

Council of Governors Meeting, 11 August 2015

Subject/Title	6.2 West Middlesex University Hospital NHS Acquisition: Approval of Transaction
Purpose of paper	To seek Council approval on the formal acquisition by Chelsea & Westminster Hospital NHS Foundation Trust (CWFT) of the West Middlesex University Hospital NHS Trust (WMUH)
Decision/action required/ recommendation	<p>Following the decision of the Board in relation to the WMUH acquisition earlier in the day, this paper is intended to support the Council of Governors in their decision with regard to the acquisition. In making its decision, the Council is reminded of the need to consider the extent to which the Board has:</p> <ul style="list-style-type: none"> i) been thorough and comprehensive in reaching its proposal in relation to the acquisition; ii) obtained and considered the interests of trust members and the public as part of the decision-making process. <p>A number of documents are appended to this report to illustrate the nature of and rationale for decision making, to demonstrate compliance against Monitor's transaction guidance and regulatory review; and to demonstrate the Board has been comprehensive and thorough in reaching its decision:</p> <ul style="list-style-type: none"> • Appendix 1: Transaction Prospectus (updated since its initial review by Council of Governors in March 2015); • Appendix 2: Schedule of other Key Documents relied upon by the Board to support decision making; • Appendix 3: Draft Monitor Transaction Risk Rating (to follow)¹; • Appendix 4: Schedule of key engagement activities; • Appendix 5: Council of Governors' Resolution.
Summary of the key risks/issues from the paper	<p>The paper summarises the steps the Trust has taken with regard to the WMUH acquisition transaction, in accordance with:</p> <ul style="list-style-type: none"> - Transaction guidance and regulatory requirements; - The transaction critical path agreed with stakeholders (principally DH, TDA, NHS England and local CCGs); - Post Transaction Implementation Plan (PTIP) requirements; - An ongoing assessment of the risks associated with the transaction and the 'weighing up' of these against the risk of the acquisition not proceeding ('the counterfactual').
Link to corporate objectives	All
Non-Executive Sponsor	Sir Thomas Hughes-Hallett

¹ This will be circulated as a separate addendum to this paper once received.

Acquisition of West Middlesex University Hospital NHS Trust: Summary Acquisition Report

1.0 Introduction

1.1 At its meeting on 26 February 2015, the CWFT Board received and approved the Full Business Case (FBC) for the acquisition of WMUH.

1.2 The decision initiated the final cycle of key steps in the formal transaction process:

- The commencement of Monitor's transaction assessment process (which culminates in the issuing of the formal Transaction Risk Rating);
- The review of the FBC by an Independent Reporting Accountant (RA);
- The finalisation of the legally binding Transaction Agreement (including supporting financial package) signed by a number of key stakeholders including the Foundation Trust subject to the Council of Governor's approval for the Board to sign the Agreement;
- The further development of the Post Transaction Implementation Plan (PTIP), which underpins the integration of the two organisations and the benefits delivery framework;
- The conclusion of the formal Gateway 4 process through the signing of the Dissolution Order by the Secretary of State for Health.

1.3 This paper sets out an analysis of the key activities taken by the Foundation Trust and directed by the Board as evidence to Board decision making. The paper is intended to support the Council of Governors in their duty to:

- to hold the non-executive directors individually and collectively to account for the performance of the board of directors; and
- to represent the interests of the members and general public

1.4 A number of documents are appended to this report to illustrate the nature of and rationale for decision making, to demonstrate compliance against transaction guidance and regulatory review; and to demonstrate the Board has been comprehensive and thorough in reaching its decision:

- **Appendix 1:** Transaction Prospectus (updated since its initial review by Council of Governors in March 2015);
- **Appendix 2:** Schedule of other Key Documents relied upon by the Board to support decision making;
- **Appendix 3:** Draft Monitor Transaction Risk Rating (to follow)²;
- **Appendix 4:** Schedule of key engagement activities;;
- **Appendix 5:** Council of Governors' Resolution.

2.0 Key Compliance with Transaction Guidance and Regulatory Review

2.1 Approval of Full Business Case (FBC)

As indicated above, the Board approved the FBC in February 2015. As part of this process, the Council of Governors considered a Transaction Prospectus and individual Governors were also given the opportunity to review the FBC in full.

This Transaction Prospectus has been refreshed to reflect the advancement of the integration programme and FBC review. An updated document is set out as Appendix 1.

² This will be circulated as a separate addendum to this paper once received.

2.2 Independent Reporting Accountant (RA)

An Independent Reporting Accountant review is required under Monitor Guidance and this forms part of a wider FBC review undertaken by Monitor³.

As part of this process, the Board is asked to make a series of self-certifications in relation to the Trust's Working Capital, Quality Governance, PTIP and Financial Reporting Procedures position, informed by the opinion of the RA.

A summary of the scope and outcomes of the RA work will be provided at the Council meeting.

2.3 Transaction Agreement

The Transaction Agreement (TA) is the legally binding agreement that all parties to the transaction are required to sign to enact the process. This includes: NHS TDA, NHS England, West London CCG, Hounslow CCG, Richmond CCG and Wandsworth CCG. The TA has been negotiated by the Executive under the direction of the Acquisition Steering Committee.

Importantly, the TA outlines the pre and post integration responsibilities of the Trust and its key stakeholders and includes confirmation of the financial support package underpinning the transaction. CWFT sought legal advice throughout this process and the draft agreement was scrutinised by both Monitor and the RA as part of their assurance processes.

The TA is supplemented by the formal Dissolution Order. This is the formal document signed by the Secretary of State and which signals the dissolution of WMUH and the transfer of all assets, staff and property to CWFT.

