Independent review of Queen Victoria Hospital NHS Foundation Trust's handling of challenges encountered in progressing a merger proposal with University Hospitals Sussex

February 2022

1. Executive Summary

1.1. Queen Victoria Hospital NHS Foundation Trust (QVH) is a leading specialist centre for reconstructive surgery and rehabilitation based in East Grinstead. The Trust has significant geographical reach across Kent, Sussex, Surrey, and into London. With a turnover of £72m a year, QVH is one of the smallest Trusts in the country.

1.2. QVH has a strong history of collaboration with local organisations, which contributes to the clinical success of the Trust. It provides outpatient clinics across Kent and Sussex and is part of the cancer network in both systems. Formal clinical relationships were established between QVH and Brighton and Sussex University Hospitals NHS Trust (BSUH) following the designation of the Royal Sussex County Hospital as a Major Trauma Centre in 2011.

1.3. Despite its strong clinical service record, QVH is facing three key challenges as outlined in the case for change, 'Securing the Long Term Future of QVH'. Due to the specialised nature of its services the Trust does not have the infrastructure to provide the wide range of clinical services that a larger hospital would have. Consequently, there is a reliance on other organisations to provide these services for the Trust. QVH also has fragile support functions; due to its small size there are several areas where one individual is responsible for a function, for example the handling of complaints. This creates difficulty for the Trust during times of pressure such as periods of increased activity and leaves of absence. Lastly, the financial position of the Trust is deteriorating with an underlying deficit, once non-recurrent funding is removed, of £9m in 2019/20.

1.4. To address these challenges QVH propose a merger with University Hospitals Sussex NHS Foundation Trust (UHSussex), which itself was created through the merger of Western Sussex Hospitals NHS Foundation Trust, and BSUH in April 2021. The Boards of QVH and UHSussex approved the Strategic Outline Case (SOC) for the proposed merger in August 2021 as a precursor to pursuing a Full Business Case (FBC). While this is a relatively recent development, discussions relating to partnership options with UHSussex and its predecessor organisations have been ongoing since March 2016.

1.5. There have been strong reactions to the merger proposal which have affected its progress. Some stakeholders are concerned about the impact a merger might have on the specialist services that QVH provides and have questioned the process that the QVH Board has followed to get to this stage.

1.6. It is also important to note the significant impact of the Covid pandemic. This has placed an extra management burden on the QVH executive and Board, as well as on UHSussex, which has slowed progress towards developing the full business case.

1.7. Carnall Farrar (CF) was commissioned to undertake an independent review of the Trust's handling of challenges encountered in progressing a merger proposal with UHSussex. The review scope covers:

- The process of engagement with staff, including explanation of the case for change and the options which were considered, how concerns were heard, and how such concerns were taken into consideration.
- The process of engagement with Governors, including a view on the tone of correspondence to and from Governors, behaviours, and Governor meetings in the context of the Code of Governance, Nolan principles, QVH and NHS Values and the duty of the Trust to look after the wellbeing of employees.
- Clarity on roles and decision making going forward, particularly between Board and Governor roles.
- Trust handling of external stakeholders.

1.8. The approach taken for the review has combined an extensive document review with stakeholder interviews to gain a deep understanding of events in the merger process. CF received over 1,000 documents and interviewed 59 people.

1.9. Passion for QVH and a desire to serve patients effectively unites all participants who engaged in the review, as does safeguarding the unique and high-quality services the Trust provides for the benefit of the population, not just locally but regionally and even nationally.

1.10. The review found deep-rooted issues between various parties in respect to the development and handling of the merger proposal. These are outlined in this executive summary and explored in more detail in the body of the report.

1.11. The QVH Board is aligned behind the approach that has been taken and the decisions the Board has reached in the proposed merger process to date. Extensive time has clearly been spent considering the issues facing the Trust and the most effective way to respond to them. NHSEI South East Region, Sussex Health and Care Partnership ICS and UHSussex are also aligned with the decisions that the QVH Board has taken to date, although they have limited understanding of the process of engagement undertaken to arrive at the current position.

1.12. The financial aspect of the case for change has been subject to particular scrutiny. While stakeholders recognise the financial position, the drivers of this are not clearly understood, and it is important to be explicit that this lack of understanding extends beyond the Governors. In particular, interviewees were not clear as to what had exacerbated the deficit in 2018/19 and the perspective of some of the Governors is that a thorough analysis of this has not been explored. The issue has overshadowed the other aspects of the case for change.

1.13. While the case for change is largely understood by all parties, the chosen route to addressing the challenges described is not universally accepted. Nursing and corporate teams have generally expressed support, but many members of the consultant body and the Trust's Council of Governors, are reluctant to accept that a merger is preferred over a partnership, or why the latter is not an option. Clarity is needed on how the proposed merger with UHSussex responds adequately to the case for change while also safeguarding what is the unique excellence of QVH in terms of the services it provides.

1.14. The Trust Board consider the reluctance to embrace the merger proposal to be largely a result of stakeholders wanting aspects of the case to be developed ahead of the need to do so in the overall process. However, a relatively narrow interpretation of the requirements has been taken with the SOC. There is strong alignment in pursuing the proposed merger with UHSussex between the Board, the leadership in the ICS and NHSEI South East Region, which has potentially resulted in the creation of the SOC in a transactional manner. Another potential reason for this is the limited resources within QVH to support the development of the SOC. Although teams from both organisations were involved, most of the input from QVH has been from finance and corporate affairs, and there has been minimal clinical leadership engagement in the process to date. The net consequence is that the process has not been an exercise in winning hearts and minds.

1.15. In developing the SOC, it would have been prudent to anticipate the need to outline a potential stronger future via the preferred option, and that doing so would require engagement between the clinical teams of UHSussex and QVH. This has not happened, and the details of the aims of a potential merger from the perspective of UHSussex have not been developed. Consequently, views of what UHSussex want to achieve through the proposed merger are projected onto them by some stakeholders, and there is no basis for understanding whether these views are accurate or not. Engagement between the two organisations on this matter has been limited at anything other than a senior level.

1.16. Both Trusts have expressed an intent to develop a shared clinical strategy as part of the work to develop a full business case for the merger. This would be co-designed through a clinically led process. While this work has the potential to address many of the concerns raised by stakeholders, undertaking it earlier in the process could have allayed some of these sooner.

1.17. The review found that continuous communications have taken place throughout the merger process, explaining the steps of the process and outlining the decisions taken. These have been accompanied by multiple opportunities for staff to ask questions.

1.18. The Chief Executive has been available to all members of staff throughout the process. He has attended multiple team meetings, where the communications are reported to be open and honest, and with two-way dialogue encouraged and staff feeling able to speak up about their concerns.

1.19. However, while communications are plentiful, engagement in the development of the merger process such that design and decision-making is influenced by a broad range of input is limited. The lack of engagement and in particular, lack of clinical input into decisions, has contributed to discontent in the consultant body about the merger proposals.

1.20. The review also found a serious breakdown in relationships between the Board and the Governors, to the extent that trust between the groups is now very limited.

1.21. Establishing a strong relationship has been hampered by the covid pandemic, both through the requirement to work virtually, and by the additional operational and managerial pressures that the whole NHS has been operating under. These pressures have been insufficiently recognised by a number of Governors; their actions having placed an additional burden on staff at a time of unprecedented challenge for the NHS.

1.22. The Governors understand their role, but there is a dispute between the Governors and the Board on what is required for the Governors to undertake it. At the heart of this is the extent to which Governors should be engaged in the merger process in order to conduct their role of approving a significant transaction.

1.23. Attempts have been made to engage Governors more extensively, but the behaviours of a small group of Governors have hampered these efforts. Overall, these behaviours have contributed to a lower level of engagement. This has further added to the cycle of mistrust between the Board and the Governors.

1.24. Given the level of interest that exists in the merger process, all other agenda items are marginalised at the Council of Governors meetings. This has created frustration on both sides and means the Governors are not exercising the extent of their role.

1.25. A consistent theme of the review has been reports of challenging behaviour from a small group of the Governors. While they understand their responsibilities, some Governors have chosen to act in ways that fall outside the parameters of their role, and have also behaved in an unprofessional manner. Examples of unprofessional behaviour on the part of some Governors have been cited, which do not appear to conform to the Nolan Principles. Limited formal action appears to have been taken within the Trust to address the issues with the individuals concerned and written communication was not followed up. This behaviour has had a negative impact on a wider group of people, both QVH staff and other Governors, who feel unable to discharge their responsibilities as a result. The issue has been escalated to NHSEI who have intervened and imposed additional Licence Conditions. This intervention has not as yet resulted in a significant change in behaviour.

1.26. Twelve recommendations have been identified to respond to the findings of the review and support the Trust's ability to move forward with the FBC and promote ongoing work and effective relationships with staff, Governors and external stakeholders.

