancellation of a number of patients which had had to be rescheduled for March and therefore lower performance should be expected in that month. The situation was being monitored to maintain performance. Mr Coleman commended all who had brought about this achievement.

The Benchmark Review of Estates Key Performance Indicators was noted. A third of the estate was below Estate Code B (adequate – but not optimal), some of which was not used. Professor Newman Taylor stressed that this did not mean there was a risk to patients. The analysis would be refined for future meetings.

Monitor – Compliance Framework: Mr Connett reported that the Trust was currently on course to achieve all of the targets measured by Monitor and would achieve a 'green' governance rating if measured now.

Mr Craig commented that another performance item which was becoming an increasing focal point in the NHS (and possibly for Monitor) was mixed sex accommodation – this was an issue in Critical Care and Paediatrics because of the nature of the services and the fabric of the building. For washing facilities, units were segregated by gender, but often had a common access passage or area. It was hoped to provide improved washing facilities on each site to ease the problem. K&C PCT had offered £200k towards necessary improvements. The DH also had £20m available against which this Trust had bid for £2m towards HDU improvements at RBH. To improve Paediatrics, accommodation would have to be expanded. Mrs Davies confirmed that Monitor had been updated on the Trust's current status with this. Mr Bell confirmed that the NHS would start penalising Trust from early 2010.

2009/032 RISK MANAGEMENT AND HEALTH & SAFETY

Mr Craig presented the following documents which the Board was requested to review and approve.

Risk Management Strategy

The strategy had to be approved by the Board annually, and included minor textual revisions, an amendment to change the title for the Director of Nursing & Governance to include Informatics, an additional section to the Statement on Internal Control to reflect Information Governance, and an update to the NHSLA Risk Management Standards section to reflect Level 2 compliance.

The Board approved the revised strategy.

Health & Safety Policy

The policy included minor textual amendments, changes to reflect the requirements of the NHS Litigation best practice, and a revised section to incorporate the Trust's obligations under the Corporate Manslaughter Act 2006.

The Board approved the policy, and the Chairman felt the policy should be reviewed if we were granted FT status.

Trust Risk Register

The Register was presented for the attention of the Board, containing risk issues reported to the Board in its Assurance Framework.

Mr Coleman confirmed that the Register matched the top 20 risks established for the Trust. He said, with regards to the risk strategy, that a risk number greater than 16 was considered not acceptable to the Trust, yet there were 6 items at the top of the assurance framework over this threshold, and the Audit and Risk Committee had looked at these and comprehensive, remedial action plans were not in place to address them.

Mrs Croft felt that some items' scores could not be reduced, such as neurological events; the Trust treated high-risk patients. Mr Coleman reminded the Board that the Director of Nursing, Governance & Informatics had added a target for the risk rating number – the target risk rating...”.

He felt that, over time, there should be progressively fewer of these. He further commented that the number of risks on the register had reduced from 500 a year ago to 130, which was a manageable number and evidence of the work undertaken recently, how risks were assessed and ranked in the Trust. He believed the register was now a very solid list.

2009/033 ANNUAL HEALTH CHECK – CORE STANDARDS: DRAFT DECLARATION

Mr Connett presented the draft and requested the Board make a declaration of compliance against the Core Standards set by the Healthcare Commission. The 24 Core Standards were grouped in 7 Domains and the domain leads had collated evidence relating to the Trust's compliance with the core standards. The London Audit Consortium had undertaken an assessment of the 9 core standards which the HCC had identified as having potential weaknesses. 4 standards were identified as requiring further evidence (C10a, C10b, C13a and C13c). Internal Audit recommended management action on C11b, and NEDs had raised questions on standards C4b, C4c and C20b. Management action had now been taken to ensure audit recommendations had been implemented in all of these standards. In relation to C11b Mandatory Training, year-end figures were awaited. The final declaration would come to the April Board meeting, with a deadline for submission of 1 May.