3.0 Additional Board/Council Assurance

3.1 Executive Review and Status of Integration Programme

Through the Acquisition Project Board (chaired by Chief Executive and overseen by Acquisition Steering Committee), the PTIP has been further developed such that it provides assurance in relation to the successful establishment of a high quality, safe and sustainable enlarged organisation. A formal 'state of readiness review' by the Acquisition Project Board demonstrated:

- The project and the deliverables are on target;
- There are no clinical risks identified for Day 1 and 'Safe Landing';
- Lessons learnt from other integrations are being heeded with emphasis on clinical and cultural buy in. The fourth Clinical Summit was held on 31 July, a Nursing Summit is scheduled for 12 August and a Corporate Summit is scheduled for 20 August. Benchmarking (Medical Engagement Scale) demonstrates that our clinical staff are in the top 20% nationally in respect of engagement and ownership;
- The 'delivery architecture' is being developed and recruited to in order to mitigate concerns on bandwidth and capacity to support both integration and business as usual.

3.2 'System Assurance': Monitor FBC Review and Transaction Risk Rating

The Trust has received a series of internal and external assurances/assessments with regard to the merits and risks associated with the WMUH transaction. This has included:

- The Department of Health 'value for money' test carried out as part of the 'vendor led assessment';
- The Competition & Markets Authority assessment;
- Legal, financial, clinical due diligence assessments undertaken on behalf of the Trust by professional advisors as part of the development of the FBC.

³ Refer: Monitor Transaction Guidance March 2015

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417799/Transactions_guidance_2015_FINAL.pdf)

A schedule of key documents relied upon by the Board to support its decision-making can be found at Appendix 2.

3.3 Monitor

The final assessment within the transaction pathway is Monitor's own transaction assessment, comprising:

- The remodelling of the LTFM to take into account a series of aggregated downside scenarios and the testing of other FBC documents e.g. PTIP;
- A formal Board to Board assessment on 25 June 2015;
- The issuing of the formal Transaction Risk Rating. This is attached at Appendix 3⁴.

This formal rating is a key step in the process. Alongside the formal TRR it is expected that the regulator will set out a series of next steps/assurances that it is seeking during the integration programme. The Board will continue to provide oversight to this process through a revised Integration Steering Committee and will give leadership to and seek assurance from the Project Board.

4.0 Member and Public Engagement

- 4.1 The Foundation Trust has embarked on an extensive communications and engagement process to ensure that its FBC and subsequent integration plan has been tested and shaped by the membership and the wider public. A detailed schedule of events across the last 18 months and the actions we have taken is set out as Appendix 4.

5.0 Conclusions and Recommendations

- 5.1 The Council of Governors is asked to approve the acquisition of West Middlesex University Hospital NHS Trust by Chelsea and Westminster Hospital NHS Foundation Trust. A resolution to this effect has been drafted and can be found at Appendix 5.

Elizabeth McManus

Chief Executive

August 2015

⁴ This will be circulated as a separate addendum to this paper once received.

**Proposed Acquisition of West Middlesex University Hospital by Chelsea & Westminster Hospital Foundation Trust:
Transaction Prospectus**

1. Introduction

The purpose of this document is:

- 1) To provide an overview of the strategic, clinical and financial rationale and benefits driving the Full Business Case (FBC) for the proposed acquisition of West Middlesex University Hospital NHS Trust (WMUH) by Chelsea & Westminster Hospital NHS Foundation Trust (CWFT). The FBC is composed of a range of documents. Principally:
 - The Acquisition Integrated Business Plan (IBP);
 - The Integration & Mobilisation Plan (IMP)
 - Long Term Financial Model (LTFM)

The IBP mirrors Monitor methodology for assessment. The IMP is a fluid document that will be updated as plans become more detailed during the integration and business planning process. The LTFM shows a number of models including the CWFT standalone, the Acquisition model 'bases case' and also reflects a number of downside scenarios and how these are mitigated.

- 2) To provide assurance to the CWFT Council of Governors that the Board of Directors has:
 - Been thorough and comprehensive in reaching its decision;
 - Obtained and considered the view of the members and the wider public.

2. Background and Case for Change

The CWFT Board of Directors has a compelling strategic vision to strengthen its position as:

- A major health provider and teaching hospital in North West London – offering a mix of regional and, in some cases, national and international) tertiary services and local secondary care;
- A leader in the health system supporting the health of the population and developing the provision of Accountable (Integrated) Care.

The focus for this strategic vision is the ambition to provide accessible, safe and high quality care for all patients and their carers. However, the Trust recognises that the healthcare provider landscape is changing dramatically and CWFT, along with a number of other providers, does not currently fit that profile in a sustainable way. In common with many elements of the wider NHS, the deterioration of the Trust's financial position is making what was a medium to long term strategic position an immediate 'burning platform'.

2.1 National Context

Nationally, there are five 'key themes' which describe the current state of the NHS, driving the need for change:

- **Increasing quality expectations**
There is ever increasing scrutiny of Trusts, hospitals, departments and individual healthcare professionals. Care Quality Commission (CQC) inspections, the Francis Report, and more recently the Keogh Review, are increasing pressure to maintain high standards of care at all times, requiring changes to health service culture and working practices in the context of a constrained funding environment. With specific regard to CWFT; historically, quality regulators and commissioners have viewed CWFT as in the top tier for providers but, in July 2014, the CQC delivered a judgement of 'Requires Improvement'.
- **Doubts over the sustainability of smaller acute Trusts**

A series of national reviews has recommended that increased specialisation of clinical teams serving larger populations deliver improved outcomes for patients^{1,2}. Monitor reported in a review of NHS foundation trusts in the nine months to 31 December 2013³ that of the 22 Trusts that were 'red rated', 18 were small to medium (i.e. have an income up to £400m). CWFT's income in 2014/15 is £385m.

- **Increasing policy shift to Integrated Care and development of new provider models**

The publication of the *5 Year Forward View* describes the need to introduce innovative service models to meet this ambition. CWFT recognises the changing nature of provider and commissioner landscapes and the challenge of continuous evolution and improvement to ensure clinical and financial viability in its objective to be a leader in Accountable Care.

- **Ongoing financial challenge**

NHS Trusts throughout England are required to deliver efficiency savings of circa 4-5% per annum. Increasingly it is recognised that traditional Cost Improvement Programmes (CIPs) alone will no longer deliver the required savings. Trusts will be expected to engage in wider transformational change and service reconfiguration with other agencies and providers in order to deliver the productivity improvements required.

