

To: The Board

For meeting on: 26 July 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, and follows a similar paper presented at the May Board meeting. 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

3. The actions where NHS Improvement is playing a leading role fall into five categories. Progress against each of Dr Kirkup's recommendations can be summarised as follows:
 - a. Trust appointments and talent management: The Chief Executive presented two papers in the private session of the May Board meeting outlining, respectively, how NHS Improvement could play a greater role in (i) board appointments and (ii) talent management. The Board accepted the recommendations and work is underway to take these actions forward. However, some aspects of the proposals are dependent on our work with NHS England to develop a new, jointly-delivered, operating model. This brief will be a central element of the new Chief People Officer role.

- b. Assessing the risks facing trusts: NHS Improvement is undertaking a number of actions in this area. Our executive team provided close support and challenge to trusts to finalise their operational plans for 2018/19, focusing on ensuring that savings plans were credible and conducive to safe, high quality care. Earlier in the year, regional teams conducted a rapid review of the level of risk and experience in community trusts. In the vast majority of cases no significant issues were raised. NHS Improvement is also undertaking two further pieces of work to identify risks in the community sector and wider provider sector.
 - c. Joint working between oversight organisations: Our formal programme of work with NHS England is continuing at pace. An update on this programme of work is being presented today in the private session of the NHS Improvement Board.
 - d. Reviewing the handling of Liverpool Community Health NHS Trust incidents: NHS Improvement will shortly receive information from organisations taking on former Liverpool Community Health NHS Trust services relating to the handling of previous Serious Incidents, disciplinary and whistleblowing cases. Our teams will review information during August and will report to the Board in September.
 - e. Reviewing the safety and effectiveness of former LCH services: The Chief Executive agreed with Dr Kirkup that a review of the relevant services will take place by 31 March 2019. 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 later this summer.
4. A detailed progress update against each action is provided in an appendix to this paper.
5. In response to Dr Kirkup's review Steve Barclay, Minister of State for Health, wrote a letter to Baroness Dido Harding, Chair of NHS Improvement and Professor Sir Malcolm Grant, Chair of NHS England, requesting that NHS Improvement "clarify the circumstances under which roles were found or facilitated for individuals identified in the report as bearing some responsibility for the issues at the Trust." In response to this letter, NHS Improvement commissioned an independent investigation, which is published alongside this paper.

Next steps

6. I recommend the Board note the progress on each action described in detail below. NHS Improvement teams will work with partners to progress the actions and a further update will be provided at the next Board meeting.

Appendix: Detailed progress update

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	Progress update	Status
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.	<p>The Chief Executive presented a paper in the private session of the May Board meeting outlining how NHS Improvement might play a greater role in board appointments, as part of work on a broader Talent Management strategy.</p> <p>Following this discussion, our team is scoping a more detailed programme of work that will ultimately fall within the remit of the jointly-appointed Chief People Officer.</p>	On track, dependency on joint working programme
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.	<p>The Chief Executive presented a paper in the private session of the May Board meeting outlining a high-level structure for a system-wide, approach to the development and management of top talent in the NHS, and a role for NHS Improvement in this. These recommendations were accepted by the Board and our team, working with HEE and other partners, are beginning to take these forward.</p> <p>Roll-out of regional talent boards is underway, led by NHS Leaders Academy (NHSLA). The Midlands and East board has met several times, and NHSLA plan to have all regional talent boards 'up and running' by Q4 2018/19. Progress is also being made on several other fronts.</p> <p>More fundamentally, our work with NHS England to develop a new, jointly-delivered, operating model will explicitly consider the role that our</p>	On track, dependency on joint working programme

	two organisations should play in talent management and professional development and this brief will be a central element of the new Chief People Officer role.	
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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	Progress update	Status
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.	Following some initial planning discussions with regional colleagues and others, we will be running regional exercises to stress test our approach to oversight. These exercises will bring together our senior team, along with colleagues from across the local health system (STP, CQC, PHE) to evaluate a recent scenario against previously available information, to try to identify where risks could have been identified earlier and support given to the trust.	Not yet underway
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.	<p>NHS Improvement provided close support and challenge to trusts to finalise their operational plans for 2018/19, focusing on ensuring that savings plans were credible and conducive to safe, high quality care. The executive team collectively reviewed and provided challenge on operational plans through a series of 'star chamber' review meetings. As a result of these reviews, feedback was given to trusts about their plans in a letter to Chairs and Chief Executives and some took the opportunity to reflect this feedback in revised submissions.</p> <p>The requirement remains for the Medical Director and Nurse Director of each trust to sign off the quality impact assessments on each cost improvement programme. Cost improvement programmes receive a high degree of scrutiny in-year as part of the oversight process with</p>	Completed

