

**WRIGHTINGTON, WIGAN AND LEIGH NHS FOUNDATION TRUST**  
**MINUTES OF A MEETING OF THE BOARD OF DIRECTORS**  
**HELD ON 27 JUNE 2018, 12.00 NOON**  
**AT ROYAL ALBERT EDWARD INFIRMARY, WIGAN LANE, WIGAN, WN1 2NN**

**Members' attendance record:**

|                      |                                      | 25/04/2018 | 22/05/2018 | 30/05/2018 | 27/06/2018 | 25/07/2018 | 26/09/2018 | 31/10/2018 | 28/11/2018 | 19/12/2018 | 30/01/2019 | 27/02/2019 | 27/03/2019 |
|----------------------|--------------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Mr R Armstrong       | Chair                                | ✓          | ✓          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Dr S Arya            | Medical Director                     | ✓          | A          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mrs A Balson         | Director of Workforce                | ✓          | A          | A          | ✓          |            |            |            |            |            |            |            |            |
| Mr N Campbell        | Non-Executive Director               | ✓          | ✓          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Dr S Elliot          | Non-Executive Director               | ✓          | A          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mrs M Fleming        | Director of Operations & Performance | ✓          | A          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mr R Forster         | Director of Finance and Informatics  | ✓          | ✓          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mr A Foster          | Chief Executive                      | ✓          | ✓          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mr M Guymmer         | Non-Executive Director               | ✓          | ✓          | ✓          | A          |            |            |            |            |            |            |            |            |
| Mr I Haythornthwaite | Non-Executive Director               | ✓          | A          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mrs C Hudson         | Non-Executive Director               | ✓          | ✓          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mrs P Law            | Director of Nursing                  | A          | A          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mrs L Lobley         | Non-Executive Director               | ✓          | ✓          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Mr R Mundon          | Director of Strategy                 | ✓          | ✓          | ✓          | ✓          |            |            |            |            |            |            |            |            |
| Prof T Warne         | Non-Executive Director               | ✓          | A          | ✓          | ✓          |            |            |            |            |            |            |            |            |

Key: ✓: attended | A: apologies sent | ✖: did not attend | --- not a member of the board at the date of the meeting

**In attendance:**

Miss C Alexander Director of Governance  
Mrs N Guymmer Deputy Company Secretary  
Mr P Howard Company Secretary

1 member of the press, 5 governors and 22 members of the public were also in attendance.

**173/18 Chairman and quorum**

Mr R Armstrong took the chair and noted that due notice had been given to all directors and that a quorum was present. The meeting was declared duly convened and constituted.

Confirmation was provided that, with the consent of the Chair, the agenda and supporting papers for the meeting had been circulated with less than the usual seven days' notice and that no directors had raised any objection.

Members of the press and public were welcomed to the meeting.

**174/18 Apologies for absence**

Apologies for absence were received as shown in the members' attendance record, above.

**175/18 Declarations of interest**

There were no opening declarations of interest.

**176/18 Establishment of an operated healthcare facility through a wholly-owned subsidiary company**

*In advance of the meeting, Unison had delivered a package containing 2,007 postcards to protest against the proposed establishment of an operated healthcare facility through a wholly-owned subsidiary company, WWL Solutions Limited. 1,919 of the postcards had been fully completed, 81 had been partially completed and 7 were blank. Further detail is provided at annex A to these minutes.*

The Chief Executive opened this item by noting that the paper which had been circulated to the board in advance was the result of 18 months' work and based on best practice recommendations within the sector. He noted in particular that the foundation trust had been willing to consider any alternative suggestions put forward, regardless of the source, to deliver the level of saving required but confirmed that no suggestions of the necessary scale had been received. In particular, he noted that Unison had suggested that it would be putting forward an alternative option but confirmed that this had not been received.

The Director of Finance discussed the content of the report in detail and reminded the board that whilst the foundation trust had reported a healthy £1.7m surplus for the financial year 2017-18, this was almost entirely due to the year-end bonus scheme with only £100k of the surplus having been delivered internally.

The Director of Finance reminded the board of the need for the estates and facilities department to deliver recurrent savings of £1.5m per year and confirmed that all alternative options that had been put forward generated considerably less savings than required.

Mrs C Hudson commented that, as a board, it is necessary to ensure that the welfare of both patients and staff is maintained. As a result, she posed three questions: whether there is a risk for existing staff who will transfer to WWL Solutions under the proposals;

what the risks to the foundation trust are; and whether the board is confident that the risks have been mitigated.