- **Increasing operational pressures**

Trusts across England are encountering increasing demand for acute services, particularly through escalating A&E attendances and unplanned admissions to hospital. Additionally, an ageing population with associated long-term conditions will demand more from health care providers year-on-year.

2.2 Local Health Economy Context

Locally, there are specific issues which are material to developing the background context:

- North West London (NWL) commissioners have set out an ambitious transformation programme of which the central strand (and biggest impact on the acute sector) is *Shaping a Healthier Future* (SaHF). This programme aims to consolidate A&E and major acute services across the region. Both CWFT and WMUH are designated as 'major acute hospitals' under SaHF and would see significant activity growth and supporting capital (PDC) enabling funds.
- In NWL, the impact of changes to Clinical Commissioning Group (CCG) funding formulas will see a reduction in CCG 'purchasing power' with expected knock-on consequences to CWFT and the local community. Hounslow CCG (host to WMUH) is nationally the furthest from capitation and is one of the largest 'gainers' under the new formulas.
- CWFT, whilst historically successful, is one of the smallest FTs in London and operates in a fiercely competitive environment containing a number of large, multi-site, multi-specialty healthcare organisations. This creates the following organisational risks to the following strategic objectives:
 - Being able to retain and develop its clinical portfolio;
 - Being able to attracting and retain a high-calibre workforce;
 - Being able to pursue opportunities for teaching and research;
 - Insulating against financial risks caused by national changes in tariff and by the ongoing efficiency requirements of the health sector.

The Trust has developed a strategy which recognises and addresses these issues and seeks to develop the Trust into a

¹ "Is volume related to outcome in healthcare? A systematic review and methodological critique of the literature", Ann. Intern. Med. 137: 511 – 520 Halm et al, 2002

² *Hospital volume and health care outcomes, costs and patient access*, NHS Centre for Reviews and Dissemination, systemic review 1996

³ Performance of the NHS Foundation Trust Sector: nine months ended 31 December 2013, Monitor.

large, high end and diversified provider that can successfully navigate the future landscape.

3. Vision for the New Organisation

The Board has developed the following Vision for the proposed New Organisation:

- **To create a major, multi-site healthcare provider and teaching hospital to the benefit of patients**
 - 1,000 beds and more than £500m revenue;
 - Expanded and improved services in a number of areas.
- **5,000 staff with better training and development opportunities**
 - Wider choice of sub-specialties;
 - Greater choice of location;
 - More opportunity for sharing best practice.
- **High-volume, high-quality local secondary services**
 - Combined acute emergency admissions of around 290,000;
 - Scale and catchment population to support strategic and clinical partnerships

More specifically:

WMUH will focus on continuing with their secondary services with the potential to expand their high-volume elective care, such as orthopaedics.

CWFT will focus on tertiary and specialist care, such as Women's Services, the Chelsea Children's Hospital and HIV.

Both sites will focus on providing a wide range of services for their local populations and will continue to provide acute services, including A&E, maternity and acute medicine and surgery.

ONE TRUST: TWO SITES



'Hot' specialist site at CWFT

- A&E and fixed points mandated by SaHF, maternity, other 'star' service lines
- Grow the volume of sub-specialist work at CWFT with consolidated volumes and repatriation from Imperial
 - eg bariatric surgery, high-risk maternity

Maintenance of core services on both sites to ensure local access

'Hot' and elective site at WMUH

- A&E and fixed points mandated by SaHF, maternity
- Grow planned care / lower complexity at WMUH
 - repatriate lower complexity planned care to WMUH (eg paediatric dentistry)
 - Potential to build a large elective orthopaedic centre on WMUH estate

4. The Business Case

4.1 The Strategic Case

The 10 year vision for CWFT is to strengthen its position as a major health provider and teaching hospital in North West London, offering a mix of regional (and in some cases national and international) tertiary services, local secondary care, and to be a leader in providing accountable care for specific patient populations. It will also be a more significant provider of private patient services with at least double the current income.

Underlying the vision are three key considerations which will support longer term financial and clinical sustainability:

1. Securing of current tertiary services – which are consolidating – to support the economics, brand, talent and research;
2. Growing total income to support workforce remodelling, infrastructure investments and CIP plans;
3. Diversifying income streams to reduce the financial risk.

In order to deliver the three considerations above, in 2013/14, the Trust considered a range of strategic options which included a mix of organic growth, partnership or acquisition. Four ‘mosaics’ or paths were considered:

1. Mosaic 1: Organic growth, incremental, negotiation-based path;
2. Mosaic 2: Collaboration with the Brompton only;
3. Mosaic 3: Acquisition of WMUH;
4. Mosaic 4: Collaboration with Royal Brompton & Harefield NHS Foundation Trust *and* acquisition of WMUH.

Facing the case for change, the CWFT Board undertook a formal review of these options on 27 March 2014 and prioritised the option that combined partnerships to support development of specific tertiary specialist work (at the Brompton and other Trusts) and the acquisition of WMUH to develop scale in core secondary care. The Board concluded that, alongside the clinical and financial benefits that were outlined, the proposed acquisition best supported the Trust’s strategic vision outlined above on the basis that it would allow the Trust to:

- Maintain and strengthen identified tertiary services;
- Grow the local secondary/acute District General Hospital (DGH) services – including the opportunity to do so on both sites under SaHF;
- Mitigate the threat of decommissioning from national or local commissioner;
- Provide the population base to take forward Integrated Care and lay the foundations for an Accountable Care Organisation;
- Be a viable and thriving part of an emerging acute provider landscape in North West London.

