Minutes of the Board of Directors meeting held on 30th March 2011 in the Concert Hall, Harefield Hospital, commencing at 10.30 am

Present:	Sir Robert Finch, Chairman	SRF
	Mr Robert Bell, Chief Executive	RB
	Richard Connett, Trust Secretary & Head of Performance	RCo
	Mr Robert Craig, Chief Operating Officer	RCr
	Mr Nicholas Coleman, Non-Executive Director	NC
	Prof Tim Evans, Medical Director	TE
	Mrs Jenny Hill, Senior Independent Director	JH
	Mr Richard Hunting, Non-Executive Director	RH
	Ms Kate Owen, Non-Executive Director	KO
	Mr Neil Lerner, Non-Executive Director	NL
	Prof Sir Anthony Newman Taylor, Non-Executive Director	ANT
	Mr Richard Paterson, Interim Director of Finance	RP
	Dr Caroline Shuldham, Director of Nursing & Clinical Governance	CS
By Invitation:	Mr Nick Hunt, Director of Service Development	NH
	Mrs Carol Johnson, Director of Human Resources	CJ
	Mr Piers McCleery, Director of Planning & Strategy	PM
	Mr David Shrimpton, Private Patients Managing Director	DS
	Ms Jo Thomas, Director of Communications	JT
	Mr Rod Morgan, Interim Chief Accountant	RM
In Attendance:	Mr Peter Doyle, Service Manager, Critical Care	PD
	Anthony Lumley, Corporate Governance Manager (minutes)	
Apologies:	Mr Mark Lambert, Director of Finance and Performance	

2011/10 **MINUTES OF THE PREVIOUS MEETING HELD ON 26TH JANUARY 2011**

The minutes of the meeting were approved.

2011/11 **REPORT FROM THE CHAIRMAN IN RELATION TO JUDICIAL REVIEW**

SRF reported that Royal Brompton and Harefield NHS Foundation Trust (RBHFT) had issued proceedings for Judicial Review of the processes followed by the Joint Committee of PCTs (JCPCT) in respect of the future provision of paediatric cardiac surgery in England. He also outlined how this decision had been reached and gave a summary of events leading to this decision. The main grounds for the Trust's action are:

- the JCPCT business case is flawed as the decision had effectively been made before the consultation had begun;
- the process had not taken account of the collateral impact of the withdrawal of paediatric cardiac surgery from RBHFT;
- the retention by RBHFT of paediatric cardiac surgery was not an option upon which the JCPCT were consulting.

SRF reported that he and the Chief Executive had met with Sir Neil Mackay, Chair of the JCPCT, and Ms Ruth Carnall, Chief Executive of NHS London, who were keen that the Trust postponed the launch of legal action. However, the Trust's legal advisors have said that any delay in issuing legal proceedings could be detrimental to the Trust's case and therefore, reluctantly, the Trust has issued legal proceedings and is now awaiting to hear whether the Judges decide to make the order.

In the meantime the Trust is considering its strategic options.

These include:

- remaining on the Sydney Street site and rebuilding the Royal Brompton Hospital in Chelsea
- rebuilding Harefield Hospital on its existing site
- rebuilding elsewhere, including rebuilding Royal Brompton elsewhere in London – perhaps on Imperial's site at Hammersmith or rebuilding Royal Brompton at Cambridge.

Boston Consulting Group have been engaged to assist with assessing these options.

SRF said that the uncertainty would probably cause delay to the redevelopment of Harefield and he noted that site disposal or redevelopment at Harefield would not generate sufficient capital to fund the whole Harefield Hospital redevelopment.

BB revisited the chronology of the evolution of the judicial review application process. The Trust first had sight of the JCPCT business case in mid February 2011. At this point the Trust contacted the JCPCT and requested a postponement of the start of the consultation process. This proposal was rejected. The Trust then asked for a deferral of the consultation process for 28 days. The JCPCT did not reply to this suggestion.

At the meeting between SRF, BB and Ruth Carnall and Sir Neil McKay, Ruth Carnall had offered to work with the 3 London hospitals (RBHFT, Gt Ormond St (GOSH) and Guy's & St Thomas' (GST) to find a London solution which could be dovetailed with the JCPCT process.

At a further meeting between the Chief Executives of the 3 London centres, convened by Ruth Carnall, it became clear that GOSH and Guy's and St. Thomas' would only be interested in an NHS London brokered solution once the judicial review process was either concluded or not pursued. GOSH and GST made it clear that they were keen to participate once the outcome of the judicial review was known.