1.27. The twelve recommendations are:

1. A work programme for the merger process should be developed, which allows for a holistic set of stakeholders to be engaged as the work is

undertaken. At the heart of this should be clinical engagement, but wider engagement with staff, patients and stakeholders will also be important.

2. The work programme should reflect that the FBC needs to rehearse the strategic case in a level of depth including the case for change, the long-list of options, the hurdle criteria, the short-list of options, the evaluation criteria, and the appraisal leading to the preferred option.

3. The work should report to a steering group that includes multi-professional clinical and financial leadership, prior to the Board. The current steering arrangements should be reconstituted to include the Sussex Integrated Care Board (ICB), the NHSEI South East Region, UHSussex and QVH.

4. The steering group should oversee the development of a proportionate communications and engagement plan to accompany the work programme and should monitor an engagement log which is maintained as the work is undertaken.
    a. The plan should carefully consider each aspect of the process and the necessary stakeholder group(s) to contribute to it.
    b. Discussions with stakeholders should take place to understand the most effective way to engage with them, ensuring the FBC is the product of an inclusive process.
    c. Once produced, the plan should be tested with representative staff groups within QVH, QVH Clinical Directors and relevant clinical leaders from UHSussex before being finalised.
    d. The plan should be under review so that themes from the engagement are responded to and reflected in the programme of work as required.

5. Once the work programme and engagement plan have been developed in draft, a seminar session with the Council of Governors should take place, ideally in person, to review the plans prior to finalising so Governors' feedback can be incorporated.

6. A resourcing plan should be developed to support the delivery of the work programme with resource commensurate to the task. The resourcing of the team should be supported by the ICS. The team itself should be embedded in QVH, working in partnership with a lead director from the ICB and the team at UHSussex.

7. The clinical body should be engaged in this work at the earliest opportunity and should do so in partnership with clinical teams from UHSussex before pressing ahead with the development of the preferred option. The development of the preferred option should engage clinical teams of the two Trusts, with staff members from all professions.

8. The staff Governors should meet with other representative staff groups and be supported to ensure that all staff are engaged in the merger process and that the holistic views of staff are appropriately represented,

including the difference of opinion that exists. If staff Governors are unable to represent the views of all staff a change in the constitution should be made to ensure the staff Governors are more representative of the whole staff.

9. The additional NHSEI licence conditions should be developed into a Trust policy reflecting the requirements for the Governors of the Trust to adhere to the seven principles of public life. The policy needs to outline the approach taken where these principles are breached, which must ultimately lead to dismissal if conduct is unacceptable. This policy should be shared with staff in the Trust who engage with Governors so that they understand what to do if they believe they are being bullied or harassed by someone.

10. To support Governors to discharge all their statutory responsibilities effectively, and ensure that roles of Governors are clear:
    a. There should be dedicated meetings with all Governors on matters relating to the merger process
    b. The merger process should not be included on other agendas such that Governors are able to engage effectively on other matters
    c. Governor representation in other meetings of the Board should be brought into line with recognised best practice, and the following arrangements should cease:
        i. Lead Governor attendance at private meetings of the Board
        ii. Governor representatives on subcommittees of the Board

11. The regional and ICB finance teams should take a role in supporting the Trust to discuss the financial position of the organisation with stakeholders, including deterioration of performance, the feasible actions that can be taken to improve the position, and the potential benefits that may be derived from a merger. The outcome of this session should be alignment on what more, if anything, is needed in the work plan going forward.

12. Detailed communications should flow from the regional NHSEI leadership via its Specialist Commissioning function and the Sussex ICS, setting out how they plan to work with QVH to ensure the continued delivery of the specialist services that QVH provides, safeguards their quality and meets the relevant national clinical standards. This will need to be aligned with the work that QVH and UHSussex will undertake to develop a shared clinical strategy.

1.28. The scope of work that needs to be undertaken to develop a positive and constructive relationship between all Governors and the Board is significant, but necessary if all parties are to discharge their duties effectively, including with respect to the proposed merger. To allow this work to be undertaken in a timely manner and with a consistent group, we advise that as far as is permissible within the Foundation Trust code of governance, no change is made

to the Council of Governors until NHSEI are sufficiently assured that they are prepared to lift the additional licence conditions

2. Introduction

2.1. CF was commissioned in December 2021 by NHSEI South East Region and the newly appointed Chair of Queen Victoria Hospital NHS Foundation Trust (QVH) to undertake an independent review of QVH's handling of challenges encountered in progressing a merger proposal with University Hospitals Sussex NHS Foundation Trust.

2.2. The terms of reference for the review can be found in Annex 1. The scope for the review covers:

- The process of engagement with staff, including explanation of the case for change and the options which were considered, how concerns were heard, and how such concerns were taken into consideration.
- The process of engagement with Governors, including a view on the tone of correspondence to and from Governors, behaviours, and Governor meetings in the context of the Code of Governance, Nolan principles, QVH and NHS Values and the duty of the Trust to look after the wellbeing of employees.
- Clarity on roles and decision making going forward, particularly between Board and Governor roles.
- Trust handling of external stakeholders.

2.3. The review is expected to make recommendations that seek to resolve conflict and build a consensus, which should allow progress to be made at pace in order to ensure the Trust has a long-term and sustainable plan for its services and staff.

2.4. The approach taken to conduct the review has combined an extensive document review and a programme of interviews. Over 1000 documents were provided to the review team in December 2021 and January 2022. The full set of documents reviewed are listed in Annex 2. The materials consisted of:

- The Strategic Outline Case (SOC)
- Email correspondence
- Meeting minutes (Board of Directors, Council of Governors, staff briefings)
- Letters and responses to and from external and internal stakeholders
- Results of staff surveys
- Leaflets and website updates sent to members of the public
- Slides from workshops

2.5. The terms of reference highlight the need to engage with a range of stakeholders including Trust Board members, the Lead Governor, ICS Leader, the Council of Governors, the NHSEI Regional Director and team, the QVH Staff Ambassador

Group, Clinical Directors and Heads of Nursing. Over the course of the review 67 people have been invited for interview and 59 have been interviewed either 1:1 or in small groups. A full list of interviewees as well as the eight stakeholders who were unable to attend an interview are provided in Annex 3.

2.6. The views shared in the interviews have been treated with sensitivity and the review will not attribute comments to any individual.

2.7. This document reports the findings of the review, covering the challenges the QVH Board has faced whilst progressing the merger proposal, with a focus on engagement with staff, the Council of Governors, and external stakeholders. It also explores the respective roles of Governors and the Board and the interaction between them.

2.8. The document sets out twelve recommendations that, taken together, will help resolve conflict and build a consensus which should allow progress to be made at pace in order to ensure the Trust has a long-term and sustainable plan for its services and staff.

3. Context

About Queen Victoria Hospital NHS Foundation Trust

3.1. QVH is the one of the smallest Trusts in the country, with an annual turnover of around £72m. It is a specialist provider of plastic and reconstructive surgery across a range of clinical areas – head and neck, maxillofacial, oculoplastic, and corneal surgery and allied services including diagnostics and therapies. It is also an adult and paediatric burns inpatient unit but does not meet the national specification for this and has been working with derogation since 2013. QVH also provides a minor injuries unit for the local population.

3.2. The specialist nature of the services provided means QVH has significant geographical reach across both Kent, Sussex and Surrey and into London. As a brand, QVH has a strong reputation for high quality care and a loyal following that traces its origins back to pioneering reconstructive surgical work in World War 2.

3.3. QVH has a strong record of collaboration with a range of organisations to improve the clinical performance of the Trust. It provides outpatient clinics across Kent and Sussex and is part of the cancer network in both systems. The QVH facial palsy and maxillofacial teams, worked in partnership with the ENT and neurosurgery departments at Brighton and Sussex University Hospitals Trust (BSUH) to treat patients with cancer and those with facial palsy. The plastic surgery team is an integral part of the Sussex Trauma Centre at the Royal Sussex County Hospital and the Sussex Trauma Network. These are just a few examples of specialist clinical excellence and success that QVH has seen in the past few years.

3.4. Despite this, QVH is facing some key challenges that call the long-term viability of the Trust as a standalone organisation into question. These challenges have been explored in a leaflet published by the Trust in October 2020, 'Securing the Long term Future of QVH' which outlines the case for change.

3.5. The first challenge referenced is the Trust's reliance on key individuals. Due to its small size, many areas including support services and back-office functions are provided by a single person; in turn this leads to difficulty covering periods of high work pressure, annual leave, sickness or a recruitment lag.

