

To: The Board

For meeting on: 24 May 2018

Agenda item: 6

Report by: Kathy McLean, Executive Medical Director and Chief Operating Officer

Report on: Update on actions taken in response to Independent review into Liverpool Community Health NHS Trust

Summary

1. At NHS Improvement's March Board meeting the Chief Executive proposed a series of actions that NHS Improvement would take in response to the recommendations of the Kirkup report into issues at Liverpool Community Health NHS Trust (LCH). At this meeting, the Chief Executive emphasised that NHS Improvement's actions must have lasting impact and give us confidence that we can avoid a similar situation ever occurring again. The Board accepted all of Dr Kirkup's recommendations and the actions proposed in response.
2. This paper provides an update on each of these actions. Separate papers will be presented in the private session of this Board meeting to discuss specific workstreams in more detail, including those relating to talent management and board appointments; the key points of these papers are summarised below.
3. The Board is asked to note and provide comments on the actions proposed and underway.

Update on actions agreed at NHS Improvement's March Board meeting

Trust appointments

Recommendation 1: In approving trust board appointments, NHS Improvement should take note of the level of experience of appointees and level of risk in the Trust, and should ensure a system of support and mentorship for Board members where indicated. **Action: NHS Improvement.**

Action agreed in March: The Chief Executive agreed to review NHS Improvement's role in board appointments in light of Dr Kirkup's findings, and to report back with recommendations at this Board meeting.

4. The Chief Executive will present a paper in the private session of this Board meeting to review NHS Improvement's role in board appointments and has previously stated his belief that NHS Improvement should be playing a greater role in board appointments, as part of work on a broader Talent Management strategy, which is also being discussed by the Board today.

Action agreed in March: NHS Improvement will work with other national bodies, including Health Education England and NHS Leadership Academy, to develop an ambitious talent management and professional development offer for the provider sector. The Board supported the proposed ambition to make substantial progress towards building a scale operation by the end of 18/19. We have brought a detailed proposal to this meeting.

5. The Chief Executive will present a paper that summarises the current status of talent management in the NHS, and proposes a greater role for NHS Improvement in this area, as well as a high-level structure for a more coherent, system-wide, approach to the development and management of top talent in the NHS. The paper proposed that NHS Improvement should play a leadership role in developing an integrated strategy for the management of very senior talent in the NHS, which should consider career pathways, appointments, performance management and support / rehabilitation.

Assessing the risk facing trusts

Recommendation 2: In assessing the level of risk facing a trust, regulators and oversight organisations should take into account the cumulative impact of relevant factors, including a newly established organisation, inexperienced board, cost improvement targets and service acquisitions. **Action: Care Quality Commission (CQC), NHS Improvement, NHS England.**

Action agreed in March: NHS Improvement will work with other national organisations to conduct exercises that 'stress test' our current oversight approach against a range of scenarios. We will use the findings of these exercises, which will be complete by **autumn 2018**, to improve our approach to assessing risk.

6. Jeremy Marlow, Executive Director of Operational Productivity, is taking this action forward and designing a series of scenarios that would test our current oversight approach and our ability to identify and respond to a range of potential issues in the provider sector.
7. The scenarios will draw on issues we have already faced, as well as risks identified through conversations with a number internal and external

stakeholders. The exercises will likely take the form of facilitated workshops with senior NHS Improvement staff, and counterparts in other arm's length bodies. In undertaking this work, the team will draw on CQC and Public Health England (PHE) expertise in scenario modelling and testing.

8. The next step will be for a working group formed of CQC, PHE, NHS Improvement national and regional colleagues and sector leaders to agree a set of scenarios and to conduct the first exercise in the next few weeks. I will report back to the Board on key findings and any actions NHS Improvement or partner organisations should take as a result.

Action agreed in March: Based on our judgement of organisational risk, and the credibility of proposed savings, NHS Improvement will seek additional assurance, where appropriate, that robust and clinically-led processes have been followed in the development of cost improvement plans.