The current position is that the judicial review application is with the High Court waiting for a judge to be assigned. If the judge decides there is a case to be heard, the judicial review process will commence and there will be a hearing. It is the Trust's understanding that the current consultation could be stopped at this point.

SRF invited questions and comments from the public:

- Mr John Ross asked if the Board were aware of a local newspaper article in which it was speculated that the Trust was considering selling land and possible planning applications.

SRF replied that the Trust has looked in depth at developing HH but absolutely no conclusion had been reached because the cost of a scheme will be substantially in excess of the value of any surplus land sold. There is no planning application even in draft. He emphasised that the Trust would consult with all stakeholders first if a planning application was contemplated. BB added that the Board concluded in January that the redevelopment of HH could not be considered until there was also clarity about the redevelopment of the RB site.

- Ken Appel expressed his appreciation on behalf of the governors of the expeditious way the Board acted on behalf of the Trust. The governors have full confidence in SRF and BB.

SRF thanked Mr Appel and stated that there is everything to be gained by the Harefield community considering now how it should respond.

- David Potter, Chair of ReBeat and erstwhile Vice Chairman of Heart of Harefield, said that he recognised that Harefield Hospital is part of the Trust and that the 2 hospital sites are interdependent. He asked the Board to comment on the possible material impact on services at HH if these proposals are implemented.

SRF said that there could potentially be a material impact on services at Harefield if these proposals are implemented. BB went on to explain the nature of the interdependency, with paediatric services being the originators of patients for adult congenital heart disease programmes and in the case of paediatric CF services, the service from which referrals for lung transplants at Harefield are made once patients transition to the adult service. He added that the loss of paediatrics could cost the Trust 10% of its income. This could bring the financial viability of the organisation into question by Monitor through its system of financial risk rating. BB also pointed out that national and London commissioners have also announced reviews of transplant and cancer services.

SRF said that it was not possible to disaggregate HH from the RBH. He observed that staff have built up one of the great medical institutions of Europe. The paediatric re-designation proposals would undermine this institution and are not in the best interests of patients and the Trust therefore has a duty to defend those interests.

- Mr Stan Bishop from the Hillingdon Residents Association asked about the potential move to Cambridge, commented on the more general threat to stroke and trauma services from NHS reforms, asked for more clarity on the effect of the 10% potential income loss and also asked whether the legal costs inherent in the legal process could be justified especially if the review is ultimately unsuccessful.

SRF replied that a move to Cambridge was not mutually exclusive to continuing at Harefield. Both the HH and RBH sites need money to be spent to bring some of the buildings up to modern standards. The Trust is taking the

best advice from the Boston Consulting Group. In terms of income loss the 10% estimate was based on the size of the paediatric service. He pointed out that the Trust had made two major efforts to defer the consultation but had been left with no choice but to pursue the legal action. The decision to proceed with an application for judicial review had been taken on the best legal advice and with great reluctance.

BB expanded on SRF's comments. He clarified that the 10% income loss was based on activity and said the Trust had budgeted for legal costs. The Trust has a duty as a Foundation Trust to defend its interests. ANT added his view on the impact of the value of losing the paediatric service. He agreed that it could make continuing provision not viable and that there could be implications for the Trust's collaboration with Imperial College and implications for the transplant service. He also pointed out that loss of the paediatric CF service could threaten the existence of the large gene therapy academic CF research unit at Royal Brompton headed by Professor Eric Alton of Imperial College.

2011/12 **REPORT FROM THE CHIEF EXECUTIVE**

BB reported that the Care Quality Commission has published the annual staff satisfaction survey. The Director of Human Resources will bring a summary to the next meeting of the Trust Board. He said that overall he was very content with the level of satisfaction and that the response rate was higher than the national average.

2011/13 **NATIONAL INSTITUTE FOR HEALTH RESEARCH, RESEARCH SUPPORT SERVICES**

TE introduced a report which informed the Board of the NIHR Research Support Services initiative and asked the Board to approve the RBHFT R&D Operational Capability Statement.

The Board APPROVED the recommendation.

