

Meeting Title	Mid and South Essex Acute Trusts Boards Meeting in Common (Session in Public)		
Meeting Date	11 th March 2020	Agenda No	12
Report Title	Future Organisational Form – Progress Report		
Lead Executive Director	Jonathan Dunk, Chief Commercial Officer		
Report Author	Andrew Stride, Group Director – Corporate Governance Integration		
Action Required	Decision <input type="checkbox"/> Discussion <input type="checkbox"/> Monitoring / Assurance X		
Background / Context	<p>As Board members, Governors and members of the public will be aware, the three acute trusts in Mid and South Essex aspire to merge to form a new organisation – Mid and South Essex NHS Foundation Trust (MSE), from 1st April 2020.</p> <p>The merger is subject to formal approval from NHSI, as well as from the Secretary of State for Health and Social Care (in respect of Mid Essex - MEHT) and from the Councils of Governors for Southend (SUHT) and Basildon and Thurrock (BTUH).</p> <p>This paper details the progress made in the last two months to ensure not only that the merger is approved, but that the proposed new organisation is able to function in a way that is well-governed, is safe for patients and staff and operates efficiently for the benefit of taxpayers.</p> <p>The overarching message is that the merger process remains on target to deliver the target date of 1st April 2020. This paper provides assurance to Board members, Governors and the public as to the process being followed by ourselves and by regulators.</p>		
NHSI Assurance Process	<p>On 27th February 2020, a “Board to Board” meeting took place as one of the final stages of the NHSI merger assurance process. This meeting involved senior members of the NHSI/E regional team alongside the Chair of the proposed MSE Trust, the Chief Executive, and a number of other executive directors and some of the non-executives who have been appointed to the Board of the proposed new trust.</p> <p>Key lines of enquiry at the Board to Board meeting included:</p> <ul style="list-style-type: none"> • The financial efficiency challenge – particularly regards delivery of 2020/21 efficiency which, whilst in line with sector norms, will need to be delivered at same time as structural change is implemented. • Ambition of our financial plans and whether we had taken all possible steps to improve the financial position over the term of the modelling. • Assurance that there is sufficient planned capacity to deliver the extent of change that our clinical reconfiguration and our financial plans require? 		

	<ul style="list-style-type: none"> • The operating model and future governance model for the proposed new trust. • System alignment with our partners across the Mid and South Essex Sustainability and Transformation Partnership (STP) • Sustained operational performance <p>The final decision by regulators as to whether to approve the proposed merger will be taken by the NHSI Provider Oversight Committee (POC) at national level on 10th March 2020.</p>
Reporting Accountant and Board Declarations	<p>Members were previously briefed on the role of the Reporting Accountant (RA) in relation to NHS mergers, which in our case has been carried out by Ernst and Young (EY), an independent professional services company. The RA final report and opinions will be discussed elsewhere on the Board agenda.</p> <p>On the basis of the RA report and other sources of assurance which form board memoranda, the Trust Boards will be asked to authorise the submission of a number of formal declarations and certifications to NHSI.</p> <p>The RA report reviewed four specific workstreams, these being Working Capital, Financial Reporting Procedures, the Post Transaction Implementation Plan (PTIP) and the Quality Governance Framework.</p>
Legal Documents Supporting the Transaction	<p>Several other legal documents are required to be endorsed by the Boards in Common as part of the merger approval process. These include:</p> <ul style="list-style-type: none"> • The Business Transfer Agreement (BTA); • A deed formally dissolving the contractual joint venture between the three trusts which has been in place since January 2017; • Formal Letter of Application from the three trusts to NHSI requesting that the merger takes place. <p>These documents have been drafted with support from our legal advisers, Addleshaw Goddard, and the drafts have been shared with members of the Boards in Common for approval.</p>
Constitution for the Proposed Merged Trust	<p>The Constitution for the proposed Mid and South Essex NHS Foundation Trust has been approved in line with legislation. The Boards in Common gave their approval on 15th January 2020, followed by the SUHT Council of Governors on 3rd February 2020 and the BTUH Council of Governors on 24th February 2020.</p> <p>Although the MEHT Patient Council were not required to formally approve the Constitution for the new trust, they have been involved throughout its development and endorsed the content at the MSE Governor Conference in early February 2020.</p> <p>The final version of the Constitution will be submitted to NHSI appended</p>