4.2 The Patient and Clinical Benefits

Whilst the strategic case is crucial, the CWFT recognises that any change must provide ‘real’ benefits to the Trust’s local patient population. The Trust has therefore used the following criteria to ensure that consideration of patient benefit is incorporated into each stage of the acquisition pathway. The high-level projected patient benefits are as follows:

- **Continued access to local care:** The acquisition will support the ongoing clinical and financial sustainability of services on sites, enabling patients and their families to continue accessing a wide range of acute, secondary and tertiary services locally.
- **Improved access through care closer to home:** New services will be developed based on population need to benefit patients who are currently either travelling or unable to access the services; there will be better-quality services closer to home.
- **A better patient experience through new models of care:** New models of care will lead to tailored, patient-centric care pathways. The patient journey will be seamless and integrated, resulting in the best possible experience for patients and their families.
- **A better patient experience through shared best practices:** The integration will support the sharing of best practices across sites, building on CWFT's track-record, including the sharing of best practices on improving experience for patients and their families.
- **Greater patient advocacy in the sector:** The acquisition will create a combined entity servicing eight local CCGs and a population of c.1.1 million, and will bring the benefits of the FT membership and governance model to this wider catchment area. The new organisation will be a strengthened participant in local and regional decision-making processes.

In addition to the 'patient benefits', the Trust has engaged its clinicians to develop the following clinical benefits:

- **Safer care:** The increase in clinical mass brought about by the acquisition, both of the clinical workforce and of patient volumes accelerated by the deployment of a new fully integrated Electronic Patient Record (EPR) system, will support both hospitals in implementing the latest guidelines on clinical care, thereby improving service quality and safety. This will support the provision of standardised care pathways to ensure equity, reduce variation and ensure access to the best treatment.
- **Higher-quality care through a larger clinical organisation:** The new organisation will serve a population of c. 1.1m, with an increased clinical mass of key services. This increased scale is projected to improve clinical outcomes, particularly with regard to surgical and procedural-based specialities.
- **Higher-quality care through shared best practices:** There are currently some excellent examples of leading practice and high-quality services in each Trust. These will be rolled out across sites, driving improvements in clinical outcomes and ensuring the highest quality patient care.
- **Higher-quality care through the addition of new services:** The addition of new services, achieved as a result of the acquisition, will improve clinical outcomes in specific service lines and enable patients to receive best practice care.
- **More innovative care:** Patients will have greater access to high-quality, leading research programmes in the combined organisation. These programmes will encourage innovation and improved quality of care for patients both locally and internationally.
- **Technological advancement:** Significant advances in technology, including a new EPR system, will be funded through the integration and it is expected that these will also have a significant impact on patient outcomes. Assessment against international research has indicated that inpatient medication errors could be reduced by 1400 per year (900 for CWFT, 500 for WMUH), some of which are likely to have resulted in harm, and many in additional bed days. Technology can also be utilised to help protect patients against harm in other ways, such as by reducing falls and pressure ulcers. The system will improve the Trust's assurance that clinical quality standards such as those set by the CQC are being consistently met for every patient, every time.

The Trust has run a number of Clinical Summits to ensure that developments are 'bottom up' and reflect the aspirations of our clinical staff. It has benchmarked (against the national Medical Engagement scale) and we have found that our clinical staff are in the top 20% nationally for engagement and ownership.

The Board has facilitated a number of sessions on the development of clinical benefits and – while these focussed on key services such as Maternity, Cancer and the targeted service developments – it was clear that each area could show:

- 1) Improved Clinical Outcomes (for example through improved mortality via quicker time to diagnosis in acute oncology)
 - 2) Improved Patient Experience (for example in reduced length of stay under the local access to cardiology services)
 - 3) Improved Choice (for example by innovative service models enabled by resilient midwifery staffing structures which could support low risk mothers in home births)
- At the WMUH end of the patch patients would see improved access to services such as bariatrics, ophthalmology and cardiology; and gain expertise from sub specialists in HIV, acute oncology and end of life care mitigating health inequalities of under-served population.
 - At the CW end of the patch the threat of loss of local access is mitigated and improvements in quality and productivity will be seen through continuity of care via improved staff rotation
 - For the wider population the opportunity for seamless, integrated care is enhanced with an organisation which can position itself as the provider of choice for an increased catchment population.

4.3 The Financial Case

Historically, the Trust has delivered a financial surplus in excess of the Foundation Trust average, up to and including 2014/15. However; more recently, the Trust's ability to deliver a surplus has declined due to the cumulative impact of income pricing pressures and the Trust's inability to transform its cost base in response over the past two years. This has resulted in the Trust needing to reduce its forecast surplus in 2014/15 in-year and created a risk of an underlying deficit in respect of future years.

The Board has considered carefully the implications of the deterioration in the CWFT standalone position on the acquisition and has concluded that the clinical strategy for growth through acquisition will better address the underlying economic pressures than the 'standalone state'. In particular, the standardisation of clinical processes will be a significant lever for the productivity improvement and deliver the change in clinical service portfolio required to achieve financial sustainability.

In terms of financial benefit, the acquisition LTFM shows a £39m improvement versus the standalone scenario; and our profit/loss improves from 7.0% (standalone) to 11.6% (acquisition) and our net surplus from £3.9m (standalone) to £24m (acquisition) by 2019/2020: year 5 of the LTFM.

The model shows that, by the end of the 5 year period, the FT is able to deliver a sustainable Continuity of Service Rating (CosR) of 3, which is the threshold level at which Monitor, the financial regulator, expects FT's to operate. Under the standalone we are unable to meet this sentinel indicator and remain at 2

Within the LTFM the Board have accounted for the risks posed in taking on the liabilities associated within the WMUH Private Finance Initiative (PFI) build and the modelling provides assurance that this is at least/more than mitigated by:

- The service developments enabled by the negotiated financial support;
- The development of the EPR (funded by the above);
- The ability to improve staff retention and better utilise staff to deliver improved services.
- Restructuring of existing FT loans
- Additional mitigations recommended by the Reporting Accountant (such as DH term loan)

5. Managing Risks

The acquisition process and the transaction itself will inevitably involve risk.

The overall responsibility for the management of such risks rests with the CWFT Board. These risks are managed through the 'Acquisition Project Board' which meets on a bimonthly basis and is composed of members of the Executive team of both CWFT and WMUH respectively and escalate to the agreed governance structure. In addition, the Trust has established an Acquisition Steering Committee as a formal Committee of the Board. The NHS Trust Development Authority (TDA) Transaction Board takes 'system management' responsibility for overseeing the transaction and works with the two Trusts to deliver the critical path.