3.6. As a consequence of the scale and focus on the provision of specialist reconstructive and rehabilitation services, QVH does not have the full range of clinical services found in an acute general hospital, some of which are required as co-located services to support the delivery of specialist work. This poses a potential risk to patients as the Trust is unable to guarantee the provision of all services that are required to manage some complex and life-threatening conditions that may arise as a complication of the work the Trust undertakes. One example of how such risks have been mitigated is the decision in 2019 that paediatric burns patients requiring an overnight stay would receive inpatient care at another hospital because QVH did not have access to paediatric intensive care on site.

3.7. The final challenge has been related to value for money and the financial sustainability of the Trust. QVH has struggled to meet its financial targets and has reported deficits of £4.2m and £9m in 2018/19 and 2019/20 respectively. This shows a steep deterioration in the financial position of the Trust since 2017/18 when it reported a £0.8m surplus. The drivers of the deficit that have been cited include a change in tariffs for non-elective trauma causing an income gap; changes in activity; and recruitment initiatives. The small size of the Trust also contributes to the financial challenge. The case for change sets out that some of these drivers are recurrent and so will continue to impact the financial position of QVH.

3.8. In order to address the issues outlined in the case for change, QVH began pursuing partnership options.

History of the merger proposals

3.9. From a clinical perspective, QVH has worked closely with other Trusts in the South East region for many years. The designation of the Royal Sussex County Hospital, part of BSUH, as a Major Trauma Centre in 2011 strengthened the clinical relationship between the two providers and heralded joint appointments in ortho-plastic surgery as part of the major trauma service.

3.10. In 2015/16, discussions were held to extend the partnership between BSUH and QVH and develop a collaboration to deliver paediatric burns and to extend the scope of lower limb trauma care. The scale of capital and revenue investment required, however, was a barrier to progressing this further.

3.11. In April 2017, Western Sussex Hospitals NHS Foundation Trust (WSHT) and BSUH entered a three-year management contract operating with a single accountable officer and a chair in common. In October 2017 BSUH and QVH set out a Memorandum of Understanding to collaborate on a range of clinical services. The focus of this collaboration was burns care, plastic surgery, and head and neck services.

3.12. In June 2018, QVH announced plans to build on this partnership and initiated the creation of a programme board to explore further opportunities for joint working.

3.13. In March 2019, the QVH Board approved the terms of reference for a joint executive programme board to oversee the work of developing a hospital group with WSHT and BSUH. These plans were publicly announced in November 2019. The QVH Board agreed a statement of intent to pursue a formal partnership as part of a group model. It was anticipated that further work to evaluate this would be undertaken in early 2020.

3.14. Due to the immense operational pressures created by the coronavirus pandemic, the mobilisation of BSUH and WSHT's plans was paused in early 2020. In June 2020, the two organisations announced their intention to merge and become University Hospitals Sussex NHS Foundation Trust. This new Trust was formed on 1 April 2021.

3.15. The decision for BSUH and WSHT to merge changed the potential form of any future relationship between QVH and the proposed new organisation, with a merger now the only option on offer. The QVH board considered this in depth and agreed to pursue a merger proposal in September 2020.

3.16. The SOC was produced and discussed at QVH and UHSussex Board meetings in August 2021 where it was agreed that a full business case would be pursued.

3.17. The Covid pandemic has had a significant impact on the development of the full business case, as it has placed an extra management burden on the QVH executive and board, as well as on UHSussex, and is one reason why progress has slowed

The key events are outlined in Exhibit 1

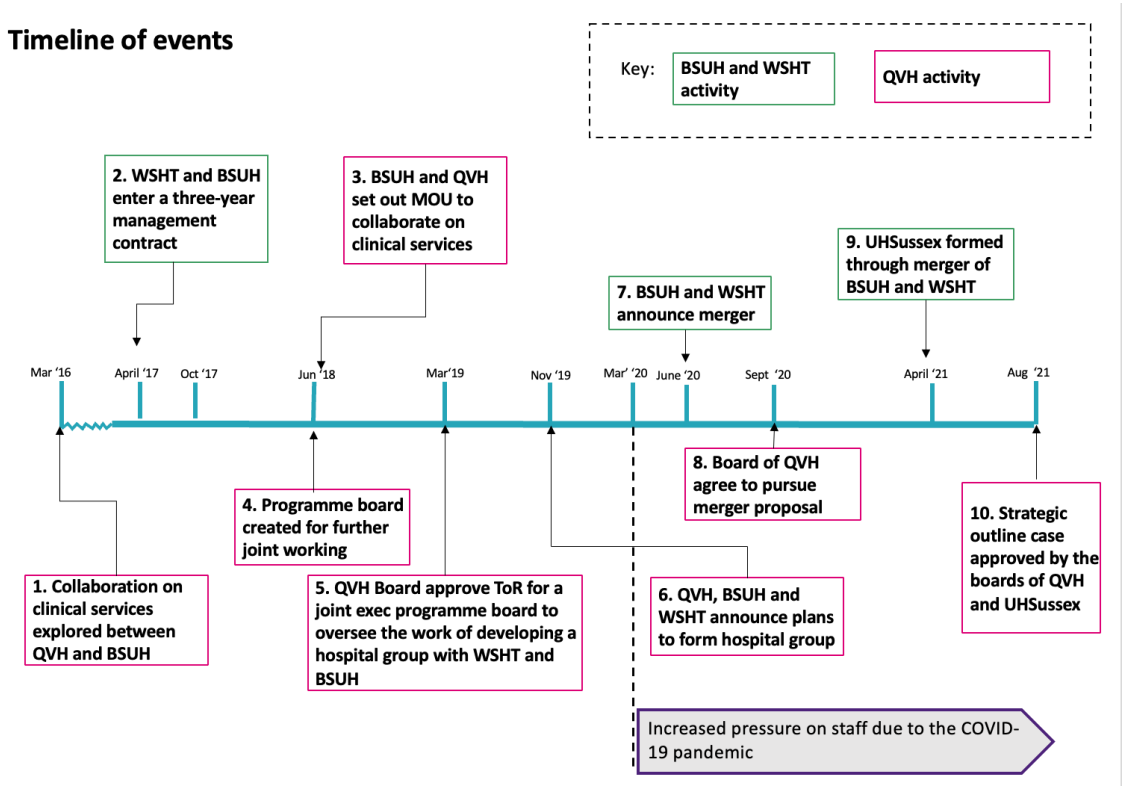

Exhibit 1: Timeline of events leading to the SOC

Reactions to the merger proposal

3.18. The announcement in September 2020 that the QVH Board were to pursue a merger rather than a partnership agreement with UHSussex resulted in a greater level of concern being raised about the process to date and the potential for a negative impact on services provided by QVH under this model. While some were supportive, other stakeholders shared anxiety about QVH losing its specialist services within a larger organisation. While this concern is both natural and understandable, it is important to note that the formal process for enacting major service change precludes providers making changes without a decision by their commissioners. And for commissioners to determine to do this they are required to engage relevant Overview and Scrutiny Committees who would typically require them formally to consult the public on a range of options. This process is designed to ensure stakeholder concerns around the impact of any proposed service change are aired and addressed.

3.19. In September 2020 the corneo-plastic consultant surgeons wrote to the Chief Executive voicing their concern and raising questions about the potential impact on service delivery. The letter referenced that the challenges in responding to the pandemic could result in the merger decision not receiving adequate time and resource to enable effective evaluation. The consultants also raised concerns about the limited staff consultation that had taken place to date on the merger.

3.20. Another letter was sent to the former Chair and Non-Executive Directors (NEDs) from 52 out of 83 consultants in September 2021 after the SOC was approved. This was to ask for the NEDs to seek a motion of no confidence in the Chief

Executive. The letter outlined five key concerns related to the merger proposal; no clarity in the decision-making process, limited attempts to improve financial stability, concerns about joining the newly formed UHSussex, communication issues and loss of culture.

3.21. The Chair also received many letters over a 12-month period from patients and from local MPs communicating the worries of their constituents. These letters mainly referenced a fear of losing the services that QVH provides and the negative impact this would have on people in the East Grinstead area.

3.22. Members of the public in Kent, Surrey and Sussex have shown their frustrations with the proposal announcement by creating an online campaign and petition that currently has close to 13,000 signatures. The campaign named "Save our Specialist Services" was founded in November 2020 and, through patient stories, press coverage and protest suggestions, has sought to block the proposed merger with UHSussex.

3.23. Following elections in November 2020, the merger proposal has become a particular focus for the Council of Governors. The relationship between the Board and Council of Governors is covered later in this report.

3.24. In November 2021, NHSEI imposed additional licence conditions on the Trust in relation to its Council of Governors, specifically:

1. The Licensee must ensure that it has in place sufficient and effective Board leadership capacity and capability, in particular a suitably experienced and effective Chair, as well as an effectively functioning Council of Governors, to enable it to address:
    a. the issues faced by the Licensee in relation to its financial position and long-term sustainability; and
    b. any other issues relating to governance or operations that have caused or contributed to, or are causing or contributing to, or will cause or contribute to, the breach of the conditions of the Licensee's licence.
2. The Licensee's Council of Governors must ensure that it implements arrangements to work effectively with the Licensee's Board, in particular with a view to securing long term sustainability of the Licensee's services and ensuring that they:
    a. at all times comply with applicable requirements of the Licensee's constitution,
    b. operate in accordance with their respective statutory roles and responsibilities; and
    c. have regard to relevant guidance issued by NHS Improvement in relation to governance of NHS foundation trusts.