<p>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.</p>	<p>trusts.</p> <p>Regional teams conducted a rapid review of the level of risk and experience in community trusts in March. In the vast majority of cases no significant issues were raised.</p> <p>NHS Improvement is also undertaking two further pieces of work to identify risks in the community sector, and wider provider sector:</p> <ul style="list-style-type: none"> - The Executive Medical Director and Executive Director of Nursing are leading an organisation-by-organisation review of soft intelligence to identify if there are any early signals that quality is at risk. The outcome of this exercise will be presented to the Board in September. - Secondly, we are undertaking a detailed review of risk in standalone community providers, building on the rapid review of the level of experience and risk in community providers, which I described in my May update to the Board. Our policy team is collating a comprehensive dataset and will then work with regional leads to form a judgement on risk, which will be collated and reported to the Board by September. 	<p>On track</p>
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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.**

Action agreed in March	Progress update	Status
<p>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</p>	<p>An update on this programme of work is being presented in the private session of the NHS Improvement Board today.</p>	<p>On track</p>

progress in May.		
NHS Improvement's programme to transform its business systems will launch in April 2018 and the first changes will be delivered by late July.	NHS Improvement's programme to transform its business systems is on track to deliver against this timeline.	On track

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	Progress update	Status
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.	An update on this programme of work is being presented in the private session of the NHS Improvement Board today.	On track
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.	Following a review by NHS Improvement's governance team, I am confident in NHS Improvement's ability to transfer formal records in the event of changes to national functions. Our joint working programme will 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.	On track

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.**

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	Progress update	Status
<p>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.</p> <p>We will advise other trusts that have taken on former LCH services to take similar action and will support trusts with this.</p>	<p>I provided an update to the Board on this action in May and described action that NHS Improvement had taken to ensure that the relevant organisations undertake the proposed investigations to the same standard. I also noted that:</p> <ul style="list-style-type: none"> - We 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. - NHS England and NHS Improvement contributed additional funding to Mersey Care to enable them to engage external support to undertake the reviews and additional capacity to implement improvements in former LCH services. These reviews are now underway and the results will be shared with NHS Improvement by the end of July. 	<p>On track</p>
<p>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</p>	<p>My team will review this information during August and will report to the Board in September. NHS Improvement's regional and national teams are in regular contact with the providers. We will formally review the support we are offering to these providers in August, when the outcomes of the reviews are known.</p>	

<p>support trusts with these reviews.</p> <p>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.</p>		
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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	Update	Status
<p>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.</p>	<p>As noted in May, 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 later this summer.</p>	<p>On track</p>

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.**

Action agreed in March	Update	Status
The Department of Health and Social Care (DHSC) is taking forward this action.	DHSC has engaged Tom Kark QC to conduct a review of the effectiveness and operation of the fit and proper person test as it is applied within the NHS. The review will consider the scope, operation and purpose of the fit and proper person test as a means of specifically preventing the re-deployment or re-employment of senior NHS managers where their conduct has fallen short of the values of the NHS. NHS Improvement is engaging closely with the Department throughout this work.	On track

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.**

Action agreed in March	Update	Status
NHS England is taking forward the implementation of these recommendations.	NHS Improvement will support NHS England as appropriate.	n/a

Independent review into Liverpool Community Health NHS Trust: Oversight Arrangements: Findings

1. Introduction

This report has been produced in response to the letter dated 20 February 2018 from Steve Barclay, Minister of State for Health, to Baroness Dido Harding, Chair of NHS Improvement (NHSI) and to Professor Sir Malcolm Grant, Chair of NHS England. The letter refers to the independent review into Liverpool Community Health NHS Trust (LCH) carried out by Dr Bill Kirkup CBE (the Kirkup report) and requests that NHSI “clarify the circumstances under which roles were found or facilitated for individuals identified in the report as bearing some responsibility for the issues at the Trust.”

