

**York Health Overview and Scrutiny Committee – 20th October 2015
Leeds and York Partnership NHS Foundation Trust**

**Assessment of events leading to the closure of Bootham Park
Hospital on the 30th September 2015**

Introduction

This paper provides the Health Overview and Scrutiny Committee (the Committee) with the chronology of events leading to the Care Quality Commission's (CQC) decision that all "regulated clinical activity" at Bootham Park Hospital (BPH) should cease.

Background

The Leeds Partnerships NHS Foundation Trust was established in 2007 with a strong history of providing mental health and learning disability services in Leeds with a range of specialist mental health services, such as mother and baby and inpatient eating disorder services.

Under the national Transforming Community Services programme (the Health and Social Care Act 2012), all Primary Care Trusts (PCT) were required to divest themselves of directly managed provider services. Following a tender exercise the Leeds Partnerships NHS Foundation Trust took on the management responsibility for mental health and learning disabilities services for the York, Selby, Tadcaster and Easingwold localities on the 1st February 2012 becoming the Leeds and York Partnership NHS Foundation Trust (LYPFT).

At the point of transfer to LYPFT, there was a joint recognition with the then North Yorkshire and York PCT that the ambition for the delivery of modern mental health services in York would be highly dependent on a clear coherent mental health strategy and at a later date a re-specification of services. The importance of the improvement and redevelopment of the estate from which services would be provided was also recognised. The PCT's estates assets remained in the ownership of the PCT at that point.

Background to Estate issues

LYPFT was fully cognisant of the magnitude of the issues presented by the mental health and learning disability estate portfolio in York and the other localities, especially the historical challenges associated with BPH.

However the Trust had a long experience of reconfiguring its estates with the closure and re-provision of two major institutions linked to the on-going redesign and improvement of its services.

LYPFT spent several months undertaking a detailed due diligence of the estate as part of its preparation for the PCT's tendering for its services. This included an initial independent survey of the estate by specialists, Capita Symonds. This in turn led to a more detailed survey by agreement with, and commissioned by, the PCT as the then owner and landlord of the facilities.

These surveys concluded that BPH was not, and could not be made "fit for purpose" as a place from which to deliver a modern mental health service. At this stage LYPFT negotiated a substantial capital commitment from the PCT to invest in addressing backlog maintenance amounting to circa £5m during 2012/13. Regrettably the financial year 2012-13 proved to be one of substantial upheaval in the NHS due to the abolition of PCTs and the setting up of CCGs and other statutory bodies, including critically NHS Property Services Limited (NHS PS). These structural organisational changes began to impact the capital development programme as noted below.

At the time of the dissolution of the PCT, its estate portfolio was offered as a capital transfer to LYPFT. After careful consideration, taking into account the fact that a disaggregation of the estate portfolio was forbidden (that is, it was a take all of it or none of it option), and being reminded by the Vale of York CCG (VoY CCG) that its contract was only for three years, LYPFT declined the offer. The rationale for this decision was principally due to the significant clinical and financial risks associated with BPH, recognising that it could not be made fit for purpose in the long term, also, if vacated, it may not be readily marketable. Consequently all of the estate was transferred into the direct ownership and responsibility of the newly formed NHS Property Services (NHS PS) a company wholly owned by the Department of Health. LYPFT was fully committed to working proactively with the nascent NHS PS and VoY CCG to drive forward strategic estate issues, as well as addressing the operational maintenance issues which were sub-contracted by NHS PS to the York Teaching Hospitals NHS Foundation Trust. LYPFT had begun to formulate strategic plans for estate reconfiguration working with the parties involved.

However, the fledgling nature of NHS PS and the VoY CCG with their developing governance and management structures appeared to create difficulties linked to lack of clarity of responsibility and the lack of retained organisational knowledge in the system. There were immediate difficulties in accessing the capital for the agreed £5m programme of works, previously agreed with the NYY NHS PCT. The introduction of the NHS system reforms and the issues for services in York were highlighted as a key risk within LYPFT.