These events are set out in Exhibit 2

Timeline of merger announcement reactions

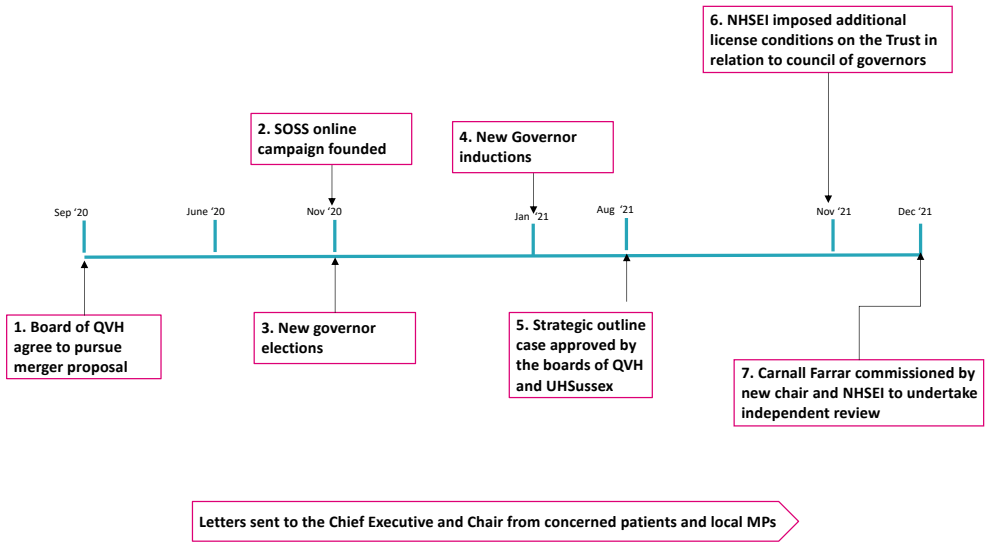

Exhibit 2: Timeline of reactions of stakeholders post announcement of merger proposal

4. Review findings

4.1. The review findings explore the ways in which the Board has handled the proposed merger to date in overall terms before covering more specifically the four elements of the review's scope: engagement with staff, engagement with the Council of Governors, clarity on the respective roles of the Governors and Board, and the handling of external stakeholders. The recommendations are grouped accordingly and set out in this section.

Overall findings

4.2. Passion for QVH and a desire to serve patients effectively unites all participants who engaged in the review, as does safeguarding the unique and high-quality services the Trust provides for the benefit of the population, not just locally but regionally and even nationally.

4.3. From conversations with the executive team as well as leadership in the Sussex Health and Care Partnership ICS, it is clear the process that led to the creation of the SOC has been an iterative one over a significant period of time. The result of this is that other stakeholders, who engaged later in the process, are not fully informed of the decisions and evaluation that has resulted in the pursuit of a potential merger with UHSussex.

4.4. The review found the Board to be united in support of continuing to pursue the case for a merger with UHSussex. There is alignment in considering this to be the best option of those available to QVH and one that has the potential to secure its long-term future. Doing nothing was not seen as an option as it does not address

the drivers of unsustainability outlined in the case for change and consequently some form of strategic organisational change is deemed necessary.

4.5. The Board recognise the challenges this course of action presents but are satisfied with the approach taken to date. However, they recognise there were opportunities to have done things differently. For instance, both the document review and interviews with the Board highlight how, with the benefit of hindsight, a thorough formal options appraisal would have been a useful exercise in gaining assurance in the approach they were pursuing. This activity would have also created a strong opportunity to engage staff and Governors in the process at an early stage.

4.6. The QVH Board has spent significant time considering the issues facing the organisation and deliberating the most effective response to them. In December 2017 the Board discussed the need to explore an options appraisal that address these issues during a strategy away day. Further to this, Board seminars were held in April and December 2018 to consider other available partnership options. During these sessions the compatibility of existing clinical pathways and relationships were considered ultimately leading to a decision to pursue a partnership with BSUH and WSHT.

4.7. The NHSEI South East Region, Sussex Health and Care Partnership ICS and UHSussex are in agreement with the decisions that have been taken by the Trust Board to date. The case for change is supported by all parties as a clear exposition of the challenges that are faced by QVH, and the preferred option to address these through a merger with UHSussex is viewed as logical and sound. While decisions reached are supported by these three stakeholders, they have limited understanding of the process of engagement undertaken to get to this point and have not been participants in the engagement that has been undertaken.

4.8. Within QVH itself the findings of the review are less consistent. There is comprehensive evidence of extensive communication with staff, including regular staff-wide correspondence the day after any significant decision has been made. For example, staff were informed prior to the SOC being presented to the Board, and then notified of its approval on the 6 August 2021. Frequent team meetings are held with smaller staff groups where the Chief Executive is on hand to answer questions on the process so far. In contrast, inclusive engagement in the process of deliberation (as opposed to communication of decisions pending or taken) is limited to a small senior group of stakeholders. The review was unable to find examples of wider engagement with a diverse selection of colleagues.

4.9. A consequence of this approach is that positions have become polarised, which is at the heart of many of the handling challenges the Board have been facing. There is a breakdown in trust between the Board and the Governors and a significant number of consultants do not understand the case for merger.

4.10. This is not to say the case for change is disputed. A significant majority of stakeholders who participated in the review understood and accepted the need for change. The contents of the leaflet 'Securing the Long-term Future of QVH' has been widely socialised and there is recognition of the need to work differently.

4.11. The clinical challenges around the co-location of some critical services and the fragility posed by having some functions delivered by a single member of staff have been overshadowed by the financial aspects of the case for change, which have been subject to particular scrutiny. While stakeholders recognise the fragile financial position, the drivers of this are not clearly understood by the Governors and by several members of staff. A particular lack of clarity persists around the drivers of the financial deterioration in 2018/19, including what had changed and why the position was not recoverable. This topic has been the subject of extensive interrogation by some Governors, who have sought to pinpoint the root causes of the financial deterioration and remain unconvinced by the explanations that have been offered by the Board. The position has become intractable and remains a specific source of acrimony and mistrust.

4.12. While the case for change is largely understood and accepted, how the proposed merger responds to the case for change is much less well understood and is not accepted as the optimal course of action by many members of the consultant body and the Trust's Council of Governors. This is in contrast with nursing and corporate teams who have generally expressed support. For those who do not agree with merger being the optimal course, there is a desire to understand why and how the discussions with UHSussex evolved from exploring partnership to exploring merger and the rationale for this change. Clarity is needed with respect to how the proposed merger with UHSussex responds adequately to the case for change while also safeguarding what is the unique excellence of QVH in terms of the services it provides.

4.13. The Board largely considers these issues to be a result of stakeholders wanting aspects of the case developed ahead of the need to do so in the process. From their perspective the need to do so was not disputed, and five tests were set out and communicated widely that describe the conditions that the proposed merger would need to meet:

a. further develop and invest in our services
b. maintain and build on our excellent record for patient experience, clinical outcomes and safety
c. continue to provide services to patients from the wide area we cover currently
d. continue to deliver world class research and innovation
e. secure the future of the hospital in East Grinstead providing services such as the minor injuries unit for local people

4.14. Given this, a relatively narrow interpretation of the requirements for a SOC has been taken, with arguably the minimum necessary programme of work

undertaken to secure its approval. The strong alignment in pursuing this option between the Board, the leadership within the ICS and the NHSEI South East Region, has potentially resulted in the creation of the SOC in a transactional manner. One reason for this is the limited resources within QVH to support the development of the SOC. Although teams from both organisations were involved, most of the input from QVH has been from finance and corporate affairs, and there has been minimal clinical leadership engagement in the process to date. The net consequence is that the process has not been an exercise in winning hearts and minds, engaging people in the development of the requirements such that they can influence and understand the deliberations, air their concerns, and seek reassurance, or understand the limits of what can reasonably be determined at each stage of the process with respect to future models of care.

4.15. The burden of engagement has fallen in particular on the Chief Executive of QVH, who has played a pivotal role in the communication to and engagement with staff. The role of clinical leaders in the engagement process has been less clear, either those who are part of the formal management structure or from within the consultant body as a whole.

