NHS
Improvement

Investigation Report: Lewisham and Greenwich NHS Trust

November 2017



1. Introduction and background

1. This report sets out the findings and recommendations from NHS Improvement's investigation into Lewisham and Greenwich NHS Trust's (the trust's) decision to accept its 2017/18 control total, and wider financial governance concerns.

2. As a result of the trust's significant and increasing underlying deficit, calculated by the trust to be £70.2m at the end of 2016/17, it became a participant of the Financial Improvement Programme (FIP) in February 2017 and is being supported by EY.

3. The trust accepted its 2017/18 control total to deliver a deficit of £22.8m (including £16.7m of Sustainability and Transformation Funding - STF) in November 2016, simultaneously submitting a letter to NHS Improvement setting out a number of caveats to this acceptance. Key caveats included that Sustainability and Transformation Partnership (STP) clinical transformation schemes would stop activity worth £17.4m being treated at the trust, with a corresponding trust expenditure reduction of £25.1m, and that STP collaborative productivity changes would reduce trust expenditure by £16.7m.

4. At month 3 of 2017/18, the trust had reforecast its deficit from the planned £22.8m deficit to a £60.1m deficit, which represents an underlying deterioration of £20.6m when the lost STF is excluded. The primary cause of this deterioration is the significant under-delivery of savings from STP schemes. The trust has further increased its deficit reforecast to £65.2m deficit.

5. The trust has commissioned or been subject to a number of governance reviews over the past year. This includes a Good Governance Institute review in June 2017 and an EY review of financial governance in May 2017 as part of the FIP. The EY review raised a number of recommendations, including two high risk recommendations pertaining to non-executive director (NED) scrutiny and CIP governance.

6. The investigation objectives were to:

   i) Assess the quality of decision making in relation to acceptance of the control total;
   ii) Establish the extent to which the trust is complying with NHS Improvement's financial and workforce policies;
   iii) Determine the extent to which the trust has taken action to identify the drivers of its deficit and responded adequately to these; and
   iv) Assess the adequacy of the trust's response to EY's financial governance recommendations in May 2017.

14. In relation to STP savings, the Board placed too much emphasis on the goodwill that existed in the system, and not enough on the potential downsides of accepting a control total in the presence of such significant risks. Post-November monitoring of STP progress was not sufficient and the Board was therefore not adequately sighted on crystallising risks in the following months. This was a significant lapse in governance. We consider that the existence of a caveat letter accompanying the control total acceptance reduced the Board's sense of accountability for delivering the control total, and therefore its oversight of associated risks.

15. We have identified a number of instances of non-compliance with NHS Improvement's consultancy spend and interim agency very senior manager (VSM) policies. These appear to have arisen from a lack of priority given to compliance with these policies. The trust does not have sufficient systems and processes to manage and oversee compliance with these policies. Furthermore, based on our understanding, the trust has breached OJEU[1] procurement regulations in relation to a significant piece of consultancy work by undertaking a single tender exercise when an open tender was required. The Board has not yet approved the single tender waiver, a year after the work started. These are significant governance failings.

16. The trust has produced a lot of work on drivers of the deficit over the past two years. This has resulted in some useful analysis, but this has not led to the development of an overarching strategy to address the deficit. The trust is only now preparing a strategic and systematic response to these drivers, which now needs to develop further into a series of detailed and aligned implementation plans.

17. The trust has responded to the key concerns of EY's financial governance review, resulting in the two high risk concerns being reduced to low risk following a follow-up EY assessment. The trust needs a more robust overarching response to all the governance reviews it has received in recent months, with a clear plan detailing how it will respond to the common themes it has already identified and a clear system for monitoring progress against these actions. This plan will need to shift from the current focus on process to a more outcomes-based approach, to ensure embeddedness of the actions taken.

[1] Official Journal of the European Union

material omission. Although the value of clinical transformation schemes was reduced by 25% as a contingency, there was no risk adjustment of the STP collaborative productivity values to account for the limited assurance in place at the time.

24. The paper did not make a recommendation regarding acceptance or otherwise of the control total, instead allowing an open discussion by Board members. We deem this to be an appropriate approach. However, the paper could have been more balanced in its assessment of the risks and rewards of each course of action; the potential benefits of accepting the control total were clearly set out, but there was no such analysis of the potential disadvantages presented in the papers. A more explicit discussion of the risks of accepting may have prompted greater consideration of the likelihood of reaching the position the trust now finds itself in, with a large deterioration in forecast outturn.

Quality of discussion

25. The minutes of the extraordinary FIC meeting set out some of the specific questions from NEDs and the responses. They focus on a number of technical points rather than discussion on what we view as the key issues, being the risks surrounding delivery of £48.7m of savings. The minutes only reference that a discussion on these risks took place, but without further documented details we are reliant on the (understandably limited) memories of interviewees to assess the quality of discussion that took place.

26. All interviewees spoke of a lengthy and robust discussion at the extraordinary FIC, in which there was significant questioning and challenge from the NEDs. However, as mentioned above there is little evidence to support this from the minutes, and little detail was added in interviews. Our impression is that executives did not provide challenge in this meeting, but rather responded to NED questions. We would expect challenge from a unitary board to come from all members but we accept that such discussion may have instead taken place in executive forums.