The Director of Workforce responded to these questions by confirming that, if approved, staff would transfer to the subsidiary company under the Transfer of Undertakings (Protection of Employment) Regulations 2006, which means that terms and conditions are protected for all transferring staff. As a result, all contractual policies also transfer with the staff. She noted that trade unions had expressed concerns around the dynamic application of the Agenda for Change terms and conditions for the 25-year duration of the contract and responded that the subsidiary company would remain within the foundation trust's group and therefore the foundation trust expects that the subsidiary company will continue to live the foundation trust's values.

She confirmed that all transferring staff will continue to have access to the NHS pension scheme as closed direction order status had been confirmed for the subsidiary company by NHS Business Services Authority. She also confirmed that an equality impact assessment had been undertaken on the proposed transfer of staff. The initial assessment had identified a potential impact surrounding two protected characteristics; gender and disability. A more detailed assessment had therefore been undertaken and concluded that the risk of detriment to staff with these protected characteristics was mitigated through the TUPE regulations and the agreement by the subsidiary company to mirror Agenda for Change terms and conditions for the full 25-year contract period.

With regard to the second question posed by Mrs C Hudson, the Director of Workforce reminded the board that staff subject to transfer are entitled to object to the transfer up to the date of transfer. In doing so, they would effectively be resigning and whilst there would not be a financial risk to the foundation trust as there would be no entitlement to redundancy payment, there would nonetheless be operational challenges in the short-term. She also noted that employees who object are able to consider bringing constructive dismissal or material loss claims, although the risk of such claims being successful was considered to be low given the assurances that have been made in relation to the retention of terms and conditions for transferring staff.

The Director of Workforce noted that continuation of industrial action was a further risk, with the current ballots by the trade unions remaining valid until November 2018. She reminded the board of the contingency arrangements that had been successfully implemented across the foundation trust over the two previous periods of industrial action and confirmed that these would continue for any future strike action in order to ensure that patient safety is maintained.

The Director of Workforce concluded by saying that the risks associated with the proposed transfer of staff had been mitigated, whilst noting that the foundation trust had a strong history of partnership working and acknowledging that this had been affected by the ongoing dispute around this issue. The need to consider how best to re-engage with affected staff and trade unions was acknowledged.

Mr N Campbell, as chair of the Workforce Committee, sought clarification on a number of issues. In response to his questions, the Director of Workforce confirmed that transferring staff would mirror Agenda for Change terms and conditions for the 25-year length of the contract, covering pay, pension and contractual policies, and that this had been confirmed in writing to all affected staff. She also noted that the foundation trust

had committed to bringing the staff in-house in the unlikely event that the subsidiary company were to fail. As a result, Mr N Campbell advised that he was satisfied that staff had been appropriately protected.

In response to a further question from Mr N Campbell, the Chief Executive advised that the proposed transfer of staff to the subsidiary company was the only option that allows the foundation trust to deliver its control total, receive its share of the provider sustainability and transformation fund and therefore keep the organisation safe and out of the special measures regime. He noted that the approach would therefore protect jobs within the organisation.

Mrs L Lobley queried whether there were any concerns around patient safety relating to the proposal. In response, the Director of Nursing acknowledged the key role that estates and facilities staff play in ensuring that patients have a safe, efficient, clean and welcoming environment. Whilst this is not expected to change under the new arrangements, since the same staff will be providing the same level of service, she clarified that performance would be monitored through contractual arrangements to ensure that this is the case.

In response to questions from the Chair, the Company Secretary confirmed that the board was legally and constitutionally able to take the decision to proceed with the establishment of a subsidiary company and the transfer of staff into it. The Medical Director and Director of Nursing confirmed that they could not foresee any negative impact on safe, effective care for patients. The Director of Finance confirmed that the board can be assured that the proposal will deliver part of the cost improvement programme required, and that it complies with current tax and HM Revenue and Customs regulations. The Director of Workforce confirmed that the board could be assured that staff transferring to the subsidiary company would be protected under TUPE regulation and that all necessary equality legislation had been taken into account.

Having considered all options and received the assurances provided at the meeting, the board unanimously resolved to grant authorisation to proceed with the creation of a wholly-owned subsidiary service company and the associated transfer of staff.

## **177/18 Questions from the public**

Questions from the public were welcomed.

The Regional Organiser from Unison addressed the meeting and advised that Unison's campaign would not end as a result of the board's decision and that further industrial action would follow because Unison does not recognise a wholly-owned subsidiary company as being part of the NHS. She noted that the General Secretary of Unison had contacted the foundation trust the previous day to express concerns around the proposal. In response to her question, confirmation was provided that the board had been provided with a copy of Unison's submission alongside a review of the document by the foundation trust's solicitors.

