

**To:** The Board

**For meeting on:** 27 September 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

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## 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 and July Board meetings. 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. This brief will be a central element of the new Chief People Officer role and progress in this area therefore depends partly on our ability to recruit quickly to this role.

- b. Assessing the risks facing trusts: Since the last Board meeting, NHS Improvement has completed two pieces of work to identify risks in the community sector and wider provider sector. Papers summarising the findings of this work, and action being taken as a result, will be presented during this Board meeting.
  - 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 has received 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 are reviewing a large volume of information and will share an update with the Board shortly after this meeting; this will be followed by a formal interim report, which will be presented to the Board in November.
  - 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 outlined in the November Board meeting.
4. A detailed progress update against each action is provided in an appendix to this paper.

### **Next steps**

5. 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 May outlining how NHS Improvement might play a greater role in board appointments.</p> <p>Our team is working collaboratively with partners in NHSE and HEE to develop new talent management strategy for board level appointments. As part of this, work is underway on the development of new guidance on "Appointments to the board" to replace The NHS Foundation Trust Code of Governance. It will include best practice and give clarity about how and NHS Improvement's role in board appointments for both NHS Trusts and Foundation Trusts.</p> <p>This is part of a 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	<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 NHS Improvement's role in this. The recommendations were accepted by the Board.</p> <p>Our team, with HEE, is taking action on a number of fronts. 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</p>	On track, dependency on joint working programme

proposal to this meeting.	<p>2018/19. Our teams are also designing a National Talent Board to oversee and support the work of the Regional Talent Boards. We need to improve our data on leadership 'gaps' and we are developing a more sophisticated approach to modelling the senior talent pipeline in the NHS.</p> <p>Talent management and professional development will be a central element of the new Chief People Officer; we are currently advertising for this role.</p>	
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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
<p>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 <b>autumn 2018</b>, to improve our approach to assessing risk.</p>	<p>We will be running regional exercises to stress test our approach to oversight. The purpose of these exercises will be to consider the following questions:</p> <ul style="list-style-type: none"> <li>• What should we collectively have spotted earlier, and what would need to change to make sure that we do next time?</li> <li>• What additional information or intelligence would make it more likely that concerns are identified early in future?</li> </ul> <p>A paper will be presented to NHS Improvement's November Board meeting outlining how we will use the findings of these exercises to improve our approach to assessing risk.</p>	On track
<p>Based on our judgement of organisational risk, and the credibility of proposed savings, NHS Improvement will seek</p>	<p>As noted in my July update to the Board, 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</p>	Completed

<p>additional assurance, where appropriate, that robust and clinically-led processes have been followed in the development of cost improvement plans.</p>	<p>conducive to safe, high quality care.</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 trusts.</p>	
<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>As previously noted, 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 has also undertaken two further pieces of work to identify risks in the community sector, and the wider provider sector. The outcomes of these exercises are being discussed in this Board meeting.</p> <ul style="list-style-type: none"> <li>- The Executive Medical Director and Executive Director of Nursing have conducted an organisation-by-organisation review of soft intelligence to identify if there are any early signals that quality is at risk.</li> <li>- Our policy team has also undertaken a detailed review of risk in standalone community providers, based on a comprehensive dataset and work with regional leads to form a judgement on risk.</li> </ul>	<p>Complete</p>

**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
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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.	An update on this programme of work is being presented in the private session of the NHS Improvement Board today.	On track
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.	As previously noted, 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>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</p>	<p>I provided updates to the Board on this action in May and July 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"> <li>- We asked providers to share with us the outcomes and evidence gathered as part of the reviews, including their board reports and report back on actions they have taken.</li> <li>- 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.</li> </ul> <p>Our team has now had information from all providers of former LCH services and are in the process of carrying out detailed assurance on the information received. Further information is expected from Mersey Care, where there were a large number of cases to review. An interim report is in preparation and the team will share the position with the Board shortly after this meeting; a formal interim report will be available for the NHS Board in November.</p>	<p>Delayed, but underway</p>

<p>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.</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</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 outlined in the November Board meeting.</p>	<p>On track</p>



can be assured of the safety and efficacy of these services.		
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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 CEO and the Chair have met with Mr Kark twice to give evidence and our teams have met with various external stakeholders to inform NHS Improvement's policy position on this issue.	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