9. NHS Improvement is providing close support and challenge to trusts as they develop and finalise their operational plans for 2018/19. In particular, we are focusing on ensuring that savings plans are credible and conducive to safe, high quality care, and the executive team collectively are reviewing and providing challenge on operational plans through a series of 'star chamber' meetings. During these meetings, the team will be considering, on a system-by-system basis, whether provider plans as submitted allow for a reasonable and realistic level of patient activity and align with corresponding commissioner plans.
10. Efficient use of NHS resources and high quality care for patients are closely linked, and NHS Improvement's Model Hospital portal and Getting It Right First Time programme will help trusts to develop credible efficiency plans that enable the delivery of high quality care.

Action agreed in March: NHS Improvement's regional teams are conducting a rapid review of the level of experience and risk in community trusts. Based on the findings of this review, NHS Improvement will take any action required to support specific providers, and will also consider whether any changes are needed to our business-as-usual support for the community sector.

11. Regional teams conducted a rapid review of the level of risk and experience in community trusts, where in the vast majority of cases no significant issues were raised. Where higher levels of risk were identified, for example where community trust leadership was new to post, NHS Improvement's regional teams continue to monitor and provide support in the interests of patients.
12. However, as we have discussed previously, data relating to community services is generally poorer than for other service types (eg acute, or ambulance), and it is consequently harder to build a balanced picture of risk. Together with the Chief Executive, I propose undertaking a more in-depth, data-led review of the level of experience and risk in community trusts. This exercise should be based on a set of consistent, measurable criteria (for example, CQC inspection findings, staff

survey results, gaps in senior leadership positions, incident reports) and – along with the forthcoming recommendations from Lord Carter’s work on Operational Productivity – should inform changes to our oversight and support model for community trusts.

Joint working between oversight organisations

Recommendation 3: Regulators and oversight organisations should review how they work together jointly at regional and national level, and implement mechanisms to improve the use of information and soft intelligence more effectively. **Action: Care Quality Commission, NHS Improvement, NHS England.**

Actions agreed in March: The formal programme of work with NHS England will continue at pace over the **spring and summer of 2018** and the Chief Executive will update the Board on progress in **May**.

13. A paper has been presented to the NHS England and NHS Improvement Boards to update them on next steps in our formal programme of work with NHS England.

Action agreed in March: NHS Improvement’s programme to transform its business systems will launch in **April 2018** and the first changes will be delivered by **late July**.

14. NHS Improvement’s programme to transform its business systems is on track to deliver against this timeline.

Recommendation 4: Regulators and oversight organisations should ensure that during both local and national reorganisations and reconfigurations, performance and other service information is properly recorded and communicated to successor organisations. **Action: Care Quality Commission, NHS Improvement, NHS England.**

Action agreed in March: Our work with NHS England to develop a more integrated approach to regional oversight will address the need to ensure relevant information is passed on to successor organisations locally.

15. I refer to paragraph 13 above, describing the joint working paper which has been presented to the NHS England and NHS Improvement Boards.

Action agreed in March: NHS Improvement will review its standard operating procedures for its regulatory support committees to ensure information is collected and codified in a way that supports timely and effective transfer in the event of any changes to national functions.

16. NHS Improvement’s governance team has reviewed the information management and record-keeping arrangements for all formal decision-making

committees and confirmed that these meet best practice. I am confident in NHS Improvement's ability to transfer formal records in the event of changes to national functions. The stress-testing exercises described above will also specifically consider the possibility of national and local reorganisation.

17. NHS Improvement's teams also hold a significant amount of management information and 'soft' intelligence that informs our day-to-day business as usual. Our programme of work to define how we can work more closely with NHS includes a workstream to undertake work to ensure there are processes for the auditable, secure and robust transfer of all data, intelligence, records and knowledge in the event of any change in the way national / regional functions are organised.

Reviewing the handling of Liverpool Community Health NHS Trust incidents

Recommendation 6: Organisations taking on former Liverpool Community Health NHS Trust (LCH) services should review the handling of previous Serious Incidents to ensure they have been properly investigated and lessons learned.

Action: Trusts providing former LCH services.

Action agreed in March: NHS Improvement is providing advice to the provider that has to date taken on the most former LCH staff (Mersey Care), to commission and conduct an independently-led review into previous Serious Incidents. We will continue to work with them as the review develops. Based on the findings of the review, NHS Improvement will support the trust, through our various improvement offers, to focus improvement activity on areas of greatest concern.