In relation to Mandatory Training, Mrs Hill felt that fire training was absolutely critical for this Trust. The training target was 70% (set by the Risk Committee). Ms Carol Johnson, Director of Human Resources, confirmed that e-learning had been introduced in order to reach as many staff as possible, and this was being constantly monitored. The numbers trained had improved this year. Mr Hunt added that the Trust was the first in the country to carry out practice 'live' evacuation at both sites in the last year and planned to undertake further exercises in 2009.

- 2009/034 MONITOR – DECLARATION AND SELF CERTIFICATION – BOARD STATEMENTS
Mr Craig reminded the Board that it was required to self-certify compliance with a number of board statements relating to clinical quality, service performance, other risk management processes and board roles, structures and capacity. This was to be submitted to Monitor by 25 March 2009. The Chairman addressed each item individually and Mr Craig referred to the supporting evidence and background information relevant to each one. Mr Nick Coleman, Chair - Audit and Risk Committee, supported the comments made based on assurance sought and gained by the Audit & Risk Committee.

With reference to the item on Board roles and capacity, the Chairman repeated the need for a further Non-Executive Director – arrangements for which were underway. Mr Craig said that recruitment was under way for a Company Secretary and a Director of Planning and Strategy.

- 2009/035 SETTING HIGH ETHICAL STANDARDS
Mr Lambert introduced three revised Trust policies for the Board's approval.
- Whistleblowing Policy: this had been refreshed and would be reviewed again by the Company Secretary, once appointed.
 - Hospitality, Gifts and Sponsorship Policy. There were anomalies in the policy with regard to amounts of cash which could be accepted by staff. Mr Lambert agreed to rectify this, and it was agreed that the threshold for gifts allowed to be accepted should be fixed at £25.
 - Conflict of Interest in the Workplace Policy – minor updates only

The Board approved the policies.

- 2009/036 SCHEME OF DELEGATION
Mr Lambert reported that the Scheme of Delegation had been amended to reflect organisational changes and Executive roles, including realignment of responsibility for Information Services to the Director of Governance, Nursing & Informatics.

The Scheme was approved by the Board.

- 2009/037 STANDING FINANCIAL INSTRUCTIONS
Mr Lambert reported that, as part of the ALE process, it was a requirement that Standing Financial Instructions (SFIs) be reviewed annually. The paper contained recommendations for change and had been approved by the Management Committee.

The updated SFIs were approved by the Board.

- 2009/038 AUDIT AND RISK COMMITTEE
- (i) Minutes of the Meeting of 3 December 2008.
Mr Coleman, Chair of the Audit & Risk Committee (ARC), reported the minutes had been signed off by the ARC.
 - (ii) Report from the meeting of 3 March 2009. The Chairman requested that the minutes be adopted at the next Board meeting.

2009/039 QUESTIONS FROM MEMBERS OF THE PUBLIC

There were no questions from members of the public. The Chairman took the opportunity to make the following comments:

- He had held a good meeting with Peter Molyneux (Chairman of Kensington & Chelsea PCT and recently appointed chairman of the NW London sector), who was looking for a small PCT site on the campus and had agreed to forward his requirements to the Chairman. Mr Molyneux remained very supportive of the Trust's FT application.
- He had received a series of letters following his meeting with Mr Ray Puddifoot, Chief Executive of the Magdi Yacoub Institute and Leader of Hillingdon Council. The Chairman had asked for the formation of a working party to assess the way forward with the HH site – a reply was awaited.
- The Chairman was to meet Sir Michael Partridge to discuss how he might assist in relation to HH and progress would be reported back to the Board. A working party had been proposed and *Heart of Harefield* had requested to be represented on this.
- 84 applications had been received in response to the Company Secretary position (see item 2009/34). The list had been refined to 4 final candidates. The Chief Executive, Chairman and Director of Operations would host the interviews.
- The Trust had been approached by KPMG, PwC and Deloitte in relation to partners soon to retire who might be interested in Non-Executive positions with this Trust.

2009/040 DATE OF NEXT MEETING

Wednesday 29 April 2009 at 10.30 am in the Concert Hall, Harefield Hospital