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Update report on proposed merger of South Essex Partnership University NHSFT (SEPT) and North Essex Partnership University NHSFT (NEP)

Thurrock Health & Wellbeing Overview & Scrutiny Committee
Thursday 15 September 2016

Introduction

This report updates the Thurrock Health & Wellbeing Overview & Scrutiny Committee (HOSC) with the progress of the proposed merger between South Essex Partnership NHSFT (SEPT) and North Essex Partnership University NHSFT (NEP).

The strategic rationale for a proposed merger between the two Trusts remains as strong today as it was in September 2015 when the Trusts first approached the idea of a formal merger.

Work undertaken for the Outline Business Case, competition reviews and, more recently, for the due diligence exercise has confirmed that a proposed merger remains the preferred direction of travel and is a feasible and deliverable proposition.

Significant work remains to generate the three core parts of the application which underpin the Full Business Case (FBC); the Post Transaction Implementation Plan (PTIP), the Long Term Financial Model (LTFM) and the Organisational Development Plan. These all work together to define and describe the benefits of the proposed merger and detail how it will be implemented fully.

The proposed merger timetable is for the FBC to be presented to Trust Boards for approval in November 2016; to be reviewed by NHS Improvement by February 2017 and approved by a vote of the Boards and Councils of Governors in March 2017. This will allow the proposed new Trust to be authorised and operational from 01 April 2017. This timetable is still on track for delivery and further updates can be made available to HOSC at future meetings on request.

Background

A key recommendation of the jointly commissioned Essex Strategic Review of Mental Health Commissioning (December 2015) was that commissioners should move to a single requirement, definition and payment method for mental health provision. In turn, NEP and SEPT should respond to this by considering a merger to become a single Trust. The recommendations of this report were accepted by all parties.

In addition, both Trusts needed to plan for a more secure and stable financial future. Whilst both Trusts are currently financially viable, both have submitted plans to NHS Improvement (formerly Monitor), the regulator of NHS Foundation Trusts, that show an increasingly challenged picture. To remain financially viable as a stand-alone

Trust NEP would need to find savings of an average of at least 4.4% each year for the next five years; SEPT would need to find savings of an average of at least 3.6% each year for the next five years. This scale of savings would be unprecedented. A realistic sustainable level of savings achieved in the NHS is nearer to 2.5% a year. The achievement of such a scale of savings without significant changes to front line services is hard to conceive. Under the scenario of a merged Trust, the scale of savings was estimated in December 2015 to be an average of 3% per year - still challenging, but achievable, and the bulk of these savings could come initially from corporate efficiencies, thus securing funding to front line services.

The national context of meeting standards for the care of mental health patients; the ability to recruit and retain key clinical staff; and the role of the competitive environment where both Trusts must compete with significantly larger organisations more able to support overheads, also gave an impetus for merger proposals.

In September 2015, as the Essex Review of Mental Health Services was beginning to consult on final conclusions and recommendations, HOSC was advised that the Boards and Councils of Governors of both Trusts had accepted a recommendation to explore merger proposals as a strategic option for the future. This led both Trust Boards to consider an Outline Business Case (OBC) that was submitted to Monitor (now NHS Improvement) in January 2016. A public version of the document was made available in February 2016. In April 2016, on receipt of the outcome of the review of the OBC, HOSC was advised and of the Trusts' intention to proceed to development of a Full Business Case (FBC).

Mergers in the NHS are governed by two related regulatory regimes. As with all relevant mergers in the United Kingdom over a certain size, the rules of the Competition and Markets Authority (CMA) are applied. Both Trusts operate in a very competitive environment and the concern of the CMA is to ensure that there is no significant lessening of competition and that the proposed merger is likely to bring "realisable customer benefits": in this scenario, the secure delivery of safe, high quality and affordable services to commissioners and patients. Working with NHSI, both Trusts reviewed their competitive environment and agreed that the merger proposal did not present any lessening of competition and so chose not to notify the CMA of the merger. In turn, the CMA took no steps to "call in" the merger proposals for review.