We will advise other trusts that have taken on former LCH services to take similar action and will support trusts with this.

Recommendation 7: Organisations taking on former LCH staff as part of service transfers should review the handling of disciplinary and whistleblowing cases urgently to ensure that they have been properly and appropriately resolved. These organisations should ensure that staff are not placed back into working relationships previously the subject of bullying and harassment. **Action: Trusts providing former LCH services.**

Action agreed in March: The provider that has to date taken on the most former LCH staff has confirmed its intention that an independent practitioner will undertake a review of whistleblowing records. For disciplinary investigations, this provider intends to commission an independent HR practitioner to review these. For both issues, we will ask other trusts that have taken on former LCH services to take similar action and will support trusts with these reviews.

NHS Improvement will work with all relevant providers to ensure that staff have appropriate channels to raise grievances and disciplinary cases that may not be identified as part of this exercise, and to ensure these cases are reviewed. We

will support the trusts to ensure that no individuals are placed in inappropriate working relationships and will ensure that staff can raise concerns on an ongoing basis.

18. NHS Improvement has written to all providers of services previously provided by Liverpool Community Healthcare to provide detailed guidance on the implementation of recommendations six and seven from the Kirkup report. It is important that all organisations undertake these investigations to the same standard and the letter described what we would expect from an investigation, and our expectations regarding implementation and assurance.
19. We have asked providers to share with us the outcomes and evidence gathered as part of the reviews, including their board reports, by the end of July, and report back on actions they have taken. The reviews are well under way. For instance, Mersey Care (the trust that provides the majority of former LCH services) has set up a Board sub-committee and programme management office dedicated to ensuring implementation of the Kirkup recommendations.
20. NHS England and NHS Improvement have contributed £3.1 million to Mersey Care to enable them to engage external support to undertake the reviews and additional capacity to implement improvements in former LCH services in 2018/19. These reviews are now underway and the results will be shared with NHS Improvement by the end of July.
21. NHS Improvement's regional and national teams are in regular contact with the providers, and are currently actively supporting two of them directly. We will formally review the support we are offering to these providers in August, when the outcomes of the reviews are known.
22. In addition to the guidance and support offered in writing by NHS Improvement in April, my team is meeting with Mersey Care and other trusts inheriting Liverpool Community Health services (as appropriate depending on responses to the letter described above) to follow up on the implementation of the Kirkup recommendations, and provide any further support required.

Reviewing the safety and effectiveness of former LCH services

Recommendation 8: Reconfigured LCH services should be reviewed after a year to ensure that the services are now safe and effective. **Action: NHS Improvement, NHS England.**

Action agreed in March: The Chief Executive agreed with Dr Kirkup that a review of the relevant services will take place by 31 March 2019, using the joint quality oversight infrastructure established since the period covered by his report. The Chief Executive also committed to publishing the results of this work so that the public can be assured of the safety and efficacy of these services.

23. NHS Improvement is working with Mersey Care, NHS England and CQC to agree how the review of safety and effectiveness of the services should be

undertaken. The final approach will be agreed in the summer.

Recommendations where NHS Improvement will support other organisations

Recommendation 5: The Department of Health should review the working of the Care Quality Commission fit and proper persons test, to ensure that concerns over the capability and conduct of NHS executive and non-executive directors are definitively resolved and the outcome reflected in future appointments. **Action: Department of Health.**

24. The Department of Health and Social Care is taking forward this action and has shared with us the draft terms of reference for this work. We will engage closely with the Department throughout the work; in particular, we collectively need to understand how a revised process would be implemented on in practice, and consider our oversight role in this regards.

Recommendation 9: Health services in HMP Liverpool should be subject to urgent review to ensure that future arrangements are fit for purpose and will be effectively monitored. **Action: NHS England.**

Recommendation 10: NHS England should review the arrangements for commissioning prison health services nationally to ensure that these are safe and effective. **Action: NHS England.**

25. NHS England is taking forward the implementation of these recommendations, working closely with NHS Improvement to shape a coherent support offered to all healthcare providers.

Next steps

26. I recommend the Board approves the proposed actions above. NHS Improvement teams will work with partners to progress the actions and a further update will be provided at the next Board meeting.