Genuine efforts were made to establish governance arrangements with the VoY CCG and NHS PS; however difficulties proved to be both complex and on-going. . During the period up to December 2013 (the first CQC inspection BPH) LYPFT did not escalate or raise major concerns but instead steadfastly tried to engage with colleagues in NHS PS and the VoY CCG, with regard to improving and changing the environments from which care was provided. LYPFT as the registered service provider with the CQC was consistently told that it was not the key organisation in terms of an estates strategy for mental health and that it was not NHS PS's "customer" for strategic estate decisions, as that was a matter for the VoY CCG.

The responsibility of the VoY CCG with regard to facilities from which LYPFT could provide services was confirmed to the Committee by the Accountable Officer of VoY CCG at the Committee's meeting on the 2nd of July 2014. At various points when LYPFT tried specifically to engage in dialogue with VoY CCG management about its concerns and the future of BPH it was clearly told that any exit strategy for BPH was a commissioner issue in the context of LYPFT having a three year contract to provide services.

In December 2013 the CQC compliance inspection found that BPH was not fit for purpose and the Trust was formally required to take action to make improvements. At that point, in addition to addressing the immediate concerns of the CQC, LYPFT decided that, regardless of the complexities who could decide what with regard to BPH, interim options be developed to quickly and safely vacate BPH. This decision was taken in the context that a clear strategic direction for Mental Health Strategy was under development by the VoY CCG which could lead to different longer terms solutions (e.g. new hospital).

In March 2014 therefore, acting on its own initiative, LYPFT developed an option to vacate BPH utilising existing estate owned by NHS PS.

This would have seen Adult Acute mental health services relocated to Peppermill Court. This would have required the service users in Peppermill Court to be transferred into other inpatient units for older people; the Elderly Assessment ward would be relocated to Cherry Tree House; the Section 136 suite would be relocated to Clifton House; and out-patient/community work would be incorporated into proposed mental health community “Hubs” in the city.

In April 2014 at a meeting between the executives of LYPFT and the VoY CCG this plan was broadly endorsed and a public statement was made. The VoY CCG set up a “Bootham Park Programme Board” to manage the change programme. However on further inspection and scrutiny the VoY CCG and NHS PS requested a review and option appraisal to look at staying in BPH and carrying out interim improvement works “in situ” whilst simultaneously focussing on the long term permanent solution.

In July 2014 an Estate “summit” was held, chaired by the VoY CCG where LYPFT presented its preferred option of Peppermill Court and Cherry Tree House, and NHS PS presented alternatives involving retaining inpatient services at BPH. The latter option was accepted by all parties on the basis that NHS PS deemed it quicker and less expensive to achieve than LYPFT’s option and a 36 week programme was embarked upon by NHS PS. LYPFT, despite its reservations, and in light of assurances given by NHS PS, also being desirous of good relationships with the VoY CCG, agreed to move ahead with the NHS PS and the VoY CCG’s plans.

In September 2014, the CQC carried out a further compliance inspection and again found BPH was not fit for purpose.

In January 2015 the CQC issued the Trust with regulatory compliance actions to improve the estate. At the post inspection joint CQC and Monitor Quality Summit, held on the 7th of January 2015, the VoY CCG and NHS PS gave an undertaking that the BPH interim programme work would be completed by July 2015. In addition to this the Accountable Officer of the VoY CCG, stated that a new hospital would be built within three years and that the site for this would either be The Retreat or Clifton Park. Details of the continuous slippage to the BPH interim programme are found at Appendix 1.

Notwithstanding the many issues, progress was made on a limited number of schemes within the BPH interim programme.

These include the move of the Elderly Assessment ward to Cherry Tree House on 24th September 2015, some three months behind schedule. This is one example of where in the view of LYPFT NHS PS has repeatedly failed to meet agreed target dates which the Trust believes was due to NHS PS underestimating the scale of the issues presented by the York estate.

LYPFT as the registered provider of the service with responsibility for the implementation of the action plan agreed with the CQC and Monitor at the January Quality Summit drew its concerns both to the CQC and the Secretary of State for Health.