The second regulatory regime is provided by NHSI and requires Trusts to assure their Boards, their Councils of Governors, their stakeholders (public, staff and service users) and NHSI that the new merged organisation has a robust plan for the delivery of the benefits brought about by the proposed merger. The process by which this happens is to follow the HM Treasury approved model of three business cases; strategic options, outline business case and full business case. Each stage is approved by Trust Boards and reviewed by NHSI. Once NHSI have given a risk rating to the proposed merger after reviewing the FBC, the Councils of Governors of both Trusts vote to approve the transaction, if they are satisfied that the appropriate scrutiny of options, the planning for realising proposed benefits and management of risks has been undertaken by the Trust Boards. A new merged organisation is then authorised and comes into being and NEP and SEPT cease to exist as individual legal entities.

Both Trusts are now in the process of producing the FBC for the proposed merger. The remainder of this report will detail the progress of the FBC, the involvement of stakeholders, the key risks to be managed and the high level timeline for the remainder of the process.

Full Business Case for proposed merger

The OBC was submitted to NHSI in January 2016 and, following a series of meetings, NHSI advised that they supported the move to the FBC but gave a number of recommendations and issues for advice:

- Emphasising the need for both Trusts to undertake comprehensive due diligence on each other to ensure that all the risks of a proposed merger can be identified and managed appropriately.
- Advising that significant effort is applied to an organisational development programme to ensure the two teams come together operationally and culturally to create a truly merged, new organisation.
- Ensuring that commissioner plans and the merger plans are properly integrated.
- Ensuring that the benefits of proposed merger, including the long term financial position, is properly shown and explained in the FBC and tested for possible risks to delivery.

Since April 2016, both Trusts have been working together to create the FBC and some of the key developments are noted below:

1. Sustainability & Transformation Plans, commissioners involvement & stakeholder engagement

As HOSC will be aware, the NHS planning system has been changed in financial year 2016/17 and this affects the proposed merger.

The new merged organisation will span four Sustainability & Transformation Plans (STPs) that are the unit of planning for NHS and social care commissioning. These STPs are:

- North Essex and Suffolk
- Hertfordshire and West Essex
- Mid and South Essex
- Bedfordshire, Luton & Milton Keynes

The last of these is relevant as SEPT provides community physical health services to Bedfordshire CCG and specialist mental health services, commissioned by NHS England, to both Bedfordshire and Luton localities. All these services will transfer to the proposed new merged Trust and so the merged organisation must engage with this STP.

Each of the three Essex STPs has put forward that from 2017/18 it is expected, in line with the Essex Strategic Review of Mental Health Services, that there will be a single contract for mental health services with the proposed merged organisation. This adds some complexity for the proposed merger transaction, as NHS planning guidance has also suggested that new contracts for services should be agreed before the end of calendar year 2016 – so before the two Trusts propose to merge.

To help facilitate this, commissioners are fully engaged with the merger process. Sam Hepplewhite, the Accountable Officer for North Essex CCG and the lead CCG for mental health commissioning across Essex, is invited as a commissioner representative on the Merger Project Board that is overseeing the delivery of the proposed merger transaction for both Trust Boards prior to the creation of an Interim Board of Directors. Individual commissioning representatives from health and social care are invited to the clinical work stream to ensure that proposed service developments and operational merger activities have full commissioner support. Within the clinical work stream, we are preparing to establish a Social Care working Group with representatives from our Local Authorities to assess and plan the development of social care as a key aim of the new organisation.

A stakeholder reference group of service users from both Trusts has been established to build upon existing initiatives across Essex for co-production. The group met at the end of August 2016 and was invited to participate in creating relevant service developments. They have agreed to review proposals, alongside commissioners, as they become available.

The Councils of Governors of both Trusts are regularly briefed regarding the proposed merger work and members of the Merger Project Team are available to assist Governors with any meetings they may have with their respective constituencies where the proposed merger is discussed.

2. Organisational Development Plan

Experience of other mergers, both in the NHS and in other commercial spheres, is that successful mergers focus on culture. It is essential, therefore, to dedicate time and effort to an organisational development plan aiming to create and deliver the mission and values of the proposed new merged organisation. Both Trusts have jointly engaged PricewaterhouseCoopers to support the development of an organisational development plan. The details of this plan, which will run for several months leading up to and after April 2017, are being finalised for agreement by Trust Boards in October 2016.