The high-level risks identified by the Board in relation to the proposed acquisition are as follows:

- **Transactional risks to achieving the acquisition:** these risks relate to the process of achieving a successful transaction and are composed of a number of sub-elements:
 - Financial risks identified through due diligence such as the WMUH PFI and underlying deficit: These have been mitigated through negotiated financial support;
 - Competition risks: These have been mitigated by the successful clearance of the proposals by the Competition & Markets Authority (CMA);
 - Monitor Review and Secretary of State approval: These have been addressed through a Board-led assurance programme in order to satisfy the requirements of these key external stakeholders and have culminated in the issue of the regulator's Transaction Risk Rating.
- **Integration risks to delivery of benefits:** these risks relate to the successful integration of the post-acquisition organisation realisation and to achieving the anticipated benefits described above. Key risks and mitigations include:
 - Bandwidth and ability to manage business as usual alongside the integration process: This is being addressed through the deployment of a formal Integration Programme with supporting workstreams;
 - Patient Quality and Safety of Services: This is being addressed by a model 'safe handover' process used in other M&A. Our process has been green rated by TDA assurance and has been tested as part of both RA and Monitor assessment of the Post Transaction Implementation Plan
 - Clinical culture and buy in: Reviews of mergers and acquisitions indicate this is the single largest risk and is being mitigated by a bespoke organisational development exercise led by senior clinicians (including Clinical Summits as referenced above);
 - Wider organisation culture: this is being mitigated by the deployment of resource and the secondment of clinical and managerial staff from CWFT to WMUH. This also mitigates clinical and operational risks to current performance of the WMUH.

The risks associated with proceeding along the acquisition pathway must be contrasted to the risks associated with the transaction not proceeding (i.e. the 'Counter Factual risks'). These risks can be grouped into the following categories:

- **Clinical sustainability**
 - The failure to achieve clinical sustainability and scale in some services may require such services to be transferred to an alternate provider;
 - Increasing difficulty of strengthening the Trust's small tertiary services;
 - The lack of overall activity makes it more difficult to strengthen key specialities and provide sub-specialisms as required by commissioners;
 - CWFT is unable to develop the scale of growth anticipated with the acquisition.

- **Acquisition target**
 - Increased risk of CWFT itself being seen as a long term acquisition target by larger organisations.
- **Financial stability compromised**
 - Private Patient growth delayed as in house option for expansion less likely;
 - Major part of strategy to strengthen Trust's service and financial profile delayed (for example Sexual Health);
 - CWFT seen as less attractive partner to other providers;
 - Vulnerable services may be decommissioned and 'sold' to other Trusts by CCGs leading to a decline in financial stability;
 - An inability to deliver on QIPP requirements
 - Efficiencies and service requirements unable to be met within existing service framework.

6. Developing the FBC: Assurance to Board Decision Making

This section describes how the Board of Directors has:

- Been thorough and comprehensive in reaching its decision;
- Has obtained and considered the view of the members and the wider public.

6.1 Process for Assessment and Decision Making

The Board over the last year has followed a holistic and comprehensive process to ensure that all materials risks, issues and factors related to the proposed WMUH acquisition are known, accounted for, and addressed where appropriate. The timeline below sets out the specific steps that the Board has taken:

- ✓ **Expression of Interest:** Designated as preferred bidder by WMUH following competitive process (2012)
- ✓ **Authority to Proceed:** Approval of Heads of Terms 1 setting out formal governance process (2013)
- ✓ **Board Review of Strategic Direction ("Mosaics"):** formal assessment of strategic options which prioritised acquisition as one of the enablers to CWFT strategy (March 2014)
- ✓ **Due Diligence:** the detail of this is contained below
- ✓ **Outline Business Case:** approved by the CWFT Board in May 2014. The Board then sought three additional assurances during FBC development:
 - ❑ Financial Risks → met by negotiated settlement with DH / TDA and commissioners and formally set out in Heads of Terms 2 and DH Gateway 3;
 - ❑ Competition Risks → met by approval of the proposals by the CMA in December 2014;
 - ❑ Monitor Assessment → An initial assessment and OBC Review by the regulator which indicated strategic support and approval to move to the next stage

There are a number of key next steps which have been set out in a 'Decision Tree' for the Board and Governors which has been circulated separately.

6.2 Due Diligence and Advisory Support

The Board has identified key risks and taken appropriate mitigating action through a series of Due Diligence (DD) exercises and has taken appropriate professional advice. The Schedule of key DD and lead advisors includes:

- ✓ Initial DD assessment to explore opportunity and ATP (Deloitte)
- ✓ Professional support to review strategic priorities and the development of Outline Business Case (BCG)
- ✓ Formal DD to support Outline Business Case 'Project Flower' (Deloitte):
 - ☐ Clinical (a bespoke exercise based on the Monitor Quality Governance guidance)
 - ☐ Finance
 - ☐ IM&T
 - ☐ Estates
 - ☐ Legal
- ✓ Mitigating Actions and support to Board 'tests' (set out in detail in IBP):
 - ☐ Finance negotiations and development of Long Term Financial Model (Deloitte)
 - ☐ Competition (Frontier Economics)
- ✓ FBC Review:
 - ☐ Board assurance to support submission to Monitor (Ernst & Young)
 - ☐ Legal (Capsticks)
 - ☐ Series of DD 'refreshes' to ensure that the most recent information is available
 - ☐ Independent Reporting Accountant (Ernst & Young)

6.3 Commissioner Support

The Board has directed a series of formal and written agreements with commissioners to complement its more routine 'business as usual' relationship management. Completed Steps include:

- ✓ TDA & CCGs completed OBC 'vendor assessment'
- ✓ Financial settlement and Heads of Terms
 - ☐ DH and TDA funded elements for capital development and short term financial support
 - ☐ CCG & NHS England funded elements to support Integration Plan
 - ☐ Signed support for Business Case through Gateway 3
- ✓ Series of Board to Board (CWFT & CCGs) established to ensure wider relationship management
- ✓ Agreement to establish of Clinical Reference Group