27. A number of the Board members we spoke with showed a limited understanding of some of the key risks to delivery of the 2017/18 plan, and there were some significant contradictions between meetings. For example, the November 2016 FIC paper made clear that the STP financial assumptions (and therefore the control total plan) would require seven wards to be closed in 2017/18. Some individuals acknowledged the need for bed closures and the associated risks (with variable levels of confidence); others stated categorically that the 2017/18 plan did not assume any bed closures. This is a significant concern, and brings into question whether the Board was sufficiently focused on this important matter during its control total discussions and afterwards.

commissioner fines; and being seen to act in accordance with what the trust perceived as the national expectation. As above, the paper did not set out the potential downside of acceptance, but some interviewees cited a loss of credibility or being subject to investigation as potential downsides. Our view is that a further downside was a delay in taking decisive action to tackle the deficit by signing up to a plan which was unlikely to be delivered.

34. We acknowledge that the decision to accept or reject the control total had many facets and that there were genuine benefits of accepting. However, our overarching view is that, based solely on the information available at the time, it was not reasonable to assume that the control total was deliverable. We believe that this represents an error of judgement by the Board, which has led to a large and almost inevitable variance from plan arising from the very start of 2017/18.

Caveat letter

35. The caveat letter submitted to NHS Improvement in November 2016 set out the key risks to delivery of the control total that were not wholly within the trust's gift to address. NHS Improvement did not confirm either acceptance or rejection of the letter at the time. It was not until the end of May 2017 that NHS Improvement confirmed to the trust that the caveat letter was not accepted. We agree with the trust's assessment that it was reasonable to assume that prior to this, in the absence of any correspondence to the contrary (as was the case with all trusts), the caveat letter had been accepted by NHS Improvement.

36. However, had the letter been accepted by NHS Improvement, it would not have altered what is a significant deterioration from the agreed plan, nor would it have had an impact on the current run rate. We therefore do not view the status of the caveat letter as a material factor in this investigation.

37. It is important to emphasise that a caveat letter does not and should not absolve the Board from accountability for the trust's financial position. Nor is such a letter a substitute for adequate due diligence by the Board of external risks to the financial plan and of the actions to ensure mitigations are in place or will be put in place. We consider that the existence of this letter reduced the Board's subsequent focus on the high risk areas that were not in its direct control as a result of such thinking, and that this reduced the Board's sense of accountability for delivering the control total.

Monitoring after November 2016

38. Given the scale of risks to the 2017/18 financial plan set out above, we would have expected to see monthly monitoring of these risks by FIC and the Board, to understand the extent to which they were being mitigated or crystallising. However, the overwhelming focus of finance papers to both these forums after November 2016 was on the 2016/17 financial position. While we understand such

should have conducted an open tender process in line with OJEU regulations. Instead, the contract was procured through a direct award and it therefore appears that OJEU regulations have been breached. Furthermore, a single tender waiver form has not yet been approved by the trust, over a year after the work began. These issues represent significant governance failings.

44. We acknowledge that, at times, the trust needs to make appointments of individuals or organisations urgently in order to address serious concerns, and that NHS Improvement and CQC have encouraged the trust to do so in the past. This necessary urgency should not preclude the trust from seeking the required approvals retrospectively and in a timely manner, but such approvals have not been sought in these instances.

45. We also identified an example of an interim individual who has demanded payment through a company rather than through the trust bank as the trust thought had been agreed. This has only come to light several months after the individual has started work (he has not yet been paid). While a decision has not yet been made, the trust is concerned that payment through a company will not be compliant with IR35 rules. The trust must ensure that all contractual and payment-related issues are confirmed in writing before start dates.

46. The overarching reason for non-compliance with policies appears to be a lack of management focus on compliance and, in some cases, a disregard for the relevant policies. The trust was not able to offer explanations for the breaches identified with the exception of PwC demand and capacity work, for which the trust was unaware that splitting the cost with commissioners (with each half being below the threshold) did not remove the need to submit a business case, given that the trust was the contracting party.

47. FIC received reports on consultancy and interim staff spend in July and August 2017, but these have not included comprehensive assurances on NHS Improvement policy compliance. They have also contained errors and omissions, limiting the value of these reports for assurance purposes.

48. A 2016 internal audit report on compliance with NHS Improvement agency controls provided 'significant assurance with minor improvement opportunities' that approval requirements were being adhered to. Board members were aware of and taking assurance from this report. As far as we can determine, the scope of this work did not include compliance with interim agency VSM requirements, for which we have identified issues above.

49. We have seen no evidence that breaches of NHS Improvement's policies have been identified internally, rectified and learned from.

55. The trust did not prepare an action plan in response to the report, instead using the recommendations in the report itself to guide the necessary work. The downside of this approach is that it did not allow important detail to be added to the recommendations raised, in particular how exactly the recommendation would be implemented, who would be responsible for this and how success would be measured.

56. A status update of actions in the EY report was presented to the Board in September 2017. Because an action plan wasn't produced, we found it difficult to map the 'current status' narrative to EY's recommendations and therefore to make an assessment of the extent to which EY's concerns had been addressed. Furthermore, the action update focused on process rather than outcomes, and would have benefited from a mechanism demonstrating how embeddedness of the actions implemented would be tested. It is not clear how the Board monitored progress against the recommendations between May and September 2017.

57. We note that EY have now re-reviewed the two high risk areas from their report and concluded that these areas are now both low risk because of the actions taken. This is in spite of the process limitations noted above. However there may still be learning points for the trust's response to future reviews, and to ensure sustained impact of the actions taken in response to EY's report.

58. The EY review is one of several over the past two years that has considered governance. The trust prepared a thematic analysis of all these pieces of work for the July 2017 Board seminar, which identified common themes from the reviews. This was a useful document and a good initial response to the various reviews, but the impact of this work was unclear as the next steps were set out at only the highest level. The trust needs a more robust overarching response to all the governance reviews it has received in recent months, with a clear plan detailing how it will respond to the common themes it has already identified and a clear system for monitoring progress against these actions.