A staff and stakeholder engagement process is underway to confirm the name and the vision and values of the new organisation. Meetings with a cross section of staff members in both Trusts across all geographies are being held to develop the proposed new vision and values. Both Trust Boards have recommended that the new Trust is called Essex Partnership University NHSFT. Staff and Trust members have been engaged on this and two other options. The outcome of these engagement opportunities will be reported to Trust Boards in September 2016.

3. Due diligence

A significant due diligence process has been undertaken looking at all areas of operation across both Trusts. This will be completed in September 2016.

The initial review in July 2016 did not uncover any significant risks that would not otherwise be managed as part of a proposed merger plan. For example, both Trusts have different staffing structures and bandings of staff undertaking broadly similar roles and there are differences in policies and procedures in the same areas etc. These differences yield opportunities as well as risk; for example, to rationalise IT systems or to jointly procure service.

The three largest risks identified from this process are:

- Ensuring that the proposed merger progresses to support the safe delivery of services is of paramount importance. The CQC comprehensive inspection process that both Trusts underwent recently gave a robust and independent evidence base regarding clinical services. Additional focus was paid to those services not covered by the CQC process, such as the new urgent care service being delivered by SEPT at Whipps Cross hospital and the primary care contracts run by NEP in Thurrock.

- The risk of a deteriorating financial position in either or both Trusts. With the achievement of savings in 2016/17 proving challenging, the financial position of each Trust is publicly reported at every Trust Board meeting. The due diligence process did not yield any information that was not already known, but did offer some opportunities for joint working that will assist with the delivery of existing savings plans in 2016/17.

- The third risk was around the differences in IM&T support. As with any large complex organisation, both Trusts rely completely on an efficiently run and fully functioning IM&T service for almost all clinical and non-clinical operations. The due diligence process identified a number of areas where the Trusts need to work together to ensure the proposed new organisation functions effectively and efficiently in regards to IM&T and these are being taken forward by a joint workstream of relevant staff.

The due diligence exercise was undertaken using in-house teams and to provide Non Executive Board members and Governors in each Trust with assurance of the robustness of the due diligence process. PricewaterhouseCoopers were asked to undertake a quality assurance review. The broad findings were that the process was robust and the depth of information requested, received and analysed was at a level that PwC would expect in a transaction of this scale.

Both Trust Boards acknowledged that the due diligence exercise did not uncover anything that altered the fundamental rationale for the proposed merger or suggest that the overall time frame should be shifted at this stage. Every risk identified is now listed in the proposed merger's risk register and will either be addressed prior to the proposed merger, or will be mitigated as part of the proposed merger plan.

The HOSC should note that the review of the FBC by NHSI and independent external advisors will further consider and provide assurance that the Trust Boards have undertaken appropriate due diligence, identified risks and put in place appropriate mitigating plans.

4. Service developments & benefits realisation

The OBC set out at a high level the potential benefits of the proposed merger that would be explored as part of the FBC. These fall largely into two categories:

1. Corporate services re-configuration that will reduce overall costs and allow a greater share of resource to be allocated to front line services;

2. Clinical and operational service changes that will ensure that the proposed merged Trust can meet commissioner plans and expectations and deliver safe and high quality services with good patient experience and better outcomes.

A Post Transaction Implementation Plan (PTIP) is being prepared to describe the benefits and exactly how they will be achieved and within what timeframe.

A process is underway that will see an Interim Board appointed by November 2016 to oversee the merger application and operate the new organisation until a permanent Board is in place. Each existing Trust Board will continue to have legal responsibility for the management of each Trust through to 31 March 2017. After the merger transaction has been completed in April 2017 there has to be a process of appointing a substantive Board. As an NHS Foundation Trust this will require the new organisation to establish a new Council of Governors. Firstly, the membership of NEP and SEPT will be offered the opportunity to transfer their membership to the new organisation. Then, through election by these members and statutory appointments, the new Council of Governors will be established. The Council will then appoint a substantive Chair and Non-Executive Directors who, in turn, appoint the substantive CEO and Executive Directors. The formal substantive Board of the new Trust is expected to be in place by September 2017.

The necessary processes to consult with Unions and individual staff members under relevant organisational change policies is being worked up as part of the FBC and discussions with unions' representatives from both Trusts are underway.