The Trust's final steps with regard to commissioner engagement were as follows:

- Transaction Agreement (agreed and to be signed by all partners as part of Gateway 4);
- Shaping a Healthier Future (SaHF) assurance: NHSE and local CCGs confirmed support for transaction, key service developments and their 'fit' with wider commissioning intentions under SaHF;
- Ongoing Pathway Development (to provide clinical 'buy in' and assurance internally across the organisation and with CCG partners)

- Other service developments: bidding for out of hospital work as part of integrated care agenda and reaching into new markets enabled by the new provider footprint. The FT has won 3 contracts since approval of FBC which are unlikely to have been considered outside of the acquisition model

6.4 Considering the views of Members and the Public

The Trust has developed a comprehensive Communications Plan and has, in the last 12 months, run an extensive series of 'public-facing' sessions to test plans and to take account of issues raised. These include:

- ✓ Briefings to the Council of Governors, including bespoke workshops on:
 - Strategy Development;
 - Financial Planning;
 - Clinical Benefits.

And two organised COG visits to WMUH.

- ✓ Formal presentations to local Health Overview & Scrutiny Committees (HOSCs);
- ✓ A series of formal CCGs engagement meetings;
- ✓ Engagement with local Healthwatch organisations;
- ✓ From April 2015, the Trust launched a programme of 'constituency meetings': meetings organised and facilitated by the Trust for the benefit of its Foundation Trust membership and members of the Public. The meetings allowed the Trust to update local people on key organisational/service developments (including with regard to the acquisition), as well as providing an opportunity for the Trust to receive feedback/input from its membership base.

7. Concluding Statement

In summary, the CWFT Board believes there to be a clear case for change:

This acquisition drives a number of benefits for patients, commissioners and for the Trust

- The acquisition will allow the provision of high quality clinical services to be developed and maintained at both sites.
- It aligns with commissioner strategies for sustainable services.
- It is supported by capital development of the estate under *Shaping a Healthier Future* and specific service developments.
- It provides a bespoke Electronic Patient Record which will drive service integration in and outside the hospital and provide assurance to safety, quality and consistency of service to patients.
- It provides greater assurance to the financial sustainability of the Trust and supports the development of a provider landscape in North West London that provides competition and choice for patients and providers of sufficient scale and resilience to meet the challenges of the NHS England *5 Year Forward View*.
- It has met formal regulatory tests and is compliant with NHS Transaction guidance

The enlarged Trust will focus on clinical leadership to drive the delivery of clinical and quality benefits across both sites

- It will allow improved career development for staff, improving our retention rates and continuity of services for patients.
- Ensure local access to core services and effective pathways to specialist services and greater opportunities for research and development.
- It will also provide a Board and governance structure that supports and demands the delivery of the Trust's vision and values.
- A detailed integration plan and organisational development strategy has been developed, these will be refined over the period to day 100 of any enlarged Trust.
- A robust and comprehensive risk identification and management process has been implemented and mitigation actions have been outlined to risks identified.

In the absence of the transaction, ongoing quality, financial and operational challenges provide significant and deteriorating risk to the Trust clinically and financially unsustainable in the medium term

- Increasing quality, financial and operational pressures are being placed on acute Trusts.
- CWFT, while historically successful, is at risk of becoming clinically and financially subscale as the NHS consolidates. The demands of the NHS Quality regime are rightly intensifying and CWFT has been assessed as 'Requires Improvement' even before the challenge of 7 day working is fully introduced.
- The Trust is facing declining surpluses and the very real risk of deficit in future years.
- Other elements of the Trust's strategy in respect of tertiary partnerships and Accountable (Integrated) Care would gain greater momentum and synergy if allied with the resilience and scale provided by the acquisition and the greater system influence and role in the management of the health and well-being of a wider population.

Assurance to Board Decision Making

Process for Assessment and Decision Making

The Board over the last 18 months has followed a holistic and comprehensive process to ensure that all materials risks, issues and factors related to the proposed WMUH acquisition are known, accounted for, and addressed where appropriate. The timeline below sets out the specific steps that the Board has taken:

- ✓ **Expression of Interest:** Designated as preferred bidder by WMUH following competitive process (2012)
- ✓ **Authority to Proceed:** Approval of Heads of Terms 1 setting out formal governance process (2013)
- ✓ **Board Review of Strategic Direction ("Mosaics"):** formal assessment of strategic options which prioritised acquisition as one of the enablers to CWFT strategy (March 2014)
- ✓ **Due Diligence:** the detail of this is contained below
- ✓ **Outline Business Case:** approved by the CWFT Board in May 2014. The Board then sought three additional assurances during FBC development:
 - ☐ Financial Risks → met by negotiated settlement with DH / TDA and commissioners and formally set out in Heads of Terms 2 and DH Gateway 3;
 - ☐ Competition Risks → met by approval of the proposals by the CMA in December 2014;
 - ☐ Monitor Assessment → An initial assessment and OBC Review by the regulator which indicated strategic support and approval to move to the next stage; followed by the formal FBC review and issue of Transaction Risk Rating

Due Diligence and Advisory Support

The Board has identified key risks and taken appropriate mitigating action through a series of Due Diligence (DD) exercises and has taken appropriate professional advice. The Schedule of key DD and lead advisors includes:

- ✓ Initial DD assessment to explore opportunity and ATP (Deloitte)
- ✓ Professional support to review strategic priorities and the development of Outline Business Case (BCG)
- ✓ Formal DD to support Outline Business Case 'Project Flower' (Deloitte):
 - ☐ Clinical (a bespoke exercise based on the Monitor Quality Governance guidance)
 - ☐ Finance
 - ☐ IM&T
 - ☐ Estates

☐ Legal

- ✓ Mitigating Actions and support to Board 'tests' (set out in detail in IBP):
 - ☐ Finance negotiations and development of Long Term Financial Model (Deloitte)
 - ☐ Competition (Frontier Economics)
- ✓ FBC Review:
 - ☐ Board assurance to support submission to Monitor (Ernst & Young)
 - ☐ Legal (Capsticks)
 - ☐ Series of DD 'refreshes' to ensure that the most recent information is available
 - ☐ Independent Reporting Accountant (Ernst & Young)

