

**Agenda Item:**

**Board of Directors  
Meeting**

**Report**

**Subject: Revisions to Constitution**

**Date: 24<sup>th</sup> April 2014**

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**EXECUTIVE SUMMARY**

**Constitutional amendments – update**

**1. The Constitution**

Since the February board meeting additional work has been carried out to amend the Constitution. This work has continued to encompass both necessary and desirable amendments.

**a. Necessary amendments**

The necessary amendments to the Constitution have been brought about by changes to legislation namely the implementation of the Health and Social Care Act 2012.

For example the change in the statutory duties of the Council of Governors.

They also include amendments needed to ensure consistency across the constitutional suite of documents ie: codes of conduct, standing orders etc and remove repetitive clauses (so as to avoid potential inconsistencies).

**b. Desirable amendments**

The desirable amendments have been put forward for inclusion and adoption based on a number of factors:

- changes in best practice and guidance;
- changes to address requirements included in the current Constitution which the working group considered it advisable to address for future clarity and process.

Annex 1 refers to the key proposed “desirable” changes and the current position in respect of those. The comparison copy of the constitution shows all the changes which are being proposed.

The Board is asked to review and consider the proposed amendments to the Constitution. It is noted that this review may result in the proposal of further amends. Therefore, the Board is asked to: delegate authority to the Chief Executive and Trust Secretary to agree such amendments; and where it is satisfied to do so approve the submission of the revised constitution to the Council of Governors for approval before being re-tabled before the Board again for final approval.

2. The Standing Orders for the Board of Directors and the Council of Governors and the Code of Conduct for the Board of Directors

Revised copies of these documents will be available at a later date once the form of revised Constitution has been approved.

3. The Code of Conduct for the Council of Governors

This was approved by the Council of Governors on [*insert date*]. This will also need to be tabled at the next Annual Members' Meeting for approval.

**The Board is asked to:**

1. **Note** the work which continues to be undertaken by the Trust Secretary and legal advisers to revise the Trust's constitutional suite of documents;
2. **Inform** the Trust Secretary of issues to be considered in the revision of the constitutional documents;
3. **Delegate** authority to the Chief Executive and Trust Secretary to make minor amendments to the revised constitution in advance of it being submitted to the Council of Governors for approval; and
4. **Approve** the submission of the revised constitution to the Council of Governors for approval at their May meeting.

Relevant Strategic Objectives (please mark in bold)	
<b>Achieve the best patient experience</b>	<b>Achieve financial sustainability</b>
<b>Improve patient safety and provide high quality care</b>	<b>Build successful relationships with external organisations and regulators</b>
<b>Attract, develop and motivate effective teams</b>	

<b>Links to the BAF and Corporate Risk Register</b>	
<b>Details of additional risks</b>	n/a
<b>Links to NHS Constitution</b>	√
<b>Financial Implications/Impact</b>	
<b>Legal Implications/Impact</b>	
<b>Partnership working &amp; Public Engagement Implications/Impact</b>	n/a
<b>Committees/groups where this item has been presented before</b>	n/a

**ANNEX 1 –Key proposed “desirable” proposed amendments (in addition to necessary/statutory changes)**

1. Transition arrangements

a. Requirement:

A request has been made to consider allowing Elected Governors who cease to be able to continue as a Governor because they are no longer eligible to act as a Governor in respect of the class they were elected for to continue as a Governor in any event.

b. Current Position:

It is not thought appropriate to allow Elected Governors to retain the office of Governor if they are no longer eligible to due to a change in their membership. This is because:

- (i) It is questionable as to whether a staff/public Governor could continue to represent that class if they were no longer a member of it. This is particularly the case for public governors’ becoming members of the staff class;
- (ii) It is questionable that the Elected Governor in question could represent their new class (as an additional Governor) because they would not have been given a mandate by that class;
- (iii) It is likely to affect the composition of the Council of Governors and could adversely affect the balance between public v non-public Governors.

Instead the new provisions have been included to allow such Elected Governors to continue to attend the Council as a Co-optee (subject to approval by the Council). This would make them advisers to the Council but ineligible to vote. The new provisions also include restrictions on the number of co-optees attending the Council of Governors at any time (3 max) and the length of time co-optees can serve.

