

Board of Directors Meeting

Agenda item:
Report

Subject: Constitution
Date: 27th February 2014
Author: KERRY ROGERS, DIRECTOR OF CORPORATE SERVICES/COMPANY SECRETARY

Lead Director: KERRY ROGERS

EXECUTIVE SUMMARY

It is necessary to amend the Trust's Constitution as it currently does not accord with the provisions of the Health and Social Care Act 2012. The impact of those changes to the Constitution means it is also relevant and timely to review the Standing Orders and other associated governing documents, which is a review that has already commenced in conjunction with the finance team who are reviewing the Standing Financial Instructions

ACTION REQUIRED BY BOARD

The Board is asked to:

1. **Note** the work being undertaken by the Director of Corporate Services/Company Secretary and legal advisers to revise the Trust's constitutional suite of documents;
2. **Inform** the Director of Corporate Services/Company Secretary of issues to be considered in the revision of the constitutional documents.

A copy of the current changes to the Constitution is available on request from the Director of Corporate Services/Company Secretary.

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

Links to the BAF and Corporate Risk Register	Compliance with Authorisation/Licence and with legal framework
Details of additional risks	
Links to NHS Constitution	Not directly linked
Financial Implications/Impact	n/a
Legal Implications/Impact	n/a
Partnership working & Public Engagement Implications/Impact	n/a
Committees/groups where this item has been presented before	CoG 20 Feb 14 CoG working group recommendations

Background

Progress report on revisions to the Trust's constitutional documents

1. Constitutional amendments – update

a. The Constitution

Since October 2013 a working group made up of 6 Governors including the Lead governor and the Director of Corporate Services & company Secretary has been considering necessary and desirable amendments to the Trust's Constitution. This work was instigated as a result of a review by the Director of Corporate Services & Company Secretary who on appointment recognised the extant Constitution required amendment to accord with the provisions of the H&SC Act 2012.

i. 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.

ii. 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 contains a list of some of the key "DESIRABLE" amendments proposed by the Working Group and the current position in respect of those.

The work of the Working Group has now ceased and the Constitution has been passed to the Trust's legal advisers to review the proposed amendments and provide assistance in drafting some of the required provisions.

The work being undertaken in relation to the Constitution is ongoing and the revised constitution will be tabled for approval by the Board and the Council in due course.

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

As these documents are part of the constitutional suite of documents for the Trust it is appropriate to review these at the same time. Revised versions of these documents are

currently being developed to ensure consistency across all the constitutional documents and these will be tabled for approval by the Board of Directors and Council of Governors, where necessary, with the revised Constitution.

c. The Code of Conduct for the Council of Governors

Following investigation into the conduct of a Governor, recommendations were made by a Panel of Governors to consider revisions to the Governor's Code of Conduct, and to ensure that such revisions clarified and communicated reasonable conduct rules to all Governors. Consequently the Code of Conduct for the Council of Governors has also been reviewed and amended in line with statutory changes and to address those issues referred to above.

Please note the proposed revised Governors' Code of Conduct has already been tabled for approval at the meeting of the Council of Governors of 20th February 2014.

The Board is asked to:

1. **Note** the work being undertaken by the Director of Corporate Services/Company Secretary and legal advisers to revise the Trust's constitutional suite of documents;
2. **Inform** the Director of Corporate Services/Company Secretary of issues to be considered in the revision of the constitutional documents.

ANNEX 1 –Key “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 do so 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 proposal is to consider allowing such Elected Governors to continue to attend the Council as a Cooptee (subject to approval by the Council). This would make them advisers to the Council but ineligible to vote.

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) Discussions with clinical colleagues have suggested it was not appropriate to stand down the University as an Other Partnership Organisation due to the level of training provided. It is no longer proposed to do this and work will be undertaken to encourage the

partner governor to attend meetings. Plans are not being progressed to include the Deanery as a Partner Governor as it would affect the balance of the composition of the Council of Governors (particularly if coupled with a(ii)); the Chairman and CEO will have an initial meeting with the Deanery to establish how we can work more closely together going forwards

- (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 is being reviewed 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 is being considered as Monitor does permit foundation trusts to define that which amounts to a significant transaction

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 is also being given as to whether this should be annexed

to the Constitution or a standalone policy and further whether it contains appropriate mechanisms to ensure effective engagement.

6. Standing Orders

a. Requirement:

The Director of Corporate Services/Company Secretary is working with the legal team to review 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.

7. 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.