4.16. A SOC outlines the potential better future that could be delivered by the preferred option being pursued. Typically, in circumstances such as these, its development requires engagement between the relevant clinical teams, in this instance those of QVH and UHSussex. This level of engagement has not taken place to date. A consequence of this lack of engagement is that views about what UHSussex want to achieve through the proposed merger are attributed to them by members of the consultant body and members of the Council of Governors with no basis for understanding whether they are true. Some of these views paint a future which is reductive in nature and would not protect or enhance care of the patients that QVH serves.

4.17. Both QVH and UHSussex have expressed an intent to develop a shared clinical strategy as part of the work required to develop a full business case for merger. This would be co-designed through a clinically led process with the engagement of clinical service leads, though the precise remit of this has not yet been defined. While this proposed work has the potential to address many of the concerns raised by stakeholders, undertaking it earlier in the process could have allayed some of these sooner. Some interviewees were concerned that the level of resource, including the allocation of clinical time from both organisations, would be insufficient to deliver the work to the level of detail that would provide the assurance that is needed.

4.18. In summary, there is an opportunity to strengthen alignment and build consensus across a wider group of stakeholders to ensure the potential benefits of the proposed merger are captured and it can be explored for the opportunities it opens up as well as the problems it could potentially solve.

4.19. **In light of these findings the following actions are recommended:**

1. A work programme for the merger process should be developed, which allows for a holistic set of stakeholders to be engaged as the work is undertaken. At the heart of this should be clinical engagement but wider engagement with staff, patients and stakeholders will also be important.

2. The work programme should reflect that the FBC needs to rehearse the strategic case in a level of depth including the case for change, the long-list of options, the hurdle criteria, the short-list of options, the evaluation criteria, and the appraisal to the preferred option.

3. The work should report to a steering group that includes multi-professional clinical and financial leadership, prior to the Board. The current steering arrangements should be reconstituted to include the Sussex Integrated Care Board (ICB), the NHSEI South East Region, UHSussex and QVH.

4. The steering group should oversee the development of a proportionate communications and engagement plan to accompany the work programme and should monitor an engagement log which is maintained as the work is undertaken
    a. The plan should carefully consider each aspect of the process and the necessary stakeholder group(s) to contribute to it.
    b. Discussions with stakeholders should take place to understand the most effective way to engage with them, ensuring the FBC is the product of an inclusive process.
    c. Once produced, the plan should be tested with representative staff groups within QVH, QVH Clinical Directors and relevant clinical leaders from UHSussex before being finalised.
    d. The plan should be under review so that themes from engagement are responded to and reflected into the programme of work as required.

5. Once the work programme and engagement plan have been developed in draft, a seminar session with the Council of Governors should take place, ideally in person, to review the plans prior to finalisation so Governors' feedback can be incorporated.

6. A resourcing plan should be developed to support the delivery of the work programme with resource commensurate to the task. The resourcing of the team should be supported by the ICS. The team itself should be embedded in QVH, working in partnership with a lead director from the ICB and the team at UHSussex.

The process of engagement with staff

4.20. It is clear both from the document review and interviews with staff members that continuous communications have taken place throughout the merger process. Communications have explained the steps of the process and outlined the decisions taken. Multiple opportunities have been provided for staff to ask questions.

4.21. Messages and information relating to the proposals have been shared in a timely manner with communication plans being developed and adhered to by Trust leadership. The content of communication material was extensive and informative, shared in the form of all staff briefings, emails, updates to the website as well as the 'Ask Steve' function where staff can pose questions anonymously to the Chief Executive.

4.22. The Chief Executive has been available to all members of staff throughout the process. One particular group with which this has worked well is nursing staff. Interviews highlighted the ease of access to the CEO and how their concerns have been heard. Multiple team meetings have been attended by the Chief Executive where the communications are reported to be open and honest, with two-way dialogue encouraged and staff feeling able to speak up about their concerns.

4.23. The Staff Ambassador Group was a self-assembled group that has provided a further route of staff engagement. The Chief Executive has engaged with the group, and they feel confident that their views and concerns regarding the merger proposals are listened to. The members of the group describe two-way communications with their respective teams, which has facilitated the wider staff body to be informed about the merger process, emerging proposals, and next steps.

4.24. However, the lack of representation from medical colleagues poses a challenge for the group. The absence of doctors means that the views of a significant group of staff who have influence are absent from the discussions that take place. This can add to a polarising of views with differing opinions not necessarily accurately reflected and motivations for action implied as opposed to understood.

4.25. There is no connection between the Staff Ambassadors Group and the Staff Governors, all of whom are consultants. The Staff Ambassadors Group report having invited the Governors to participate in their sessions, however, the Staff Governors report having no knowledge of the group prior to the initiation of this review where they are mentioned in the terms of reference. This disconnect supports a perception expressed by a range of interviewees that the Staff Governors are not holistically representing the views of staff in the Council of Governors. The Staff Governors feel their attempts to engage systematically with all staff have been hampered by Trust leadership.

4.26. As the merger process develops it will be important to forge relations between these groups and support staff members to talk through the differences of

opinion that exist so that more nuanced reflections can be provided, which holistically reflect the various views of staff into the process.

4.27. While the review has found that communications are plentiful, engagement in the development of the merger process such that design and decision-making is influenced by a broad range of input is limited. The lack of engagement and in particular lack of clinical input into decisions have contributed to discontent in the consultant body about the merger proposals.

4.28. Most Board members consider the requests for information and engagement to be out of step with the process. And that in time the work will be done to address the issues being raised. However, a relatively narrow interpretation of the requirements needed to create a SOC have been taken. The SOC itself sets out three potential options but lacks the level of detail on how these were arrived at that would give assurance to someone unfamiliar with the work previously undertaken to reach this point. It must also be emphasised that the Board was clear that in approving the SOC, it was giving a mandate to the development of a full business case, not to merger itself, which is rather a potential outcome of the business case process.

4.29. The SOC is the point in the process to win hearts and minds and develop an understanding of the potential opportunities inherent in the preferred option being pursued. This could have been an opportunity for substantive clinical engagement both on the opportunities presented by the proposed merger and on the elements of the status quo which it is essential to protect through any change process. The review has found that the Clinical Directors and wider clinical community within the Trust have not been given the opportunity to do this.

4.30. Engagement within the Trust in the development of the SOC was limited and engagement between the clinical teams of QVH and UHSussex has not yet taken place. The covid pandemic has placed a significant additional operational and managerial burden on all organisations which, together with the requirements to work virtually, are contributary factors to this. The input that QVH clinical teams did have in the SOC was restricted to providing the third option in the strategic analysis and evaluation section and this was worked on in isolation from the rest of the document. Ideally, clinicians would have worked together to understand the potential benefits of the different options as compared to the status quo and thus been part of the process of developing the recommendations and conclusions described in the SOC.

4.31. To engage meaningfully with staff, the Trust needs to encourage the collaboration of all current staff representatives. It will also be important to connect the clinical staff both at QVH and UHSussex to progress the merger proposal to the next stage.

4.32. **In light of these findings the following actions are recommended:**

7. The clinical body should be engaged in this work at the earliest opportunity and should do so in partnership with clinical teams from UHSussex before

pressing ahead with the development of the preferred option. The development of the preferred option should engage clinical teams of the two Trusts, with staff members from all professions.

8. The staff Governors should meet with other representative staff groups and be supported to ensure that all staff are engaged in the merger process and that the holistic views of staff are appropriately represented, including the difference of opinion that exists. If staff Governors are unable to represent the views of all staff a change in the constitution should be made to ensure the staff Governors are more representative of the whole staff.

The process of engagement with Governors

4.33. The review process has found the Board to be overseeing a merger process between QVH and UHSussex under considerable scrutiny by its Council of Governors. A combination of the approach taken to handling the merger process, the manner in which the Governors have scrutinised this and the proposal to merge itself have caused relations to fracture.

4.34. Due to the pressures of the coronavirus pandemic, the June 2020 elections to the Council of Governors were postponed. The consequence of this was that, in October 2020, QVH only had nine Governors eligible to vote on transactions. The constitution allows for a council of 26 Governors and so the Board agreed to hold elections to fill these roles.

4.35. Through the election process, 14 public Governors and three staff Governors were elected. This process began soon after QVH's announcement to pursue a merger with UHSussex, and five of the newly elected Governors' nomination forms cited the proposed merger as a main motivation for applying to the role (see Exhibit 3). These statements displayed apprehension about the proposed merger as these Governors had concerns relating to the safeguarding of the specialist services the Trust provides and had not been convinced of the benefits that a merger with UHSussex might bring.