Commissioner Support

The Board has directed a series of formal and written agreements with commissioners to complement its more routine 'business as usual' relationship management. Completed Steps include:

- ✓ TDA & CCGs completed OBC 'vendor assessment'
- ✓ Financial settlement and Heads of Terms
 - ☐ DH and TDA funded elements for capital development and short term financial support
 - ☐ CCG & NHS England funded elements to support Integration Plan
 - ☐ Signed support for Business Case through Gateway 3
- ✓ Series of Board to Board (CWFT & CCGs) established to ensure wider relationship management
- ✓ Agreement to establish of Clinical Reference Group

The Trust's final steps with regard to commissioner engagement were as follows:

- Transaction Agreement (agreed and to be signed by all partners as part of Gateway 4);
- Shaping a Healthier Future (SaHF) assurance: NHSE and local CCGs confirmed support for transaction, key service developments and their 'fit' with wider commissioning intentions under SaHF;
- Ongoing Pathway Development (to provide clinical 'buy in' and assurance internally across the organisation and with CCG partners)
- Other service developments: bidding for out of hospital work as part of integrated care agenda and reaching into new markets enabled by the new provider footprint. The FT has won 3 contracts since approval of FBC which are unlikely to have been considered outside of the acquisition model

Patient, public and member communications and engagement activity

Date	Activity
February 2014	<ul style="list-style-type: none"> Trust news (February/March edition) West Mid Matters (February/March edition) GP Matters (February edition) Staff briefing (7 February) Hounslow CCG presentation and briefing for CCG governing body papers (24 February)
March 2014	<ul style="list-style-type: none"> Team briefings – verbal and written updates for all staff Staff briefing (7 March) CEO Update (March edition) Council of Governors meeting (6 March)
April 2014	<ul style="list-style-type: none"> GP bulletin (April/May edition) Trust news (April/May edition) West Mid Matters (April/May edition) GP Matters (April edition) CEO Update (April edition) Staff briefing (4 April) Team briefings (7-10 April) Central London CCG southern locality meeting (8 April) Ealing CCG presentation (23 April) Wandsworth CCG management team meeting (30 April) Richmond CCG update meeting (30 April) CWFT board meeting (24 April)
May 2014	<ul style="list-style-type: none"> NHS England briefing (as part of regular schedule throughout May) West London CCG meeting (6 May) Staff briefing (10 May) Clinical Support Services Meeting (15 May) Hammersmith and Fulham CCG meeting (20 May) Women, Neonatal, Children and Young People, HIV, GUM and Dermatology services divisional meeting (20 May) Medicine and Surgery divisional board meeting (21 May) Hillingdon CCG meeting with chief officer and chair (22 May) GP Matters (May edition) CEO Update (May edition) CWFT board meeting (27 May) Council of Governors meeting (15 May)
June 2014	<ul style="list-style-type: none"> Team briefings – verbal and written updates for all staff Trust news (June/July edition) West Mid Matters (June/July edition) GP Matters (June edition) CEO Update (June edition) Staff briefing (5 June)
July 2014	<ul style="list-style-type: none"> Staff briefing (4 July) Team briefings (7-9 July) CEO Update (July edition) APM CWFT board meeting (31 July)

	<ul style="list-style-type: none"> • Council of Governors meeting (17 July)
August 2014	<ul style="list-style-type: none"> • Trust news (August/September edition) • West Mid Matters (August/September edition) • GP Matters (August edition) • CEO Update (August edition) • Staff briefing (8 August) • Team briefings – verbal and written updates for all staff (11-13 August)
September 2014	<ul style="list-style-type: none"> • Team briefings (5 September) • Royal Borough of Kensington and Chelsea Adult Social Care and Health Scrutiny Committee update (8 September) • Westminster City Council Health Overview and Scrutiny Committee written update (9 September) • Staff briefing (9-11 September) • Hammersmith and Fulham CCG governing body written update (10 September) • Wandsworth CCG governing body written update (10 September) • Governors visit to WMUH including presentation and briefing packs (10 and 15 September) • Annual members meeting (18 September) • Wandsworth Council Health Overview and Scrutiny Committee meeting written update (22 September) • CEO Update (September edition) • WMUH Hospital Open Day • Council of Governors meeting (18 September)
October 2014	<ul style="list-style-type: none"> • Trust news (October/November edition) • West Mid Matters (October edition) • GP Matters (October edition) • CEO Update (October edition) • Team briefings – verbal and written updates for all staff (3 October) • West London CCG written update (10 October) • Hounslow Health Overview and Scrutiny Committee meeting with presentation and Q&A (13 October) • Richmond Council Health Overview and Scrutiny Committee verbal update (14 October) • CWFT board meeting (30 October)
November 2014	<ul style="list-style-type: none"> • Hounslow Healthwatch board meeting (6 November) • Team briefings – verbal and written updates for all staff (7 November) • CEO Update (November edition)
December 2014	<ul style="list-style-type: none"> • Trust news (December/January edition) • West Mid Matters (November/December edition) • GP Matters (December edition) • CEO Update (December edition) • Team briefings – verbal and written updates for all staff (5 December) • Announcement on agreement of Heads of Terms (10 December) • Christmas Open Day (11 December) • Hounslow CCG board to board meeting (15 December) • Shaping a Healthier Future programme board meeting with CCG representatives (16 December) • Competition and Markets Authority clearance and press release (19 December) • Council of Governors meeting (4 December)
January 2015	<ul style="list-style-type: none"> • Team briefings – verbal and written updates for all staff (2 January) • Richmond Healthwatch meeting (8 January)