In response to this letter, NHSI commissioned an external investigator to conduct this investigation. The investigation was undertaken by Susan Newton, a senior HR professional with extensive experience of HR investigations at senior levels.

2. Method

The following people were interviewed:

Name	Role in 2014	Current role
Lyn Simpson	NHS Trust Development Authority (TDA) Director of Delivery and Development (North)	NHSI Executive Regional Managing Director (North)
Ralph Coulbeck	TDA Director of Strategy	Barts Health NHS Trust Director of Strategy
Maria Robson	TDA Head of HR	NHSI Head of Trust Resourcing
David Eccles	TDA HR Associate	NHSI HR Associate

David Flory, who was CEO of the TDA from its establishment in 2013 until March 2015, currently works abroad and responded to questions sent to him concerning the removal of LCH’s CEO, Bernie Cuthel.

Susan Newton reviewed relevant documents provided by Lyn Simpson.

Susan Newton also met Rosie Cooper MP to explain what she had been engaged to do and to further her understanding of the circumstances relating to LCH.

3. Context

In the period between 2011 to 2013:

- Community Health Trusts were established,
- Strategic Health Authorities and Primary Care Trusts were disbanded,
- Clinical Commissioning Groups were created, and
- the NHS TDA was established to oversee the performance management and governance of NHS Trusts and to oversee their progress towards achieving NHS Foundation Trust status. Overall, the TDA had oversight of around 100 organisations, many of which were among the poorest performing Trusts in England at that time. This was a challenging responsibility for a newly created organisation.

As noted in the Kirkup Report “The external management and regulatory framework was, and remains, complex. During the period covered by the Review, organisational structures changed radically and responsibilities moved to new organisations.” It is in this context that the TDA engaged with LCH.

4. Background

One of the ways in which the TDA helped Trusts was by supporting them in the recruitment, training and development of CEOs, Chairs and Non-Executive Directors (the TDA has a statutory role to appoint Non-Executives). The TDA would also support Trust Boards, where for any of a variety of reasons, the Directors and/or Non-Executives were not functioning appropriately nor positively impacting on Board effectiveness and, to support Trust performance. This was a role which had previously been performed by the SHAs and which was continued by the TDA. In essence, if there were issues between a CEO and Chair, or indeed any other director, or if there were capability issues, the TDA would support the Trust in either exiting the individual from the organisation or help to find a more suitable alternative role, usually a secondment, for the individual or individuals concerned. Where the TDA sought to find an alternative role, David Eccles and Maria Robson brokered the arrangements.

In April 2013 accountability for LCH moved to the TDA. The Trust was categorised as a “low risk” Trust: and at this point there were no concerns identified by the wider health system in regard to clinical safety and care. As a matter of course, the TDA directors and the Trust Board had regular meetings through that year and there was no indication of serious problems within the Trust.

David Flory became CEO of the TDA on its establishment. Lyn Simpson joined the TDA in October 2013. At the time of her arrival no issues or concerns regarding LCH were brought to her attention. However, on 27 January 2014, LCH received

two reports and warning notices from the Care Quality Commission. On 5 February 2014 Rosie Cooper MP wrote to David Flory referring to the CQC reports, identifying additional concerns about LCH and questioning the Board's role in relation to these issues. From this point David Flory and Lyn Simpson realised that enhanced scrutiny and intervention were required and they set about putting the necessary support in place. This included a Quality Summit attended by the NHS Area Team, Commissioners and Regulators where the draft Trust action plan was discussed. Subsequently, the TDA's role included monitoring delivery of the action plan.

Where it was deemed appropriate, the TDA engaged with Trusts to make changes to the senior management team. Senior post holders would be moved where there was a loss of trust and confidence, questions of capability or where the style of the incumbent no longer suited the circumstances of the organisation. For example, a different kind of CEO might be needed in a turnaround situation from that required for a provider in a steady state. In these circumstances, the TDA could facilitate secondments, usually of up to 12 months, during which time the individuals would endeavour to find themselves permanent roles either within or outside the NHS.

It was stressed by all those interviewed that secondments would not be offered where there was clear evidence of serious performance issues or misconduct as these should be dealt with through a disciplinary process.