	to the Letter of Application.
Governor Decisions on 18th March 2020	<p>Members of the Boards in Common and of the Councils of Governors will be aware of the arrangements for the meetings on 18th March 2020 where the BTUH Governors and then the SUHT Governors will be invited to vote on the motion for their respective organisations to take part in the merger to form Mid and South Essex NHS Foundation Trust.</p> <p>A majority of <u>all</u> Governors on the BTUH Council and a majority of <u>all</u> Governors on the SUHT Council in support of the proposed merger is required in order for approval to take place, not only a majority of those who attend the meetings in question.</p> <p>We have ensured over the past 18 months that Governors (and MEHT Patient Council members) have been fully involved and informed on the preparations for merger and crucially why merging is in the best interests of patients.</p>
Secretary of State Approval	<p>The Secretary of State for Health and Social Care is required to consent in writing to the dissolution of MEHT as part of the proposed merger. This is only required for MEHT as it is the only NHS Trust involved in the merger.</p> <p>Neither NHSI or the MSE Team, have direct control over the time taken for the letter to be issued. However there is no suggestion at this stage that this will be delayed to impact on proposed transaction date.</p>
Legacy Governance	<p>A simple legacy governance process has been implemented to ensure that corporate memory and the governance of risks and issues are preserved in the transition between the current organisations and the proposed new trust.</p> <p>This approach involves handover/legacy reports from the current Committees in Common to their successor committees, transfer of action logs to the new committees to keep track of live issues and risks, and endorsement of the proposed terms of reference for the new committees by their predecessors to minimise the risk of any topics being inadequately mapped from the old to the new governance structure. The Quarter 4 BAF reviewed at today's Boards in Common meeting will form the starting point for the Quarter 1 BAF for the proposed merged organisation, acting as a key internal control around the ongoing management of risks.</p> <p>The FOF Programme Board will be responsible for legacy governance, reporting through to the Audit Committee, at least until the end of June 2020. Recommendations as to how best to ensure ongoing legacy governance as part of the MSE business as usual activities will be taken through the FOF Programme Board before its dissolution</p> <p>As an additional governance safeguard, the current Governors of BTUH and SUHT and representatives of the MEHT Patient Council will come together for the last time on 27th April 2020 in an informal capacity to discuss and take assurance from the Chair and Executive Team on a</p>

	number of key issues, including headlines of the 2019/20 year-end, an update on the Governor Elections and the induction plans for incoming Governors, and a reflection on the first month of the new organisation including legacy governance.
Appointments to the Board of the Proposed Merged Trust	<p>We are pleased to confirm that all of the positions on the Board of the proposed merged organisation have been successfully recruited to. Their induction process is already underway so that the proposed new trust will be well governed from the outset.</p> <p>We are sorry to say goodbye to a number of non-executive directors across the Group who will leave us, subject to merger approval, at the end of March 2020. The trusts and the populations they serve have benefitted from the unique contribution of every individual over the years.</p>
Council of Governor Elections	There is a robust project plan in place to ensure that the proposed merged trust benefits from a substantive Council of Governors at the earliest opportunity. An election company has been appointed and election material has been drafted by the MSE Team. Information evenings for prospective governors have been arranged during April 2020 at different sites. We envisage the newly elected Council of Governors taking office on 3 rd June 2020.
Timescale for Benefits to be Realised	This paper aims to provide assurance that the likely transaction date remains 1 st April 2020.
Assessment of Implications	
Financial	<p>Does this proposal have <u>revenue</u> (recurrent or non-recurrent) implications for the Trusts? The proposed merger has significant revenue and capital implications as set out in the Transaction Business Case and the Long Term Financial Model (LTFM)</p> <p>Does this proposal have <u>capital</u> (recurrent or non-recurrent) implications for the Trusts? As above</p> <p>If yes, can these implications be <u>fully</u> covered by existing budgets? As above</p>
Risk	Various risks relating to the proposed merger feature in the Board Assurance Framework.
Equality and Diversity	This paper has been subject to an equality analysis and there are no implications for groups with protected characteristics
Freedom of Information	<i>No exemptions apply (i.e., information is in the public domain)</i>
Other Implications Identified	None of note

Recommendation	The Trust Boards of BTUH, SUHT and MEHT are invited to Note and take assurance from the progress update in the future organisational form project to create a merged trust from 1 st April 2020.
Appendices	N/A