LYPFT's remains of the view that the option it put forward in July 2014 for Peppermill Court was a carefully considered and more cost effective option for the patients which would have been free of the inherent impediments in the BPH estate.

Timing of the mental health tender

LYPFT has consistently maintained that the timing of the VoY CCG's decision to tender the mental health and learning disability services in York was a poor and risky judgement, specifically their insistence that the services must transfer on the 1st October 2015. As far as LYPFT are aware, the transfer of services of this nature and scale, whilst a significant improvement plan is being implemented, was unprecedented, unsafe, and created risks for service users, carers and staff, and presented the CQC with a very difficult and controversial decision to make. The Trust's concerns were such which led it to expressing its concerns to a number of parties including the Chair of LYPFT writing to the Chair of the VoY CCG, to the health regulator Monitor and the Secretary of State for Health.

In all cases LYPFT's were met with either disinterest or false assurance. In the case of the response from the office of the Secretary of State, which was received on the 1st September 2015, the assurances provided in the letter were factually inaccurate at the time of writing. The Trust does not believe that this was intentional on the part of the Secretary of State and assumes that it was consequential to an inaccurate briefing being given by other parties.

Assessment of closure of BPH following recent CQC inspection

It is difficult not to be supportive of the recent decision by CQC to not register BPH as a location for Tees, Esk and Wear Valley NHS Foundation Trust, which ultimately led to the closure of BPH for all regulated activities on the 30th of September 2015. The closure could have been avoided if:

- a) the Interim Programme of work had been completed within the timeframe agreed by the VoY CCG and NHS PS
- b) the CQC had not been forced to make a decision based on the arbitrary deadline they had been presented with by the VoY CCG due to their insistence that the transfer had to take place on the 1 October 2015
- c) the VoY CCG had not embarked on an unnecessary and expensive retendering of the services
- d) If the VoY CCG, in making the decision to retender, had availed themselves of specialist mental health and learning disability expertise to advise on the risks and benefits of such an undertaking during a time of responding to the requirements of the CQC

LYPFT's view is that the timing of the service transfer appears to have forced the CQC to take a very hard stance. It is probable that whilst they would have been committed to the improvements being made in a timely way, they were not threatening to cancel LYPFT's registration had LYPFT remained the provider. Clearly the CQC found itself in a position of having deemed the location not fit for purpose could not in all honesty permit it being re-registered in the absence of the improvement works having been completed.

Given the age and condition of BPH, it was always possible that regulatory action or, an unpredicted event in the building, could have caused at the closure at short notice. Clearly with the benefit of hindsight, it would have been better to have a clear, planned and costed exit plan agreed shortly after the original CQC inspection in December 2013 which LYPFT argued for in 2014.

It should, however, be noted that the recent set of events has effectively brought about the closure of BPH in the absence of any public consultation.

Conclusion

Firstly, as a party to this the complex web of events, LYPFT would like to apologise to the people of York, Selby and Easingwold for the fact they have been let down by the NHS.

LYPFT believes it has tried its utmost to resolve the BPH issue in very difficult circumstances to all parties. It has not merely reacted to regulatory action but took significant steps to address the issues long before the CQC's final decision in September 2015.

The effect of the complex changes in the NHS consequential to the 2012 Health and Social Care Act found themselves being played out in York, specifically complexity about estates strategy and estates maintenance. LYPFT remains of the view that Peppermill Court could have provided a satisfactory interim solution to adult in patient services in York in a safe and sustainable manner. This could be achieved in a relatively short time scale and at affordable cost. With the benefit of hindsight LYPFT regret not pushing this solution harder at the BPH Programme Board, however at the time LYPFT was attempting to strengthen its relationship with the VoY CCG whilst finding itself being made peripheral to the estates decision making process. We very much hope that the new provider along with the VoY CCG and NHS PS will review this option again in the interests of service users and carers in the Vale of York.

The attached appendix gives a timeline of key events that led to the position reached in September 2015.

