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| <b>Meeting Title</b>  | Mid and South Essex Acute Trusts Boards Meeting in Common (Session in Public)   |                  |    |
| <b>Meeting Date</b>   | 15 <sup>th</sup> January 2020   | <b>Agenda No</b> | 13 |
| <b>Report Title</b>   | Future Organisational Form (FOF) Programme Update   |                  |    |
| <b>Lead Executive Director</b>  | Jonathan Dunk, Chief Commercial Officer   |                  |    |
| <b>Report Author</b>  | Andrew Stride, Group Director – Corporate Governance Integration  |                  |    |
| <b>Action Required</b>  | Decision <input type="checkbox"/> Discussion <input type="checkbox"/> Monitoring / Assurance <input checked="" type="checkbox"/>  |                  |    |
| <b>Background / Context</b>   | <p>Members and stakeholders will be aware of the extensive work that has been ongoing to plan and deliver the proposed merger of the three acute trusts in the Mid and South Essex Sustainability and Transformation Partnership (STP). This paper provides an update on the key aspects of the programme since the previous MSE Boards in Common meeting held on 13<sup>th</sup> November 2019.</p>  |                  |    |
| <b>Overall Timeline and Programme Management</b>  | <p>The Group continues to engage regularly with senior leaders of NHSI to assess progress, address concerns, and to ensure that our plans have the ongoing support of our main regulator. NHSI remains supportive of the target for merger on 1<sup>st</sup> April 2020 and all workstreams remain on track to enable the delivery of that date.</p> <p>Board members can take assurance that the FOF Delivery Group continues to keep detailed track of the individual workstream plans and the high level FOF programme plan on a weekly basis. Any overdue milestones are highlighted and remedial action mandated from the workstream lead, with escalation to the Executive Team as necessary through an agreed process. There is also an effective change control process in place to maintain the integrity of the plans as a source of assurance and as a means of managing the programme on a daily basis.</p> |                  |    |
| <b>Post Transaction Plan (PTIP), Merger Transaction Business Case and Patient Benefits Case (PBC)</b> | <p>At their previous meeting, the Boards in Common undertook a final review of the draft merger transaction documents and approved them for formal submission to NHSI as part of their assurance process on the proposed merger. That submission took place before Christmas 2019, as agreed with the regulator.</p> <p>Further information as to how these submissions will be utilised as part of the assurance process can be found below.</p>   |                  |    |
| <b>Capital Case</b>   | <p>The final draft Capital Outline Business Case (OBC) is being presented to the Boards in Common later today for approval. Whilst the Patient Benefits Case is not dependent upon the availability of national capital funding, the capital plans of the hospital sites are significantly over-committed. It is therefore very important, both strategically and operationally, that the MSE Group submits a credible case for accessing</p>   |                  |    |

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|  | the anticipated £118m of national capital.   |
| <b>Reporting Accountant and NHSI Assurance Process</b> | <p>In mid-November 2019, preparations for the Reporting Accountant (RA) project and the largely concurrent NHSI transaction assurance programme began in earnest.</p> <p>Ernst &amp; Young (EY) have been appointed to undertake the RA function on behalf of the current Trust Boards. Members will recall that the RA provides assurance to the existing Trust Boards on four key aspects of the proposed merged trust. These are :</p> <ul style="list-style-type: none"> <li>• Working Capital;</li> <li>• Financial Reporting;</li> <li>• Quality Governance;</li> <li>• Integration Planning/PTIP</li> </ul> <p>The Group has been working with EY throughout December 2019 to plan their work and to ensure that they receive a high quality set of documentary evidence in advance of the fieldwork which will take place in January and early February 2020. The Boards in Common will receive the reports from the RA, on the basis of which they will be asked to sign formal board declarations on the four workstreams at the Boards in Common meeting on 11<sup>th</sup> March 2020. The declarations will be submitted to NHSI as part of their assurance process.</p> <p>With regard to the NHSI assurance process, we submitted before Christmas 2019 an extensive set of documentary evidence in response to their information request list. The key merger submissions outlined above will form the foundation for this next stage of the NHSI assurance process.</p> <p>A programme of interviews/meetings between NHSI and Executives, Non-Executives, Clinical Leads and Site Leadership Teams (SLTs) has been drawn up. EY and NHSI have agreed to undertake joint meetings wherever appropriate, in order to reduce the time commitment for senior individuals across the Group.</p> <p>The initial start-up meeting between the NHSI assurance team and the MSE Executive Team took place on 8<sup>th</sup> January 2020. Ways of working for the assurance exercise were agreed and key issues likely to be the focus at subsequent meetings were highlighted. Members of the Boards in Common will be kept fully apprised as the assurance process and the Reporting Accountant process progresses over the coming weeks.</p> <p>The report compiled by the NHSI national transactions team will be provided to the regional team who will be leading the Board to Board meeting on 27<sup>th</sup> February 2020. The regional team will then recommend a decision on the proposed transaction to the national NHSI Team for ratification.</p> <p>Members should note that following a change in national policy during 2019, the Competition and Markets Authority (CMA) no longer has a role in the transaction approval process. The Patient Benefits Case will be reviewed solely by NHSI.</p> |