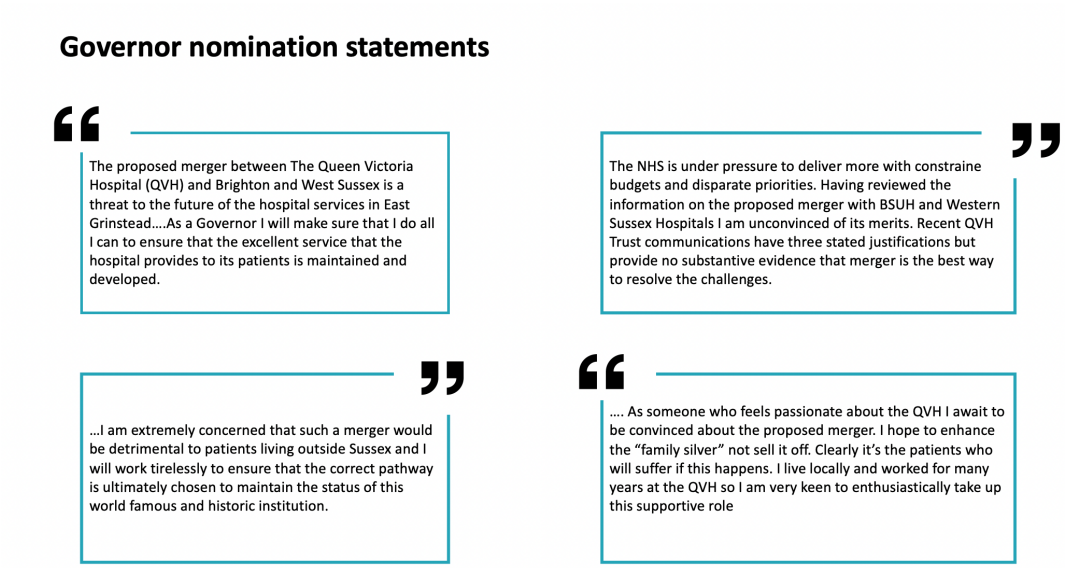

Exhibit 3: Extracts from governor nomination forms during election process

4.36. For Governors appointed through the election process in November 2020 it has been reported that a relationship of trust was never built with the Board. The two groups have not had the opportunity to meet in person and get to know one another. Behaviours have been reported as hostile and defensive on all sides from the point of induction in January 2021.

4.37. A number of interviewees report the breakdown of trust between the Board and the Council of Governors stemming from the appointment of the new Governors in November 2020. That is not to say that the appointment of the new Governors was the cause for the collapse in relationship.

4.38. CF reviewed documents from the Governor induction against the statutory requirements for the Governors of an NHS Foundation Trust. It was found that the induction covered the necessary information needed for Governors to perform their duties effectively.

4.39. The findings from the interviews were that the Governors felt as though the Board approached the induction in a defensive manner and there was no attempt to build a relationship between the two groups. The pandemic has also impacted the development of a constructive relationship as there has been limited opportunity for the Governors to meet members of the Board in person and visit QVH. The materials prepared for the induction include language that could be interpretated as defensive. For example, slides explicitly mentioning actions that are not part of the Governor role could be taken to imply a level of mistrust from the Board with respect to how they believe the Governors will behave. The induction meeting was disrupted by some new Governors discussing the proposed merger at this point, and further sessions to complete the induction content had to be arranged as a result.

4.40. The length of time over which addressing the challenges that QVH faces is significant, and this has contributed to those coming to the process at a later

stage lacking the level of understanding of the context that others have. Given the level of concern many of the new Governors had expressed about the proposed merger, briefing, communication and extensive engagement with new stakeholders was needed so that they clearly understand the context and can test this. While significant additional briefing and communication has taken place, additional engagement has been more limited; one driver of this is the poor behaviour of a small group of Governors, and this is explored later in this report.

4.41. A Merger Evaluation Working Group was agreed with the Council of Governors as a means to allow the Board and the Council of Governors to determine the criteria for assurance of the proposed merger. This is a key step in the development of the FBC and shows active effort on the part of the Board to collaborate with the Council of Governors. Unfortunately, this group failed to be established due to ongoing disputes within the Council of Governors. A small group of the Governors had disagreed with the name of the Group as they were not prepared to accept the concept of a merger without certain criteria being met.

Clarity between Board and Governor roles

4.42. A component of this review was to provide clarity on roles and decision making between Board and Governor roles. According to the reference guide produced by NHSEI the statutory duties of a governor of a Foundation Trust are:

- Appoint and, if appropriate, remove the Chair
- Appoint and, if appropriate, remove the other Non-Executive Directors
- Decide the remuneration and allowances and other terms and conditions of office of the Chair and the other Non-Executive Directors
- Approve (or not) any new appointment of a Chief Executive
- Appoint and, if appropriate, remove the NHS Foundation Trust's auditor
- Receive the NHS Foundation Trust's annual accounts, any report of the auditor on them, and the annual report at a general meeting of the Council of Governors
- Hold the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors
- Represent the interests of the members of the Trust as a whole and the interests of the public
- Approve significant transactions
- Approve an application by the Trust to enter into a merger, acquisition, separation or dissolution
- Decide whether the Trust's non-NHS work would significantly interfere with its principal purpose, which is to provide goods and services for the health service in England, or performing its other functions
- Approve amendments to the Trust's constitution

4.43. The two duties that were seen as most relevant to the merger proposal at this stage in the process are:

- Hold the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors
- Approve significant transactions

4.44. The guidance also provides clarity between the role of the Board and the Governors, emphasising that the overall running of the Trust lies with the Board. Governors should act as a body through which the Board can justify their actions without them being directly involved in the running of the Trust. The Governors also need to ensure they act in line with the Trust's values and code of conduct.

4.45. In relation to approving significant transactions the role of the Board is to bring forward proposals for the future of the organisation. The responsibility then lies with them to provide Governors with full information on the proposed transaction, seek to explain to Governors why they believe the transaction is necessary and provide evidence to support their view. The role of the Governors is then to obtain assurance that the Board has undertaken proper due diligence to reach its proposal, and appropriately considered the interests of members and the public. They cannot unreasonably withhold their consent to go ahead with a proposal if proper assurance is evidenced.

4.46. The review found that Governors had a clear understanding of their responsibilities and their statutory duties as published.

4.47. Establishing a relationship between Governors and the Board that is based on mutual trust and respect is critical in supporting the Governors to discharge their duties. Building this relationship has been hampered by the covid pandemic, both through the requirement to work virtually, and by the additional operational and managerial pressures that the whole NHS has been operating under. These pressures have been insufficiently recognised by a number of Governors; their actions having placed an additional burden on staff at a time of unprecedented challenge for the NHS.

4.48. The Governors of QVH have made a number of freedom of information (FOI) requests to access information they deem necessary to execute their role. This is unusual, given that Governors have more direct routes for asking questions and obtaining responses that promote understanding rather than meeting a limited legal requirement. The review has seen FOIs from two Governors requesting staff survey results, reporting requirements of the Trust and the annual cost of reporting as well as one request under FOI for information relating to the cost of professional legal services in relation to the proposed merger, a response to which had already been provided.

4.49. The responses to the FOIs from the Board have explained adequately where information is not available or cannot be supplied. Some Governors are not satisfied with the responses to the FOI requests they have submitted and believe information is being withheld from them under the pretext that it is commercially sensitive.

4.50. Board members indicated that the use of the FOI process to obtain information is a source of fatigue and frustration, as well as a drain on resources. There have been attempts by the Board to allow for debate and discussion by enhancing the Council of Governor meetings, and thereby limiting the need for the FOIs. Three meetings were organised in 2021 to allow more time for Governor requested business.

4.51. The Board has also gone against legal advice and allowed motions that fall outside Governor remit with the intention of encouraging Governor discussion. However, allowing such motions has potentially contributed to different interpretations of the Governor role.

4.52. Some Governors have chosen to act in ways that fall outside of parameters of their role. Despite an understanding of their statutory duties, they have a different interpretation of what constitutes performing these. One example of this is the passing of a motion to pause any activity relating to the merger process - an action that would affect the Board's ability to ensure the provision of high-quality services to its patients. A further example is a motion to pass a vote of no confidence in the Chief Executive, which lies in the statutory right of the Non-Executive Directors not the Council of Governors.

Behaviours of Governors

4.53. A consistent theme of the review has been reports of challenging behaviour from a small group of the Governors.

4.54. Both the document review and interviews revealed a small group of Governors have acted in ways that have made other Governors feel uncomfortable and unable to contribute to meetings, and consequently, unable to discharge their responsibilities as a Governor. Minutes of the Council of Governors meeting in April 2021 also evidence that some Governors have felt bullied by other Governors although individual names are not cited.

4.55. There is evidence of a lack of professionalism and a disregard of confidentiality agreements by certain Governors. The behaviour of these individuals is felt to dominate discussions and consequently means the views of other Governors are not always heard. It has also resulted in the proposed merger being the sole area of focus for the Council of Governors, and other aspects of QVH's activities have not been given the attention they warrant.