**Leeds and York Partnership NHS Foundation Trust
October 2015****Appendix i - Timeline - Bootham Park Hospital (BPH) estates issues**

- March – June 2011 – LYPFT commissioned estates survey from Capita Symonds, which informed Business Transfer Agreement (BTA) negotiations
- October 2011 – March 2012 – further detailed survey from Capita Symonds commissioned by NHS NYY, as agreed in LYPFT's BTA
- 1st February 2012 – Services transferred from NHS North Yorkshire and York PCT to LYPFT

- Assets, including BPH, retained by PCT and licensed to LYPFT under the Business Transfer Agreement (BTA).
 - Significant obligations in the BTA for the landlord (PCT) to provide sufficient and suitable premises to deliver the services.
- 12th August 2012 – LYPFT Board of Directors declined to take transfer of PCT property; in significant part due to the significant risks associated with owning BPH.
- Agreed to pursue PCT ahead of the transfer of assets to NHS PS in accordance with the BTA and agree a substantial programme of works to be agreed (and funded by NHS capital) prior to 31st March 2013.
- August 2012 – 31st March 2013 – significant programme of works (c£5m) agreed through NHS NYY PCT Capital Planning Steering Group.
- NYY PCT & P21 partner to develop programme of works
- 1st April 2013 – PCT assets and BTA obligations transfer to NHS Property Services Limited.
- Problematic getting follow through on delivering agreed programme
- November 2013 – NHS PS informed LYPFT that whilst high level risk works being completed there are problems securing funding medium and low secure risks
- December 2013 – NHS PS informed LYPFT that they could not use P21 contractor (internal procurement issues), which will delay works
- 10th, 11th, 18th December 2013 – Initial CQC inspection BPH
- December 2013 – April 2014 – LYPFT estates to urgent, high level risk work directly
- 4th February 2014 – CQC formal report
- Specific action required regarding the safety of premises
- February 2014 – LYPFT report to CQC outlining the actions to be taken following inspection report
- Requirement for high level risk works to be completed by end February 2014

- 13th February 2014 – meeting between LYPFT and NHS PS to discuss programme of works and how to implement better governance
- 20th March 2014 – Condition Breach Notice to NHS Property Services Limited to Kathryn Berry
 - Requested urgent meeting
 - Acknowledgement 6th May 2014
 - Meeting finally agreed for 2nd June 2014
- 27th March 2014 – LYPFT becomes aware that works commissioned from YTH estates on 13th December 2013 not completed to agreed plan

- 1st April 2014 – NHS PS commission YTH estates to complete works in EAU courtyard; ligatures etc.
- 1st April 2014 – YTH estates asked to visit all ward areas to remove any ligature risks (LYPFT instruction)
- 2nd April 2014- meeting with LYPFT, NHS PS & YTH to discuss outstanding actions for BPH implementation plan
- 8th April 2014 – project group established with NHS PS, LYPFT, clinical leads to discuss and implement BPH action plan – to meet weekly
- 9th April 2014 – Bootham Programme Board – Peppermill Court agreed as the preferred option for BPH replacement (Cherry Tree for EAU)
 - Noting delays on Cherry Tree reported
- 16th April 2014 – Operational meeting between NHS PS, LYPFT and YTH to discuss and improve processes and communication between three parties – monthly meeting

- 1st May 2014 – NHS PS landlord H&S audit completed
- 7th May 2014 – Minutes and ToRs of anti-ligature project group sent to NHS PS for review at executive level

- 4th June 2014 – BPH Programme Board – minutes indicate VoY CCG not wholly committed to Peppermill solution; LYPFT expressed opinion that Peppermill was the only viable solution (within available real estate and required timescales)
 - Minutes indicate some desire from CCG and NHS PS looking for an interim (remedial works) solution at BPH
- 23rd June 2014 – Chris Butler wrote to Mark Hayes on numerous matters but specifically stating concern over the timing of the tender in relation to the estates and CQC issues.