The use of secondments to facilitate the movement of senior staff was not without its critics but was considered to be an appropriate response in cases where an individual had simply been in the wrong place at the wrong time in their career or had been promoted too quickly to cope with the demands of their role. Once moved they could be re-assessed and, if appropriate, could be supported and mentored in a less high profile role. This approach enabled the NHS to retain people who went on to perform well in other roles and importantly, complied with DH guidance. This stated that no senior executive could leave a provider without working their contractual notice. The TDA was under a great deal of scrutiny from the DH at this time and, while pay in lieu of notice was an option if it was contractual, the preference was always to try and ensure that notice periods were worked as this is better value for taxpayers; therefore, the pragmatic solution was to move an underperforming executive to another position for the duration of their notice period.

There were other mechanisms for removing poor-performing staff and the secondment of staff was only one option. However, the suspension, disciplining and dismissal of a director is usually a long and challenging process for the organisation concerned. If a decision of dismissal is not the result of such disciplinary action, Board relationships are damaged to the extent that inevitably resignations occur and destabilise the situation further. In summary, all of the individuals interviewed believed that the TDA offered a pragmatic approach to executive staffing issues.

5. Findings

One senior executive in LCH was moved to another role in the NHS by the TDA, namely, the Trust's former CEO, Bernie Cuthel, and the circumstances are explained below.

From the TDA's perspective, the LCH was considered to be a low risk Trust and it was not until the CQC reports in January 2014 and Rosie Cooper's communications that David Flory and Lyn Simpson realised this was not the case. In response, the TDA began a review of LCH and instigated a governance review, conducted by Sir Ian Carruthers OBE, which was notified to Bernie Cuthel, LCH CEO, by David Flory on 19 February 2014. It appears that Bernie Cuthel and Frances Molloy resented what they considered to be unjust and unwelcome interference and criticism stemming originally from Rosie Cooper.

On 1 March 2014 Lyn Simpson sent an email to Frances Molloy raising questions about various staff surveys and follow up actions and a grievance that had been raised against Bernie Cuthel. Up to this point, the Chair of LCH, Frances Molloy, had been supportive of the CEO although, even before this evidence had come to light, David Flory had come to doubt Bernie Cuthel's competence to operate as a CEO, based on his interactions with her. He did not, however, think the evidence available at that time amounted to gross misconduct, and held the view that Frances Molloy was blind to the CEO's failings. Frances Molloy's response to Lyn Simpson's email was that the surveys and action plans had not been presented to the Board and that she was unaware of the grievance, subsequent investigation of which gave her cause for concern regarding the process followed. The Chair had also been unaware of a survey conducted by the Unions on bullying and harassment in the Trust, the findings of which were reported to the CEO and HR Director in April 2013, until Bernie Cuthel had referenced it at the Quality Summit on 18 February 2014.

At this point, it appears that the LCH Chair and Non-Executives began to feel that the Executives had been keeping information from them and the governance review, published on 24 March 2014, crystallised their view that there were significant issues with the leadership of the organisation leading to a loss of trust and confidence in the CEO. The TDA's priority at this time was to act decisively to bring in a new interim CEO with the experience and capability to fix the problems.

On 10 April 2014 in a meeting attended by David Flory, Lyn Simpson and Frances Molloy, it was agreed that the CEO's position was untenable based on concerns arising from the:

- a. governance arrangements in relation to the management of a grievance;
- b. governance and handling of issues relating to the Director of Nursing, and
- c. complaints and issues relating to bullying and harassment arising out of the CQC visit and its outcome.

At the same meeting a discussion took place on the options available to the Board to ensure effective leadership of the Trust. This meeting was followed up by a meeting of the Chair and Non-Execs on 14 April 2014. After this meeting, Frances Molloy met Bernie Cuthel and presented two options to her:

1. to tender her resignation and receive three months' notice pay, or
2. stay and the Trust would instigate procedures based on her capability and performance.

Bernie Cuthel tendered her resignation on 6 May 2014 as the result of a secondment having been identified for her at Manchester Mental Health Trust (MMH). The secondment, which was identified by Lyn Simpson, was brokered by Lyn, David Flory and David Eccles, with Lyn being the main contact for Michele Moran, the CEO of MMH.