4.56. Members of the Board have reported feeling bullied by some Governors making what they describe as personal attacks. Email correspondence from these Governors support this observation; the tone in which members of staff are spoken to and about displays a lack of respect and does not support an effective working relationship. The accusatory way some questions are posed to the Board does not seem to inspire or encourage engagement.

4.57. Professional behaviour is expected from all members of the Trust including those on the Council of Governors and any instances of bullying and harassment should not be tolerated.

4.58. QVH has a clear set of values (see Exhibit 4) and a code of conduct that all staff are expected to adhere to, which should extend to the Council of Governors. The Governors are representatives of the Trust and should therefore be held to the same standard as its staff. The review has found that some Governors are not abiding by the Humanity value of "be courteous and respectful to everyone".

QVH Values

Continuous improvement of care	Humanity	Pride
We will:		
Listen to our patients and focus on what they want	Put patients first and maintain privacy and dignity at all times	Work together, respectfully and professionally, in the interest of the patient
Deliver services that are accessible and simple to use; encourage innovation and research to improve	Be courteous and respectful to everyone	Provide a workforce committed to the needs of our patients
Deliver high standards in all aspects of our work	Communicate openly and honestly with everyone	Always go the extra mile
Train and develop our staff to maintain a highly skilled workforce	Be fair and consistent in everything	Have pride in the heritage of QVH and build the QVH of the future

Exhibit 4: QVH Values taken from website

4.59. Just as important as the Trust's own values are the Seven Principles of Public Life (also referred to as the Nolan Principles) which apply to anyone who holds a public office role (see Exhibit 5), including those elected as a Governor to an NHS Trust. The seventh principle, leadership, clearly states that holders of public office should treat others with respect. The review has revealed instances where the framework appears not to have been adhered to. Intervention is required so that Governor behaviour can be tested against the framework and if these standards are not met, action needs to be taken.

4.60. The instances previously mentioned are suggestive of a culture where staff members do not feel confident in their right to intervene. On occasion individual Governors have been warned by the Lead Governor about their behaviour; however, there has been little evidence of formal interventions by the Board that would discipline this behaviour in an appropriate manner. While the previous Chair has written to individual Governors, the behaviour exhibited was not challenged as part of a formal process addressing issues of conduct that would result in action being taken if it continued. The lack of a direct response from the Board to deal with these instances of unprofessional behaviour as they occur has created a harmful environment for both staff and Governors.

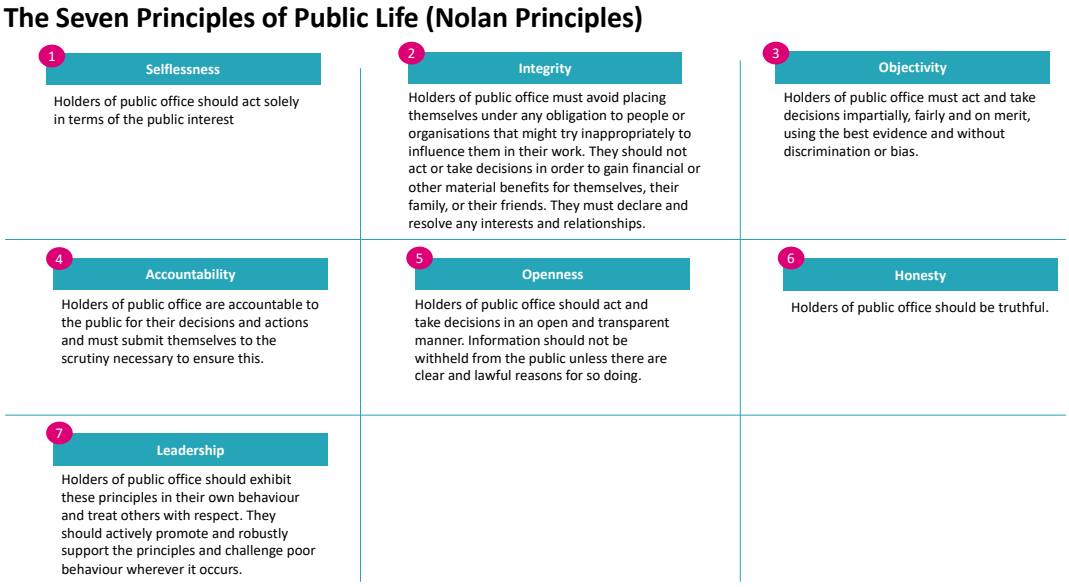

Exhibit 5: The Seven Principles of Public Life

4.61. The Board has sought the support of NHSEI in addressing the behaviour of the Governors, believing it had reached the limit of its ability to intervene directly. This is an unparalleled situation and is in itself a measure of how fractured relationships have become. On the basis of the evidence it saw, NHSEI placed additional licence conditions upon the Trust, concluding that:

- The Council of Governors was failing to secure compliance with the Licensee's licence conditions and failing properly to take steps to reduce the risk of non-compliance.

- And that further actions by the Council to prevent or hinder the Licensee taking reasonable steps to develop a sustainable long-term plan may destabilise the Trust's management, governance and services.

4.62. As yet, this action by the regulator has not resulted in a change in the relationship between the Council of Governors and the Board, or in the behaviour of some Governors, indicating further action is required to address behaviours and support the development of a more constructive working relationship.

4.63. **In light of these findings the following actions are recommended:**

9. The additional NHSEI licence conditions should be developed into a Trust policy reflecting the requirements for the Governors of the Trust to adhere to the seven principles of public life. The policy needs to outline the approach taken where these principles are breached, which must ultimately lead to dismissal if conduct is unacceptable. This policy should be shared with staff in the Trust who engage with Governors so that they understand what to do if they believe they are being bullied or harassed by someone.

10. To support Governors to discharge all their statutory responsibilities effectively, and ensure that roles of Governors are clear
    a. There should be dedicated meetings with all Governors on matters relating to the merger process
    b. The merger process should not be included on other agendas such that Governors are able to engage effectively on other matters
    c. Governor representation in other meetings of the Board should be brought into line with recognised best practice, and the following arrangements should cease:
        i. Lead Governor attendance at private meetings of the Board
        ii. Governor representatives on subcommittees of the Board

Trust handling of external stakeholders

4.64. It is important that stakeholders outside the Trust with a material interest in the merger proposal are fully engaged with the process. The key external stakeholders that the review has focused on are the Sussex Health and Care Partnership ICS, the NHSEI South East Region including its specialised commissioning function, and UHSussex.

4.65. The SOC was undertaken in conjunction with staff and leadership at UHSussex. This shows an interest from the organisation to be involved in the process and an understanding of the mutual benefit of the proposed merger.

4.66. As previously noted, the lack of clinical involvement in the creation of the SOC has had a negative effect on the progression of the proposal. Additionally, the review has found that QVH staff members outside of the Board have been had little to no access to the Board and clinical teams from UHSussex. This represents a missed opportunity to use the support and resources that UHSussex were able to provide to work with clinical directors and staff to create a document which gives QVH ownership of their own future. Findings from interviews further support the view that UHSussex is perceived to "own" the SOC and that there has been little engagement with key personnel at QVH, specifically clinical personnel, in its development. There is a general view that if UHSussex colleagues were able to engage adequately with staff from QVH, many of the concerns relating to the retention of the Trust's specialist services could have been addressed. Without exposure to UHSussex as an organisation there has been a considerable amount of speculation fuelling the misinformation being shared with stakeholders. This has included using QVH to address elective recovery challenges and deliver high volume routine activity.

4.67. In the Board's communication with the members of the Trust, there is little mention of the impact that NHSEI South East Region and the Sussex ICS have had in the decision-making process that led to the merger proposal. Interviews with stakeholders from the ICS and NHSEI South East Region indicate that they are convinced of the benefits of the proposed merger for QVH and have worked with the Trust to agree this as a way forward. The strong understanding of the

proposals and potential benefits has meant there is considerable enthusiasm to progress the proposal. However, the communications and engagement documents reviewed do not recognise the support for the proposals from NHSEI South East Region and Sussex ICS nor the reasons for it.

4.68. The Trust has spent time and resources on monitoring groups who are invested in the merger proposal, but which sit outside the formal process. An example of this is the "Save our Specialist Services" campaign which has gained a following on social media. The Board has done well to monitor the information being spread by these methods without opening a public debate on the issues. There is a difficulty in handling such encounters in order to limit the misinformation that is spread, and it is more difficult to do so in the absence of a clear clinical narrative that sets out an alternative position. The impact of this external campaign on staff morale should not be underestimated; it makes maintaining the trust of staff who are broadly supportive of the Board's efforts to secure the long-term future of QVH more difficult and creates additional uncertainty. Recommendations have already been made in this report, which should help to strengthen the clinical strategy which in turn will enable the correction of misinformation.

4.69. Other external stakeholders can support the Board as it seeks to counterbalance misinformation with a clear exposition of the facts.