In response to a question from one member of the public, the Director of Finance clarified that the estate would remain with the foundation trust's group.

A member of the public stated that other NHS subsidiary companies had not awarded their staff the Agenda for Change pay award this year and queried whether this would

be the situation within WWL Solutions in years to come. In response, the Director of Workforce reminded him of the commitment that had been made to mirror Agenda for Change terms and conditions for the 25-year life of the contract.

The Regional Organiser from Unite questioned how patient safety would be maintained if new staff are appointed on less favourable terms and conditions and the Director of Workforce reminded him of the earlier discussions in this regard.

Another member of the public enquired how the foundation trust was able to provide assurance that terms and conditions would be protected once the staff have transferred to WWL Solutions, and the Chief Executive confirmed that this would be included as a contractual obligation.

*22 members of the public left the meeting.*

**178/18 Minutes of the previous meeting**

The minutes of the previous meeting held on 30 May 2018 were agreed as a true and accurate record.

**179/18 Patient experience video**

The Director of Nursing introduced the patient experience video, which surrounded the handling of a safeguarding incident.

The board received the patient experience video and noted the content.

**180/18 Chair and Chief Executive's opening remarks**

The Chair opened by highlighting the fact that the foundation trust had recently been awarded the Queen's Award for Voluntary Service and thanked all the volunteers for their dedication and service.

The Chief Executive presented a report which had been circulated in advance which covered the improvements in A&E performance, a summary of quality metrics and a short narrative on the recent publicity around deaths at Gosport Hospital. With regard to this latter point, the Chief Executive reminded the board of the various systems in place within the foundation trust to monitor and scrutinise deaths within the organisation. The board noted these comments and requested that a report be prepared on the lessons arising from the Gosport Hospital issue, for reporting via the Quality and Safety Committee.

The board received the report and noted the content.

**181/18 Reports of committees**

The board received reports from the following meetings which had been held since the previous meeting:

- (a) Workforce Committee, held on 6 June 2018;
- (b) Quality and Safety Committee, held on 13 June 2018; and
- (c) Finance and Investment Committee, held immediately before the meeting

Mr N Campbell opened by summarising the Workforce Committee meeting and noted that the report would be focused on assurance rather than providing a narrative on all business transacted. He referred the board to the “people” board assurance framework and confirmed that the committee had received assurances in relation to all key issues. He highlighted that, whilst national Agenda for Change negotiations had now been concluded and would be implemented in the near future, there is nonetheless a period of significantly increased workload within the workforce directorate to implement the new terms and conditions.

Prof T Warne provided an overview of the Quality and Safety Committee meeting and highlighted the amber delivery confidence within the “patients” board assurance framework. He advised that the committee had received a follow-up report on the use of oxygen and the committee had noted that there are two issues to consider; firstly the prescribing of oxygen and secondly the use of oxygen. The committee had also received considerable assurance around the prompt and effective production of discharge letters.

Mrs C Hudson had chaired the Finance and Performance Committee meeting immediately prior to the board meeting, and she noted that the committee had discussed the planned re-introduction of the Health Information System into the Emergency Department in September 2018. The committee had also considered the revised operational plan submitted to NHS Improvement and the need to ensure delivery of key objectives by partner organisations was acknowledged. Concern had been expressed at the underlying deficit as at month 2, and this would be subject to continuing rigorous scrutiny.

The board received the reports and noted the content.

## **182/18      Performance report as at 31 May 2018**

The Director of Nursing opened by highlighting the fact that the foundation trust had recently been accredited as Baby Friendly by Unicef UK, which is a prestigious award with the potential to seek further Gold Award accreditation in the future. She also highlighted the positive infection control performance, with only 1 C. difficile infection during the quarter-to-date and no norovirus outbreaks since winter 2016. She noted in particular that an absence of norovirus outbreaks acts as a proxy measure for high levels of hospital cleanliness. Lowlights were noted as the two serious falls that had occurred during the month and the safety thermometer data relating to VTE incidents whilst in the foundation trust’s care.

The Director of Nursing also clarified that there was an error on page 14 of the report, in that cumulative data had been provided in lieu of data for the month surrounding third and fourth degree perineal tears.

The Director of Operations and Performance highlighted the fact that May had been an extremely strong month for performance against the vast majority of standards. She briefed directors on the fact that the two-week standard for symptomatic breast patients had failed in May as a result of six patients breaching the thresholds. She confirmed that the target would be failed again in June due to the complexities of scheduling, but that performance would return to the necessary levels from July 2018.