Bernie Cuthel started her secondment to MMH on 12 May 2014. A letter from Michele Moran to Lyn Simpson dated 15 May 2014 confirms that MMH and its Chair were aware of the circumstances behind Bernie Cuthel's resignation from LCH and were prepared to offer her a temporary role at the Trust.

The terms of the agreement have been explained to Susan Newton by Lyn Simpson and David Eccles, as the documents are no longer available to review. In summary they were as follows:

- Bernie Cuthel would be paid for the 3 months of her secondment by LCH, at the end of which her contract would be terminated
- She would then take a break in service during which time she would not be employed by either Trust and would thus lose her employment rights,
- Following the break in service, Bernie Cuthel would join MMH on a 9 month fixed term contract paid for by MMH.

Bernie Cuthel left MMH to join another NHS organisation before the end of her fixed term contract. The TDA were not aware of this at the time and were not involved in the move.

6. Conclusion

Responsibility for LCH had moved to the TDA in April 2013 and it had been identified as a low risk Trust: indeed it had been identified as being on track for Foundation Trust status. The TDA and the CQC assess Trusts from different perspectives but it is the case that issues raised by one regulator will often presage problems in the other's area of responsibility. Thus it was that in early 2014, as a result of the CQC inspections, it became clear to the TDA that there were serious issues in LCH and, as time went on, that some of these issues had been kept from the Chair and Non-

Execs by the CEO and some, if not all, the Executives. As more evidence came to light, David Flory, Lyn Simpson and, apparently reluctantly, the Chair, reached the view that Bernie Cuthel was at the root of some of the issues and that her position was untenable. Two options were identified - either a disciplinary process undertaken by the Trust or Bernie Cuthel would resign and be found an alternative, temporary position in the NHS which would better suit her skills and abilities.

Organisations are always reluctant to discipline their CEO and generally will only do so if they feel they have cast iron evidence of gross misconduct because anything less puts the Chair and the Directors in a very difficult if not wholly untenable position with regards to any ongoing relationship with the CEO.

The timing of the decision to remove Bernie Cuthel was triggered by emerging evidence of problems in the Trust and her denial of personal responsibility. It was believed that the Directors of Nursing and Human Resources were a large part of the problem but she was ultimately accountable. The TDA intervened despite some resistance from Frances Molloy. Subsequently, when further details emerged of the culture at the Trust when Bernie Cuthel was CEO, the TDA appreciated that her failings and inexperience were not appropriate for a senior public service leader. Had such clear evidence been available when the secondment was being arranged the TDA would probably have handled the situation differently. The decision to offer Bernie Cuthel the opportunity to resign was taken based on the facts known at the time and after consideration and discussion of what was best for LCH and the patients it served. The decision was made that suspending and disciplining the CEO was not in the best interests of the Trust and a swift departure of its CEO was facilitated.

In summary, working with and through his management team and Board, David Flory took responsibility for a number of decisions regarding LCH, namely the:

- withdrawal of LCH from the Foundation Trust pipeline
- removal of Bernie Cuthel
- appointment of an interim CEO
- referral of material received via Rosie Cooper from whistle-blowers to the CQC.

Hindsight might suggest that had Bernie Cuthel been allowed to stay in post, with the evidence gained from subsequent reviews, a disciplinary process may have led to her dismissal. However, the time taken and costs involved may not have been a good use of public money and would surely have distracted from efforts to turn LCH's performance around. The findings support the view that the TDA Executives involved acted in line with guidelines and accepted practice at the time, and their decisions were made with the best interests of the Trust and its patients in mind.

Although not part of my remit, I observe from NHS Improvement's paper for the public session of its Board meeting on 22 March 2018 entitled "Response to recommendations made in the Independent review into LCH" that NHS Improvement: "will work with other national bodies...to develop an ambitious talent management and professional development offer for the provider sector". NHS Improvement states that: "This needs to include support for the recruitment, development and career progression of trust leaders; a more structured offer around mentorship for less experienced leaders; and will take account of the role that NHS Improvement should play in managing failure, distinguishing between situations where an individual should no longer work within the NHS, and those where someone can be supported to learn and make a valuable contribution." If implemented effectively, in my judgment, such a grave situation as occurred at LCH would not be allowed to develop in future and failings will be identified and addressed more quickly.

Susan Newton

16 April 2018