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| <p><b>Appointments to the Board of the proposed merged trust</b></p>   | <p>Board members and Governors will be aware that in November 2019, Nigel Beverley was formally appointed as Chair of the proposed merged trust. Nigel has chaired BTUH since 2015 and has a long career at executive and non-executive level in the NHS and independent healthcare sectors. He has presided over meetings of the former Joint Working Board (JWB) and latterly of the MSE Boards in Common since early 2017.</p> <p>Nigel's appointment was made using an open competitive process including a stakeholder session and a panel interview involving Governors of SUHT and BTUH, members of the MEHT Patient Council, the Chief Executive and a representative from NHSI.</p> <p>We congratulate Nigel on his appointment and thank him for his continuing commitment to the people of Mid and South Essex.</p> <p>The 8 non-executive director positions on the Board of the proposed merged trust are currently being appointed to utilising a competitive process We are seeking 4 NEDs from within the existing pool of NEDs across the MSE trusts. The remaining 4 positions (plus any positions to which an internal appointment could not be made) will be recruited from the open market.</p> <p>The NED appointment process will conclude at the end of January 2020, such that the "Interim Board" of the proposed new organisation will be in place in early February 2020. Until the transaction date the Interim Board will act as an advisory forum only.</p> <p>It is important to be clear that until the proposed merger is formally approved by NHSI and the Governors, Nigel remains Chair of BTUH and Alan Tobias remains Chair of MEHT and SUHT. The Boards of all three MSE trusts and the Councils of Governors of the two Foundation Trusts also remain in place until the transaction date.</p> |
| <p><b>Developing the Constitution of the Proposed Merged Trust</b></p> | <p>Since the early days of the merger preparation process in 2018, debate and engagement with Governors of SUHT and BTUH, the Patient Council of MEHT, the Trust Chairs and key executives has taken place about the content of the Constitution for the new organisation (which will be an NHS Foundation Trust). Consensus was reached on key aspects of the Constitution and these were approved by the Boards in Common in Autumn 2018 and by the Councils of Governors in Common in June 2019. These decisions included:</p> <ul style="list-style-type: none"> <li>• Public membership constituencies;</li> <li>• Number of positions on the Council of Governors for public, staff and appointed governors;</li> <li>• Terms of office for Governors;</li> <li>• Number of non-executive director positions on the Board of Directors and their terms of office;</li> <li>• Headline appointment process for the Chair and NED positions</li> </ul> <p>A significant amount of content for all NHS Foundation Trust Constitutions is mandated by the FT Model Constitution.</p>  |

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|  | <p>The final draft document (technically an amendment to the SUHT Constitution as the legally acquiring trust), incorporating the previously agreed elements, is being presented later on today's agenda for approval.</p> <p>Governors will then be invited to give formal approval at a minuted "meeting in common" part of their Conference on 2<sup>nd</sup> February 2020 (see below), so that the document is available for scrutiny as part of the NHSI assurance process and so that it can be used to govern the elections to the Council of Governors for the new trust, which will commence imminently after the merger date.</p>   |
| <p><b>Governor Communications and Engagement</b></p> | <p>The third MSE Governor Conference took place on 2<sup>nd</sup> December 2019. The event was reasonably well attended by BTUH and SUHT Governors and by representatives of the MEHT Patient Council, as well as the Trust Chairs and key officers. Topics included:</p> <ul style="list-style-type: none"> <li>• Progress update on the merger submissions (see above), with the key message that the merger will bring tangible benefits to patients;</li> <li>• A reminder of the fundamental guiding principle that the new organisation will be formed from a merger of three equal parties and how this approach has been followed to date and will continue to be followed moving forward;</li> <li>• Progress on the appointment of the Chair and NEDs for the proposed new Trust Board;</li> <li>• Plans for the next phase of governor communications and engagement leading up to April 2020;</li> <li>• Timetable of meetings from January to March 2020 where key decisions about the merger proposal will be made and the process to be followed by Governors when making a decision on the proposed merger. The date for the Governor decision meetings is 18<sup>th</sup> March 2020.</li> </ul> <p>The fifth MSE Governor Conference will take place on 2<sup>nd</sup> February 2020. Topics will include updates on all aspects of the merger, formal approval of the Constitution of the proposed merged trust (as a meeting of the Councils of Governors in common) and the election process for the new Council of Governors.</p> <p>The third edition of the stakeholder newsletter has been published, along with a dedicated newsletter for Governors.</p> <p>The Executive Team and the Trust Chairs continue to work closely with Governors collectively and individually over the next three months to address any unresolved concerns or queries they may have about the proposed merger.</p> |
| <p><b>Timescale for Benefits to be Realised</b></p>  | <p>Ongoing to the anticipated transaction date of 1<sup>st</sup> April 2020 and beyond in terms post transaction implementation planning and delivery.</p>   |

| <b>Assessment of Implications</b>    |  |
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| <b>Financial</b>                     | <p>Does this proposal have <u>revenue</u> (recurrent or non-recurrent) implications for the Trusts? <b>Yes</b></p> <p>Does this proposal have <u>capital</u> (recurrent or non-recurrent) implications for the Trusts? <b>Yes – see Capital Case section</b></p> <p>If yes, can these implications be <u>fully</u> covered by existing budgets? <b>No – hence the need for Capital Case approval</b></p> |
| <b>Risk</b>                          | Risks associated with failure to deliver the merger are reflected in the Board Assurance Framework   |
| <b>Equality and Diversity</b>        | This proposal has been subject to an equality analysis and there are no implications for groups with protected characteristics   |
| <b>Freedom of Information</b>        | <i>No exemptions apply (i.e., information is in the public domain)</i>   |
| <b>Other Implications Identified</b> | None of note   |
| <b>Recommendation</b>                | <p>The Trust Boards of BTUH, SUHT and MEHT are invited to:</p> <p>Note and take assurance from the progress update on the formation of the proposed merged trust.</p>  |
| <b>Appendices</b>                    | N/A  |