The Director of Operations and Performance thanked all the teams in scheduled and unscheduled care who have helped to deliver the significant improvements in performance.

The board received the report and noted the content.

**183/18 Financial position as at 31 May 2018**

The Director of Finance presented a report which had been circulated with the agenda to summarise the foundation trust's financial position as at 31 May 2018. He confirmed that a year-to-date trading deficit of £2.7m was being reported, which represents an adverse variance against plan of £558k.

Mr I Haythornthwaite commented that the ability to deliver the necessary levels of cost improvements, and recurrent cost improvements in particular, is of vital importance. The board therefore requested that further information be included in the monthly reports.

**ACTION: Director of Strategy and Planning**

The Chair suggested that, at the July meeting, the discussion should focus on the forecast delivery of cost improvements and the board agreed to this approach.

The board received the report and noted the content.

**184/18 Safe staffing report**

The Director of Nursing presented the regular safe staffing report for the board's information.

The board received the report and noted the content.

**185/18 Board assurance framework**

The board considered the board assurance reports for the four corporate objectives, and noted that each objective had been allocated to a specific committee. Two of the objectives had been discussed earlier in the meeting as part of the chairs' updates, and the remaining two objectives were considered.

The board approved the board assurance reports as presented.

**186/18 Freedom to Speak Up Guardian's annual report 2017-18**

A report by the Freedom to Speak Up Guardian to summarise had been circulated with the agenda for information. The board commended the report and noted the high level of assurance that had been provided.

**187/18 Identification of key risks and successes**

The board discussed and agreed the key successes as:

- A&E and other performance metrics;
- Improvement in mortality rate;
- Unicef UK Baby Friendly accreditation; and

- the Queen's Award for Voluntary Services

The key risks were identified as:

- industrial action and the threat of ongoing opposition to WWL Solutions;
- challenges around implementing new Agenda for Change arrangements;
- adverse variance in the financial position as at month two; and
- performance against the two-week standard for symptomatic breast patients

#### **188/18 Questions from the public**

Questions from the public were received.

A governor in attendance noted that comments made by the Unite Regional Organiser representatives during the earlier part of the meeting had appeared to threaten the safety of patients during the forthcoming strike action. For that reason, she sought assurances from the board as to what actions would be taken to mitigate any risk. The Director of Operations and Performance responded by advising that there is a robust system in place to cover all services, both in and out of hours. The Director of Workforce also noted that, despite the comments made earlier in the meeting, trade unions have a legal obligation to ensure patient safety.

#### **189/18 Exclusion of the press and public**

The board resolved that representatives of the press and other members of the public be excluded from the remainder of the meeting, having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest.

#### **190/18 Date, time and venue of next meeting**

The next meeting of the Board of Directors will be held on 25 July 2018, 12 noon, at Royal Albert Edward Infirmary, Wigan Lane, Wigan, WN1 2NN.



## ANNEX A

Prior to the meeting, the board received a package from Unison containing 2,007 postcards. The text of the postcards is given below and it has not been modified in any way:

### ON THE FACE:

We Say No To WWL Solutions  
SAVE THE [NHS logo]  
Working for WWL Solutions Ltd Is not Working for the NHS  
[Unison logo]

### ON THE REVERSE:

Left-hand side: Dear Mr Armstrong  
I fundamentally disagree that NHS staff  
working at Wrightington, Wigan and Leigh  
NHS Foundation Trust should be transferred  
to a private limited subsidiary company.

Yours Sincerely

Signed: \_\_\_\_\_

Print: \_\_\_\_\_

Home postcode: \_\_\_\_\_

Right-hand side: Robert Armstrong  
Chairman  
Royal Albert Edward Infirmary  
Wigan Lane  
Wigan  
Lancashire  
WN1 2NN

Of the 2,007 postcards provided, 1,919 had been fully completed.

81 postcards had been partially completed, meaning that only one or two of the three fields (signature, printed name and home postcode) had been provided.

7 postcards were blank, with no markings at all.

## Action log: Board of Directors

| Date of meeting | Minute ref. | Item                                | Action required   | Assigned to                       | Target date  | Update   |
|-----------------|-------------|-------------------------------------|---|-----------------------------------|--------------|--|
| 31 Jan 2018     | 11/18       | NW Sector Partnership Business Case | Arrange for Programme Director to attend a future meeting.                    | Company Secretary                 | ASAP         | Arranged for 31 October 2018.<br><b>Action complete.</b> |
| 27 Jun 2018     | 183/18      | Financial position                  | Include more detailed information on CIP delivery in future financial reports | Director of Strategy and Planning | 25 July 2018 |  |