2011/14 **CLINICAL QUALITY REPORT FOR MONTH 11: FEBRUARY 2011**

RCo introduced the report and highlighted the following from Month 11:

- One outbreak of infection relating to four cases of diarrhoea of unknown virological cause
- One serious untoward incident (SUI) connected to a grade 3 pressure ulcer incurred during a 34 hour surgical procedure
- One case of *Clostridium difficile* (C Diff). RCo informed the Board that the Trust was the only one in London not to have agreed its C Diff objective for 2011/12 with commissioners and the Department of Health (DH) because a very low target of 7 for the year has been put forward by DH
- Cancelled operations is showing a continuing adverse variance, although the indicator has not deteriorated any further
- On 18-week Referral to Treatment Time Targets, Median Waits there has been some improvement
- Complaints: there were 11 complaints in December and all were answered within 25 days. There were a further 7 in January 2011 of which 5 were answered in time. Overall performance stands at 82% to

M10. An Annual Review of complaints will be prepared and brought to a future meeting of the Trust Board.

NC commented on the SUI numbers saying that while more had been reported, the pace seems to be easing off and that the Risk and Safety Committee will take a detailed look at SUIs in July

The Board NOTED the report.

Mixed Sex Accommodation
RCr presented this section of the report on behalf of Sarah Corley, Quality and Safety Lead HH Heart Division.

The Board APPROVED the declaration of compliance as set out on page 15 of the report.

Modern Matrons
PD presented this section of the report. He noted that the cleaning contract is currently being tendered and that the Modern Matrons have some concerns about the potential relocation of services.

The Board noted that performance on hand hygiene is flat and debated how to improve on this. It was acknowledged that, while auditing could help identify offenders and that TE was willing to take direction from the board on enforcing compliance, audits had been carried out by junior staff. Audits in themselves may not address the issue.

It was AGREED that the Executive Directors should look at how compliance can be improved.

2011/15 **FINANCIAL PERFORMANCE REPORT FOR MONTH 11: FEBRUARY 2011**

RP presented the report. In summary he highlighted:

- overall a disappointing performance: in-month activity was below plan in both NHS and Private Patients (PP);
- a deficit for the month of £100k against a planned surplus of £700k. A re-forecast as recently as last November of a £1.1m surplus means the Trust is £1.2m behind that re-forecast for P11;
- a shortfall principally at the income line. The M11 year-to-date, thanks to Project Diamond (PD) is an actual surplus £3m, but if PD is excluded the underlying deficit is £5.4 million;
- the Financial Stability Plan (FSP) has achieved £8.6m in cost savings, 85% of the YTD target;
- the Trust is £6m over budget on costs YTD which reflect shortfalls in other cost categories. To address this, the intention next year is to manage the FSP against the full I&E account, that is, as a block of expenditure, rather than against specific items;
- balance sheet: there are high levels of stock, notably high value devices bought in advance of the increase in VAT on 1 January but this should fall with greater usage and there is no great risk of obsolescence or deterioration;
- a substantial overrun on capital expenditure: this is to be explored in a paper to be presented to the Audit Committee in April. This means that the Board are being asked to defer a discussion of the capital expenditure

outturn for 2010/11 and approval of the CAPEX budget for 2011/12 until next month's Board meeting so that the Audit Committee views will have been captured and considered;
- the combination of high stock / capital expenditure over runs and the debtors position has led to pressure on the cash position. So, £5m has been drawn through the working capital facility for a period of 90 days. In reply to a question from RH on the effect on the year end position, RP said that the Trust would meet its obligation to hold 10 days expenditure in cash as required by Monitor.

RCr also commented on aspects of the report:
- the income targets in the FSP had been predicated on second half of the year capacity which it had not been possible to deliver. Despite not reaching the activity targets, it should be noted that 5% more spells, and 5% more occupied bed days had been delivered compared to last year, although the cost of achieving this had been through payment of premium rates outside normal working time. RCr said that he had to correct the view promulgated that only FSP items were actively tracked and managed. All expenditure budgets were managed and subject to regular review;
- over commitment of capital expenditure should reduce as major projects come to fruition. The Cardiovascular BRU was intended to deliver some clinical capacity in 2010/11, but this had been delayed from September 2010 to March 2011; the Harefield additional catheter laboratory had also been put back from October 2010 to July 2011;
- RP added that the over run on capital expenditure would be the subject of further discussion at the next Audit Committee.

NL indicated that he supported the Interim Director of Finance's proposal for monitoring expenditure.

The Board NOTED the report.