In addition, provisions have been included to allow the Council of Governors to appoint co-optees where there are vacancies amongst the governors and no one is willing to stand.

It should be noted that provisions such as these are not required by the Core Constitution and whilst Monitor’s role in approving constitutions as changed guidance (on a no names basis) has been sought from Monitor as to its view on such provisions. A response is awaited.

2. Composition of the Council of Governors

a. Requirement:

- (i) A request was made to remove the University of Nottingham as an “Other Partnership Organisation” i.e. an organisation entitled to appoint a Governor and replace it with the Deanery;
- (ii) A request was made to establish a Mansfield Hospital staff class and have 3 volunteer classes representing: King’s Mill Hospital; Newark; and Mansfield Community Hospital. This would result in a staff governor composition as follows: King’s Mill Hospital Staff 3; Newark Hospital Staff 2; Mansfield Community Hospital Staff 1: and 2 from the Volunteer Classes.

b. Current position:

- (i) The Director of Nursing suggested it was not appropriate to remove the University as an Other Partnership Organisation due to the level of training provided. It is no longer proposed to do this. Plans are not being progressed to include the Deanery as it would affect the balance of the composition of the Council of Governors (particularly if coupled with a(ii));
- (ii) This would change the number of staff governors from 7 to 8 which will affect the balance of the Council and compromise the need for there to be a majority of public governors. The only way to negate this would be to increase the number of public governors.

These amendments are not being progressed.

3. Inclusion of PFI staff in a staff constituency

a. Requirement:

The current constitution provides for the Trust to keep a register for Sub-contractors. This is not currently the case. However, given the Trust’s PFI it is felt that the personnel of those key contractors should be entitled to form part of the staff constituency.

b. Current position:

Drafting has been revised to allow for this.

4. Mergers and significant transactions

a. Requirement:

The Council of Governors wish to be consulted on transactions that are not only ‘significant’ but which will also have a reputational impact on the Trust and want such transactions to be subject to their approval.

b. Current position:

This is in excess of legislative requirements. However, drafting on this point has been considered as Monitor permits foundation trusts to define that which amounts to a significant transaction. However, following such consideration instructions to the legal advisors has been to require the Board to notify the CoG of any transactions which the Board considers may have a negative impact on the Trust's reputation.

## 5. Engagement Policy

### a. Requirement:

In light of Monitor's new Code of Governance for Foundation Trusts, the Council of Governors has proposed a framework for communication between the Board of Directors and the Council of Governors with a dispute resolution mechanism.

### b. Current position:

The policy is being reviewed by legal advisers to ensure consistency with statutory requirements. Consideration has also been given as to whether this should be annexed to the Constitution or a stand alone policy – it is intended to have it as a stand alone document.

## 6. Conflicts of Interest

### a. Requirement:

To ensure the conflict of interest provisions adequately address the issues which conflicts can pose.

### b. Current position:

The Constitution has separate conflict of interest provisions for Governors and Directors. In each case the relevant provisions reflect the core constitution from Monitor. Concerns which have been raised as to how well such provisions are understood will be addressed through training and the use of FAQ documents.

## 7. Assistance with voting

### a. Requirement:

That the Trust has in place arrangements to ensure that those persons who need assistance to vote in governor elections are provided with such assistance.

### b. Current position:

It has been confirmed that the Model Election rules contain such provisions. However, given past issues with this, a clause further referring to this has been added to the Constitution.

## 8. Standing Orders

### a. Requirement:

Legal advisers are reviewing all the documents to ensure that any necessary overlap between the Constitution and the relevant Standing Orders is appropriate and consistent.

b. Current position:

Certain provisions within the Constitution are being removed where they should be more appropriately placed in the Standing Orders. The reverse is also true.

9. Codes of Conduct

a. Requirement:

- (i) The Code of Conduct for Directors should be reviewed to ensure it is consistent with the other constitutional documents and new legislative duties.
- (ii) The Code of Conduct for Governors needs to be updated to reflect recent legislative changes and eradicate inconsistencies within the standing orders and code of conduct.

b. Current position:

- (i) This work will be done in conjunction with legal advisers.
- (ii) The revised code of conduct has been tabled before the Council of Governors for approval. Where it is approved it will in due course be presented to the Members in Annual Meeting for their approval.