4.70. **In light of these findings the following actions are recommended:**

11. The regional and ICB finance teams should take a role in supporting the Trust to discuss the financial position of the organisation with stakeholders, including deterioration of performance, the feasible actions that can be taken to improve the position, and the potential benefits that may be derived from a merger. The outcome of this session should be alignment on what more, if anything, is needed in the work plan going forward.

12. Detailed communications should flow from the regional NHSEI leadership via its Specialist Commissioning function and the Sussex ICS, setting out how they plan to work with QVH staff to ensure the continued delivery of the specialist services that QVH provides, safeguards their quality and meets the relevant national clinical standards. This will need to be aligned with the work that QVH and UHSussex will undertake to develop a shared clinical strategy.

Annex A: Terms of Reference

Purpose

1. The following are the Terms of Reference for the Independent Review of the Queen Victoria Hospital NHS Foundation Trust's ("the Trust") handling of challenges encountered in progressing a merger proposal with University Hospitals Sussex NHS Trust (UHSussex).

Background

2. Queen Victoria Hospital NHS Foundation Trust provides specialised services including reconstructive surgery, rehabilitation and specialist cancer services to a population across Kent, Sussex, Surrey and London. The Trust also provides a minor injuries service for its local population. The Trust played a key role as one of two regional cancer centres in 2020 during periods of high COVID demand. The Trust is rated 'Good' by CQC overall and in the 'Well-led' domains (May 2019) and following the issuing of additional licence conditions is in segment 3 of NHSEI's Single Oversight Framework. A new Chair took up post at the Trust on 15 November 2021 following the retirement of the previous Chair.
3. The Trust employs 980 staff and is one of the smallest NHS providers in the country (pre-COVID-19 operating income of £72m in 2019/20). It faces growing sustainability challenges, which led the Trust Board of Directors ("the Board") to explore options for a strategic partnership with neighbouring NHS providers. In October 2020 the Trust communicated its plans publicly in the 'Securing the Long-Term Future of QVH' document.
4. On 5 August 2021, the Trust Board and the Board of QVH University Hospitals Sussex NHS Foundation Trust (UHSussex) each considered the strategic case for future organisational arrangements. Both Boards agreed to work together to develop a Full Business Case for potential merger. QVH Board published a detailed paper and considered this in the public Board meeting; the final decision and full strategic case were reviewed in private. The strategic case is supported by Sussex Integrated Care System (ICS) and NHSEI's regional team.
5. The Trust held Governor elections in winter 2020/21 which brought 15 new Governors onto the Council of Governors. In addition, there are four longer-serving public Governors and three stakeholder Governors.
6. Should the Board consider the Full Business Case and make the decision to merge, the Council of Governors has an important role assuring that the Board has followed an appropriate process and that it has taken account of the interests of members and of the public in that process.
7. The majority of QVH's Council of Governors have voiced concerns about the proposal, requesting a significant delay in work on the merger to understand better the future financial framework for the NHS and to consider further the suitability of UHSussex as merger partner.
8. The relationship between the Board and the Council of Governors has become extremely challenging.

9. The Trust Board and NHSEI recognise the importance of effective Governor scrutiny of merger proposals but believe that the actions of some of QVH's Governors are preventing the Trust from reasonably being able to make progress on the next step in due process, namely the preparation of the Full Business Case, which under the FT Code of Governance and the constitutions of both Trusts must be agreed by the Boards of both Trusts.
10. These actions put the Trust at significant risk of breaching the conditions of its licence. NHSEI therefore took regulatory action on 20 October 2021 requiring the Governors to work effectively with the Trust Board in line with the Trust's Constitution. The additional licence conditions are published online at https://www.england.nhs.uk/publication/queen-victoria-hospital- nhs-foundation-trust/
11. The merger proposal has also led to a significant number of QVH consultants writing formally to raise concerns and express a lack of confidence in the Trust's Chief Executive (letter to the Trust Chair dated 23 September). QVH staff from other groups have subsequently written letters of support for the Chief Executive.
12. This situation highlights both the strength of feeling of different parties and also, regardless of views held, a desire to do the best for QVH's patients and staff in the development of a long-term future plan.
13. Considering the issues above, the Chair of Queen Victoria Hospital NHS Foundation Trust and NHSEI have agreed to jointly commission an independent review.

Independent review scope

14. The Review will consider the Trust's handling of the challenges it has encountered in progressing the merger with UHSussex.

    - The Review should provide an objective and representative assessment of the Board's handling of the merger and of relations with the Council of Governors.
    - The Review should make recommendations which will help resolve conflict and to build a consensus that allows the Trust to make progress effectively and at pace in order to ensure the Trust has a long-term and sustainable plan for the Trust's services and staff.
    - The Review should provide clarity on roles and decision making going forward, particularly between Board and Governor roles.
    - The Review should not attempt to redo work undertaken to date.
    - There is an expectation that the Review will be conducted in a positive and constructive manner to help all parties resolve conflict and build consensus.

15. There have been three key phases in the last 12 months within the Trust process of securing a long-term sustainable future

    i. Autumn/Winter 2020 - QVH Board consideration of potential merger with the new organisation to be formed by merger of Western Sussex Hospitals NHS Foundation Trust with Brighton and Sussex University Hospitals NHS Trust (BSUH); the publication of the case for change.

ii. Throughout 2021 - ongoing staff and Governor engagement.

iii. August 2021 – the Trust Board review of the Strategic Case and the decision to progress to Full Business Case.

16. The Review should focus on the Trust handling of engagement with relevant stakeholder groups and the challenges to progress in the three key stages of the process. In doing so the Review should consider

I. the process of engagement with staff, including explanation of the case for change and the options which were considered, how concerns were heard, and how such concerns were taken into consideration.

II. the process of engagement with Governors, including a view on the tone of correspondence to and from Governors, behaviours, and Governor meetings in the context of the Code of Governance, Nolan principles, QVH and NHS Values and the duty of the Trust to look after the wellbeing of employees.

III. Trust handling of external stakeholders.

17. Set out recommendations to support the Trust's development of the Full Business Case, particularly measures which promote their ongoing work and relationship management approach with staff, Governors, and external stakeholders.

18. The review will be conducted by Carnall Farrar and will:

i. Include interviews with key individuals including

- Trust Board members
- Lead Governor
- ICS Leader
- An independently randomised selection of Governors in small groups
- NHSEI Regional Director and team
- QVH Staff Ambassador Group
- Clinical Directors (single meeting)
- Heads of Nursing (single meeting)

ii. Review documentation relating to developing the business case including but not limited to:

- The Strategic Case
- Board papers
- Hospital Management Team papers
- Internal communication, including correspondence with consultants

- Correspondence with other key stakeholders
- Induction given to new Governors; correspondence between Governors and Board; correspondence between Governors and NHSEI; minutes of Council of Governors and minutes of Board meetings over the time period January – October 2021.

iii. Form a view on the significance or otherwise of the issues set out in this Terms of Reference, summarising evidence and information considered, findings, conclusions and recommendations for further action as appropriate to the Review findings.

Selection of reviewer

19. The selection of Reviewer has been agreed by the Trust Chair and NHSEI. The selection decision has met the requirements of the Trust's Procurement Standing Orders as appropriate.

Reporting

20. The Reviewer will provide a confidential report to the Trust Chair and NHSEI summarising the steps taken to address each of the points laid out in these Terms of Reference, summarising evidence and information considered, findings, conclusions and recommendations for further action as appropriate to the Review findings.
21. The report will be considered by the Trust Chair, the Trust Board, and the Regional Executive Team of NHSEI. The process for submitting the report is to be agreed.
22. The full report will be treated by all parties as confidential in recognition of the need to ensure that parties approached by the Reviewer are able to discuss confidential or sensitive issues as necessary. The Reviewer will also produce an executive summary report containing the key findings, conclusions and recommendations without confidential information in such a way that this can be shared with relevant parties more widely.
23. The full report is expected to be provided by Friday 14 January

Cost

24. The cost of the Review will be agreed with the Trust at the outset and will be met by the Trust.

Governance and Confidentiality

25. The integrity of the Investigation will be reliant upon its independence. As a prerequisite to any investigatory work commencing, the Trust Chair and NHSEI will take all reasonable measures to assure themselves of the independence of the appointed Investigating Officer (and, therefore, their suitability to conduct the Investigation).

26. The Investigation will be conducted as a confidential process throughout, and all participants will be informed of the requirement to observe the need for confidentiality at all times.

27. The Investigating Officer will ensure that information obtained in the course of the Investigation is processed in accordance with all relevant legislation and guidance, including but not limited to: General Data Protection Regulation (GDPR); the Data Protection Act 1998 (as amended); the NHS Code of Practice 2003 (supplemented 2010); prevailing Department of Health Guidance; and NHS England's Confidentiality Policy (June 2014).