2011/16 **UPDATE ON PROGRESS TOWARDS THE BUDGET 2011/12**

RP presented the report in which he had set out a preliminary budget for the next financial year. He drew the attention of Board members to the following points, highlighted key issues from the one page Budget Setting Summary, and answered queries from Board members as they arose:

- work continues to identify further cost savings;
- Monitor is expecting the Trust to maintain a financial risk rating (FRR) of 3 throughout 2011/12. The Trust needs to report a break even to maintain the level 3 but also may need to do a little better than that in 2011/12 to preserve it;
- there are about £8m of cost pressures to be absorbed;
- a lack of clarity about commissioning intentions 2011/12 and other potential loss of revenues (such as the impact of emergency readmissions rules) have led to the inclusion of a possible £5m in income loss. NH was invited to give an update on recent contract negotiations. He said the Trust has three challenges from the North West London, South Central and East of England London specialised commissioning groups;
- the position of doubtful debts will be kept under review;
- the remaining net deficit for 2011/2 as at 30th March 2011 is £5m.

The Board discussed the report in detail. NL congratulated RP and Rod Morgan, Interim Chief Accountant, for producing a well put-together paper which set out the risks such as that inherent in the additional PP income target. NC commented favourably on progress made since the January Board meeting on closing the projected gap of £26-30m. It was recognised that in agreeing a final budget three broad **o**ptions were apparent: included setting a neutral result; a 1% surplus; or aim for a surplus of around £10m but views expressed tended towards aiming for a modest surplus, on the basis that the Trust's FRR 3 rating would be maintained. ANT was concerned about a possible tariff reduction in 2011/12 for complex specialist cases. NH provided a summary of the current position in respect of non payment for readmissions within 30 days and other commissioning questions. In response to a comment from NL, RCr assured the Board that additional private patient ward capacity would be complete in April, but the budget prudently assumed income from May.

BB reported on a meeting he had attended that morning for Chief executives in trusts receiving Project Diamond monies. There is irrefutable evidence that the National tariff is insufficient. The tariff shortfall in London amounts to £65m. He looked forward to 2012/13 when Monitor will set the tariff and said he hoped that the standard tariff would be recalibrated to avoid piecemeal application of top ups. He also added that as the Trust has Biomedical Research Unit (BRU) status for its two facilities, it qualifies for a £1.6m "Market Forces Factor" top up. If the RBHFT gains Biomedical Research Centre status it would receive a higher income grant. The Trust has now applied for an upgrade to BRC status [**Note for the minutes**: a verbal update on this is included in the minute on item 2011/19 Research Scorecard]. If successful the Trust could get £8-10m annually which would mean the £1.6 top up will grow incrementally.

The Board NOTED the report.

2011/17 **MARS UPDATE**

Paper E was presented by CJ.

CJ said that uptake for the MARS scheme had been higher than originally anticipated. 81 people have applied and it is expected that 70% of these applications will be agreed, generating a recurrent saving of at least £2m. She believed that the scheme had been well received in the Trust.

BB said this would not be the end of staff reduction initiatives and that there would need to be further reductions in the pay envelope.

JH noted that the changes presented an opportunity for the organisation to engage in succession planning and leadership development and she said that she would be keen to know how this had been leveraged.

The Board NOTED the report.

2011/18 **SERVICE LINE REPORTING: PROGRESS UPDATE**

Introducing the report, RCr said the paper provided an update on progress in achieving Service Line Reporting (SLR) and the planned timetable for the rollout of SLR to the Divisions and Care Groups within the Trust. The latest data (for Q3 of 2010/11) was currently being validated. Reports are organised

so that analysis flows back from a high level Trust summary to a more granular patient-level detail. RP suggested that the first quarterly progress report with SLR data by care group be on the first quarter of the new financial year. This was agreed.

The Board NOTED the report.

2011/19 **RESEARCH SCORECARD**

TE presented the report to the Board in which information on recent research activities was included. He also gave a verbal update on applications to set up two specialist Biomedical Research Centres (BRCs), one cardiovascular and one respiratory, which would supersede the two current Biomedical Research Units (BRUs) from April 2012. Outline applications had been submitted on 21 March 2011. If the Trust is not invited by the end of April to proceed with full BRC applications, the intention is to apply for renewal of the BRUs. TE said that backed up by 6 NIHR awards and fellowship of the academy he remained confident that the Trust should be able to uplift the status in one or both areas.