- 9th July 2014 – BPH Programme Board minutes note involvement of English Heritage (flexibility) and concern over utilising Peppermill (what to do with tricky chaps); EH keen to keep BPH
- 28th July 2014 – Property Summit led by Vale of York CCG
 - Narrative moves to a BPH interim solution in situ
- 6th August 2014 – BPH Programme Board; mainly recap on summit and note that CQC due to have full inspection
- 3rd September 2014 – BPH Programme Board
 - Peppermill Court removed as an option formally (confirmed action from previous meeting)
 - Dawn Hanwell (DH) expressed anxiety around ability to act quickly
 - DH call for evidence around BPH and noted that anticipated CQC inspection would not be favourable
 - DH reported that PID missed 1st September deadline
 - DH queried 20 week programme for Cherry Tree
- 29th September 2014 - BPH Programme Board
 - DH noted inter relationship with MH strategy and forthcoming tender
- October 2014 – CQC inspection BPH
- 14th November 2014 - BPH Programme Board
 - DH commented on clarity on timescales (Cherry Tree)
 - Ian Butterworth assured works will be completed by March 2015
 - Note delays on permanent solution to BPH
- 3rd December 2014 - BPH Programme Board
 - DH concerns re timelines and clinical sign off; not sighted on Cherry Tree PID
 - BPH Ian Butterworth assured that delay in PID will not delay works
- January 2015 – CQC issue regulatory action against LYPFT
- 4th March 2015 – BPH Programme Board
 - NHS PS reported Cherry Tree as on track
 - BPH plan aiming at end March submission to NHSE
 - Anthony Deery (AD) concerns re plans so far

- 1st April 2015 – BPH Programme Board
 - Cherry Tree - AD queried whether Kier letter would cause delays – assured not
 - BPH plan – not clear who signs off
 - AD noted CQC action plan risk if PID not signed off
- 6th May 2015 – BPH Programme Board
 - Some delays reported for Cherry Tree
 - BPH PID not yet approved
 - DH noted red light items for conservation officer and potential delays re consultation; NHS PS gave assurances
- 3rd June 2015 - BPH Programme Board
 - Cherry Tree – further delays reported
 - DH chasing practical completion date
 - BPH delays – AD to notify CQC
 - Acomb – no programme completion date yet
 - Community Hubs – no material progress
- 15th June 2015 – Chris Butler wrote to the CQC expressing concerns over the timing of the service transfer
- 1st July 2015 – BPH Programme Board
 - IB confirmed main Cherry Tree works complete by 3rd July
 - BPH not yet fully approved
 - AD queried drainage and rising water levels – no planned works
 - Acomb – DH queried whether works could be completed by end August – IB confirmed OK
- 1st July 2015 – LYPFT formal referral to Monitor re concerns over procurement process and also requesting a delay on the transfer to facilitate the delivery of the CQC action plan.
- 3rd August 2015 – LYPFT writes to Secretary of State for Health re concerns over works delays and NHS PS
- 5th August 2015 – BPH Programme Board
 - Cherry Tree – IB assurance of practical completion for 17th August, which would get patients in early September
 - BPH – DH noted LYPFT had acquiesced to interim solution at BPH.
 - Discussion re clear delays across programmes. AD commented that on-going problems with BPH solution should have been anticipated due to age of building

- AD comment that plans not clinically stable
- DH noted that other options are available (Peppermill) but that LYPFT are effectively no longer involved
- 1st September 2015 – Letter received in reply (from DH) providing assurance on works etc; this letter was factually incorrect; works listed as completed were not complete.
- 15th August 2015 – LYPFT CEO write to CQC regarding slippage on works and concerns over transfer date and effect on necessary works
- 9th 10th September 2015 - Inspection by CQC – BPH & Cherry Tree House
- 11th September 2015 – Requirement by CQC to accelerate EAU Ward 6 to Cherry Tree House by an agreed date of 24th September 2015
- 24th September 2015 – All EAU Ward 6 patients transferred to Cherry Tree House; BPH EAU ward closed
- 24th September 2015 – CQC require all clinical services at BPH to close by 30th September 2015
- 30th September 2015 – all regulated clinical services at BPH closed and other services transferred to TEWV