	<ul style="list-style-type: none"> • Hounslow Healthwatch meeting (20 January) • CWFT board meeting (29 January)
February 2015	<ul style="list-style-type: none"> • Hounslow Overview and Scrutiny Committee meeting (3 February) • Team briefings – verbal and written updates for all staff (6 February) • West Mid Matters (February edition) • GP Matters (February edition) • CEO Update (February edition) • CWFT board meeting (26 February) • First edition of monthly Connect newsletter for all staff
March 2015	<ul style="list-style-type: none"> • Integration news – weekly e-bulletin – launches at West Mid • CWFT board meeting (26 March) • Council of Governors meeting (5 March) • Kensington and Chelsea constituency meeting (25 March) • Message on integration goes up on both trust websites (27 March) • Connect newsletter for all staff
April 2015	<ul style="list-style-type: none"> • 4x Integration news e-bulletins at West Mid • Letter to all key stakeholders across both trust catchments advising of delay to transaction date • CWFT board meeting (30 April) • Westminster constituency meeting (22 April) • Connect newsletter for all staff • All staff survey on Connect newsletter launched
May 2015	<ul style="list-style-type: none"> • RBKC health OSC written update • Wandsworth Council Health scrutiny committee • Hounslow and Richmond CCG management team meetings • 4x Integration news e-bulletins at West Mid • CWFT board meeting (26 May) • Council of Governors meeting (14 May) • Wandsworth constituency meeting (19 May) • CWFT Open Day (9 May) • Connect newsletter for all staff • Branding workshops begin
June 2015	<ul style="list-style-type: none"> • Hammersmith and Fulham Health and Adult Social Care Scrutiny Committee • Westminster City Council Health Scrutiny Committee • Richmond Health OSC (29 June) • 4x Integration news e-bulletins at West Mid • GP Matters (June edition) • CWFT board meeting (25 June) • Hammersmith and Fulham constituency meeting (16 June) • Joint Chief Executive briefings at both sites (10 & 19 June) • Branding workshops end • Connect newsletter for all staff
July 2015	<ul style="list-style-type: none"> • Health, Adult Social Care and Social Inclusion Policy and Accountability Committee (7 July) • RBKC Health Scrutiny Committee meeting (1 July) • Hounslow Health OSC (27 July) • Hounslow Health and Wellbeing Board (30 July) • 4x Integration news e-bulletins at West Mid • Patient information stand set up at West Mid to explain the integration and support membership drive • CWFT board meeting (27 July)

	<ul style="list-style-type: none"> • Joint Chief Executive briefings at both sites (2, 10 & 17 July) • Membership drive message goes up on West Mid website • Hammersmith and Fulham Older Peoples' Consultative Forum (14 July) • Westminster Health Scrutiny briefing (25 July) • Connect newsletter for all staff • All staff survey on communications approach and website launched • Websites and intranet workshops take place • West Mid meeting with Richmond and Hounslow Healthwatches
August 2015	<ul style="list-style-type: none"> • Clinical/patient benefits video posted on both trust websites • Manager's briefing pack distributed (pending HR workstream) • Commemorative editions of Trust News and West Mid Matters • 4x Integration news e-bulletins at West Mid • Patient information stand manned by governors and members of West Mid exec and comms teams on daily basis • Patient information leaflet created for use in final month to integration – to be updated after 1 September for first 100 days • Healthwatch Hounslow to include integration information in their newsletter and e-comms (awaiting same for Richmond) • North west London CCGs to include integration information in their communications to GPs and other stakeholders • Joint Chief Executive briefings at both sites (17 & 27 August) • Connect newsletter for all staff

Chelsea and Westminster Hospital NHS Foundation Trust

Resolution of the Council of Governors

11 August 2015

1. BUSINESS OF THE MEETING

- 1.1 In accordance with its general powers exercisable under section 47 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) (the “**Act**”), Chelsea and Westminster Hospital NHS Foundation Trust (the “**Trust**”) are proposing to acquire West Middlesex University Hospital NHS Foundation Trust (“**WMUH**”) (the “**Proposed Transaction**”).
- 1.2 In accordance with the terms of a transaction agreement setting out key steps in the acquisition and the related funding arrangements (the “**Transaction Agreement**”), the acquisition of WMUH is subject to the approval of a majority of the Council of Governors.
- 1.3 The Chairman reported that the purpose of the meeting was:
- (a) to consider and approve the Proposed Transaction;
 - (b) to consider the Documents (as defined below); and
 - (c) (if deemed fit) to approve:
 - (1) the Proposed Transaction; and
 - (2) entry by the Trust into the Transaction Agreement.

2. DOCUMENTS PRODUCED TO THE MEETING

- 2.1 The following documents were produced to the meeting:
- (a) a summary report on the Proposed Transaction prepared by the chief executive officer; and
 - (b) a summary of the report from the Independent Reporting Accountant.
- (together, the “**Documents**”).
- 2.2 The meeting also viewed a video presenting the clinical benefits of the Proposed Transaction.

3. KEY CONSIDERATIONS FOR THE COUNCIL

- 3.1 In considering the approval of the Proposed Transaction the Council considered the Documents and:
- (a) its responsibilities under the Act, including its responsibilities in paragraph 10(A) of schedule 7 which provides that the general duties of the Council of Governors are:
 - (1) to hold the non-executive directors individually and collectively to account for the performance of the board of directors; and
 - (2) to represent the interests of the members of the corporation as a whole and the interests of the public.
 - (b) Monitor’s guidance “Your statutory duties: A reference guide for NHS foundation trust governors” published in August 2013; and
 - (c) the thorough and comprehensive consideration of the Proposed Transaction undertaken by the board of directors of the Trust (supported by relevant legal and financial professional advisers) including by:

- (1) completion of the legal and financial due diligence processes;
- (2) taking account of:
 - 1. Monitor's assessment of the risks of the Proposed Transaction:
and
 - 2. the interests of the members and the public.

4. RESOLUTION

- 4.1 Having carefully considered the Proposed Transaction including (without limitation) each of the Documents set out at paragraph 2 above and the matters set out in paragraph 3 above,

IT WAS RESOLVED to:

- (a) approve the Proposed Transaction; and
- (b) approve entry by the Trust into the Transaction Agreement in the light of, and subject to, approval of that document by the Trust's Board of Directors.

Signed on behalf of the Council: _____

Position: _____

Date: _____