The Board welcomed this report. ANT emphasised that the two BRC applications have the complete support of Imperial College.

The Board NOTED the report.

2011/20 **AUDIT COMMITTEE**

(i) MINUTES OF THE MEETING HELD ON 19 OCTOBER 2010

The Board noted the minutes.

(ii) REPORT FROM THE MEETING HELD ON 1 FEBRUARY 2011

NL reported on two issues:

- the committee had looked at the level of reporting of appraisals and considered whether the level of reporting does actually reflect the level of appraisals being carried out. The Director of Human Resources is doing a paper on appraisals which will come to the Audit Committee meeting on 12 April;
- and Follow up of Recommendations by Internal Audit. These will be presented to the Audit Committee on 12 April 2011.

2011/21 **RISK AND SAFETY COMMITTEE**

(i) MINUTES OF THE MEETING HELD ON 19 OCTOBER 2010

The Board noted the minutes.

(ii) REPORT FROM THE MEETING HELD ON 1 FEBRUARY 2011

NC gave a verbal report on the meeting. In summary the committee had:

- looked at the Board Assurance Framework (BAF) and had concluded that it was working as intended. The committee also considered if the BAF really did reflect risk management in the Trust or was simply an “add on”. The committee felt that on this the jury was still out. If it is the latter, the Trust must look at other ways of doing it as it is a cost. It was agreed that the BAF will be reviewed again at the end of the year;
- scrutinised the recent SUIs (7 up to the start of Month 11) and had concluded that there was no evidence that the recent upturn in SUI

numbers was symptomatic of a deeper trend or malaise within the organisation and that the Trust processes were working as intended;
- was briefed by the Medical Director about moves underway to re-group clinical teams around specialist areas. The committee gave its full support to the Medical Director in this change.

2011/22 **REPORT FROM THE CHAIR OF THE FINANCIAL STABILITY SUB COMMITTEE**

NL said that this committee has been a useful forum. It had provided comfort to the Board that that these issues are getting the attention they deserve. He commended the retention of this committee, reconstituted as the Finance Committee.

It was agreed that the committee would continue as a Finance Committee, the terms of reference for which were duly approved.

There will be an evaluation of the Finance Committee after 1 year. Following discussion, it was agreed that NEDs have a right to attend any committee of the Board if they so wish. Furthermore, it was clarified that as a subcommittee of the Board, the Finance Committee has no decision making powers, these being reserved to the Trust Board.

2011/23 **QUESTIONS FROM MEMBERS OF THE PUBLIC**

Ken Appel raised the following issues:
- having heard the NHS Specialist Commissioners are not making payment for work done it should be pointed out that this was unacceptable and that this is work we have done and should be paid for;
- the adverse impact on donations of the linkage between charitable income and the I&E accounts;
- he had noted the establishment of a 24/7 arrhythmia service at Barts and the London and wondered what the impact might be on RBHFT. He also noted the underachievement of the cancelled operations target and that this was a cause of concern for patients and a likely cause of reputational damage for the Trust.

Replies:
- NH said that he shared Mr Appel's concerns about commissioner behaviour. BB said this was an illustration of NHS dysfunction and that he hoped that the situation might be improved through the NHS reforms;
- RP said that the Trust depends very heavily on charitable income and the charity is well endowed. The funds are used to support research, some to support capital expenditure programme. BB expanded on this, saying that donations normally go into the charity;
- TE said the Trust employs 6 full time arrhythmia doctors and provided a round the clock service. He recognised that cancellation of appointments was very distressing and should be avoided whenever possible.

Mr Don Chapman asked a question about security at HH and in particular mentioned an incident where a motorist had become belligerent following a car parking issue outside the Friends Pavilion.

Reply: BB said that this would be looked into

2011/24 **5 YEAR CT SCANNER SERVICE CONTRACT (£303K)**

RCr gave notification to the Board, as required by the Trust's Standing Financial Instructions of intention to spend £303,000 on a new five-year contract to support a CT scanner which would be coming out of warranty.

This was NOTED by the Board.

2011/25 **ANY OTHER BUSINESS**

RCr notified the board that Rose Paton had recently left the Trust following many years of service. Thanks for her service were expressed by the Board and it was agreed that the Chairman would write to Rose to record the gratitude of the Trust.

2011/26 **DATE OF NEXT MEETING**

Wednesday 27th April at 2.00 pm in the Boardroom, Royal Brompton Hospital.