With regard to changes to clinical services, there is significant effort being undertaken to ensure that any proposed changes are co-produced with commissioners and the stakeholder reference group. At this stage, the intention is to transfer under the commissioned arrangements agreed as part of the 2017/18 contracting round with any other changes being developed specifically as part of the proposed merger likely to be implemented in the second year of the merged organisation. Commissioned changes are expected to be reflective of the submitted STPs. Where changes are significant, appropriate service user and public engagement and consultation will be undertaken.

Nonetheless, there are some areas that have been identified and are being actively explored to examine how the resources of a merged organisation could be used to deliver greater benefit. These services include examining those which are currently shared across both Trusts and should be amenable to efficiencies.

In addition to service developments and changes, there are a number of benefits to front line service delivery that will come about through the proposed merger and changes to the general training and clinical governance infrastructure. For example, it is expected that a single merged Trust will be able to yield benefits in the areas of recruitment and retention and standardised training. Any improvements in this area will see increases in consistency of care experienced by service users and a reduction in cost as the new organisation will rely less on agency and bank staff.

Both Trusts have agreed to open a new ward at Basildon to reduce out of area bed pressures to improve the financial position for commissioners and help prevent the risk of Essex residents being placed out of county.

5. Long Term Financial Model

Work has begun on a detailed Long Term Financial Model (LTFM) as required by NHSI for the FBC. This process begins by refreshing the assumptions of the OBC that generated a financial plan for a stable organisation by the third year of the proposed merger.

Throughout the months of September and October 2016, proposed changes to services, both clinical or non-clinical, will be tested and costed to inform the LTFM for the FBC. This process will be supplemented with the most up to date financial position for the Trusts to create the final LTFM submitted as part of the FBC in November 2016.

Proposed Merger Timeline

From September 2016, the key dates for the proposed merger are shown below. It is recognised that the deadlines remain subject to change as the process is not entirely within the Trusts' control.

Planned Timetable for Merger:

Action	Planned Date	Responsible Body
Engagement with stakeholders (staff, service users, commissioners) to develop FBC	Ongoing	Merger Project Team
Appointment of Interim Board for the merged organisation	10 November 2016	SEPT Board NEP Board
Membership of NEP and SEPT invited to be members of new Trust	November 2016	SEPT Council of Governors NEP Council of Governors
FBC for merger received by Trust Boards for approval to submit to NHSI	30 November 2016	SEPT Trust Board NEP Trust Board
Appointment of independent external advisors (external audit firm) to work with NHSI to review the FBC	30 November 2016	SEPT Trust Board NEP Trust Board
NHSI reviews FBC, tests assumptions with external advisors, meets the Interim Board for a challenge session, gives the merger transaction a risk rating	28 February 2017	NHSI
Council of Governors approve FBC amended in light of NHSI risk rating	Early March 2017	SEPT Council of Governors NEP Council of Governors
NHSI complete Transfer Order and approve application for authorisation of new merged Trust	30 March 2017	NHSI
New Trust comes into being and all assets are transferred	1 April 2017	Interim Board of Directors
New Council of Governors elected from membership and appointed, new Chair and Non-Executive Directors appointed, confirmation of CEO and Executive Directors posts and formal creation of substantive Board of Directors	September 2017	Board of Directors of New Trust

Benefits review to ensure early merger benefits have been realised/are on plan to be realised and move to "business as usual" for the new Trust	October 2017	Board of Directors and Council of Governors of New Trust

Acronyms used in proposed merger update report:

CCG	Clinical Commissioning Group
CEO	Chief Executive Officer
CMA	Competition and Markets Authority
FBC	Full Business Case
HOSC	Health Overview and Scrutiny Committee
IM&T	Information Management and Technology
LTFM	Long Term Financial Model
NEP	North Essex Partnership University NHS Foundation Trust
NHS	National Health Service
NHSFT	NHS Foundation Trust
NHSI	NHS Improvement
OBC	Outline Business Case
PTIP	Post Transaction Implementation Plan
PwC	PricewaterhouseCoopers
SEPT	South Essex Partnership University NHS Foundation Trust
STPs	Sustainability & Transformation Plans

Further reading

NHSI have published a literature review of how mergers can be made to work better for patients. This has helped inform the two Trust Boards in terms of planning for the merger and is helpful background reading for anyone interested in the merger transaction. It can accessed at https://improvement.nhs.uk/resources/how-make-nhs-mergers-work-better-patients/

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