

BOARD MEETING

28 JULY 2016

Paper Title:	Constitution Review
Section:	Public – Governance
Lead Director:	Paul Hogg, Trust Secretary
Paper Author:	Stella Jackson, Deputy Trust Secretary
Agenda Item:	17

KEY ISSUES AND REQUIREMENTS OF THIS REPORT:

The report provides details of proposed changes to the Trust's constitution. As required by the NHS Act 2006, as amended by the Health and Social Care Act 2012, amendments to the constitution must be approved by both Trust Board and the Council of Governors before they can take effect.

The proposed changes to the constitution address concerns/suggestions raised by Governors relating to the elected Governors' terms of office and boundary areas. Other proposed changes relate to general housekeeping/formatting matters, the criteria relating to the Non-Clinical staff constituency, written resolutions (a procedure used in the private sector) and the establishment of working groups of the Council of Governors.

The proposed amendments have been drafted by/reviewed by Hempsons Solicitors.

Once the amendments have been approved, the draft Council of Governors Governance manual will be updated accordingly.

RISK ISSUES IDENTIFIED FOR DISCUSSION:

If the proposed amendments are not adopted, the following risks would arise:

- The term of office of all Governors would end on the same date. Should those Governors not stand and be elected for a second term, this would result in the Trust having to undertake an intensive induction and training programme to equip the new Council of Governors with the skills needed to effectively undertake the role before any business could be effectively progressed;
- The existing constitution requires that elections to vacant seats are undertaken within three months of a Governor resigning their seat. Should some Governors leave the Trust at different periods during a financial year, the Trust would be required to undertake a number of elections in response to those resignations. This would have resource (human and financial) implications; and
- Currently, the Council of Governors meets once every three months. There may be occasions when an urgent decision is required outside of the meeting cycle (for instance, the approval of a new Non-Executive Director appointment). Should the

proposed amendment not be adopted, there would be a need to call an additional meeting of the Council of Governors.

FINANCIAL IMPLICATIONS:

The Membership office budget is able to accommodate expenditure relating to elections and Governor expenses for travel. However, non-adoption of the proposed amendments would impact on the ability of the Membership office to deliver non-recurrent savings at the financial year end.

LEGAL IMPLICATIONS:

There is a legal requirement for the Council of Governors (at least 50% of those entitled to vote at a meeting) and the Board (at least 50% of those entitled to vote at a meeting) to approve changes to the constitution.

PREVIOUS MEETINGS/COMMITTEES:

Highlight whether the paper has been discussed at any of the following meetings:

Audit Committee	<input type="checkbox"/>	Quality and Safety Committee	<input type="checkbox"/>	Remuneration Committee	<input type="checkbox"/>	Finance, Business & Investment Committee	<input type="checkbox"/>
Executive Management team	<input checked="" type="checkbox"/>	Directors Group	<input type="checkbox"/>	Chair of Committee's Meeting	<input type="checkbox"/>	MH Legislation Committee	<input type="checkbox"/>

RECOMMENDATION:

That the Board:

- Approves the proposed amendments to the constitution; and
- Notes that the Council of Governors will be asked to approve the proposed amendments at its meeting on 11 August 2016.

Revision of the Constitution

1. Summary

This paper provides details about proposed amendments to the Trust's constitution. These amendments address concerns/suggestions raised by Governors relating to the elected Governors' terms of office and boundary areas. Other proposed changes relate to general housekeeping/formatting matters, the criteria relating to the Non-Clinical staff constituency, written resolutions and the establishment of working groups of the Council of Governors.

2. Proposed Amendments

2.1 Paragraphs 13 'Council of Governors – tenure' and 15 'Vacancies amongst Governors'

Currently, the constitution requires the Trust to enter into the elections process within three months to fill the seat for the remainder of the term of office. This has the following implications:

- Resources - the cost to run each election and the resultant impact on the Membership office workload;
- Sustainability - the term of office of each Governor would expire on the same date (the Council of Governors', at its meeting on 15 August 2015, believed this posed a potential continuity risk to the Trust and considered it appropriate to review this).

In order to address these issues, it is proposed that the amendments detailed below are made to paragraphs 13.1 and 15.3.3:

Paragraph 13.1 currently states:

'A governor (whether elected or appointed) may serve a term of office of three years'

It is proposed that this is changed to read:

'A governor (whether elected or appointed) may serve a term of office of up to three years provided that, in the case of a governor who is appointed or elected after the date this amended Constitution comes into force, his term of office shall expire no later than 31 March in his final year of office'.

Paragraph 15.3.3 currently states:

'If there is no such next highest polling candidate for that seat willing to take office or if the most recent election did not take place within the last six months, be at liberty to call an election within three months to fill the seat for the remainder of the term of office'

It is proposed that this is changed to read:

'If there is no such next highest polling candidate for that seat willing to take office or if the most recent election did not take place within the last six months, the Council of Governors may leave the seat vacant until the next scheduled election, where an election is due to be held within the next twelve months, provided that the Council of Governors can continue to be quorate until the election is held. If the Council of Governors cannot be quorate during

the relevant period or if an election is not due to be held within the next twelve months, the Council of Governors shall call an election as soon as reasonably practicable to fill the vacant seat’.

2.2 `Annex 1 – The Public Constituency’

Since the constitution was first produced, the local authority has made changes to its constituency boundaries. Manningham has moved from the Bradford East constituency to the Bradford West constituency and Little Horton has moved from the Bradford West constituency to the Bradford East constituency.

It is proposed that Annex 1 of the constitution is updated to reflect these changes.

2.3 `Annex 2 – The Staff Constituency’

This annex provides criteria relating to both the Clinical and Non-Clinical staff constituencies. Last year, two managers that were qualified but not currently delivering healthcare services nominated themselves for the Clinical constituency when they should have nominated themselves for the Non-Clinical constituency. The Trust Secretary exercised his powers to accept the nominations on the basis that those staff were more likely to elicit votes from the Clinical constituency than they were from the Non-Clinical constituency. It is proposed, therefore, that Annex 2 is updated accordingly.

Annex 2 currently states that:

‘The Clinical group will contain all staff who are qualified or non-registered and who deliver healthcare services and treatment. The Non-Clinical constituency will contain all other staff such as those in corporate roles e.g. human resources, finance, estates and facilities and those who provide administrative support in the Trust.’

It is proposed that this is changed to read:

‘The Clinical group will contain all staff who are qualified or non-registered and who deliver healthcare services and treatment directly or undertake a managerial role within a clinical team. The Non-Clinical constituency will contain all other staff such as those in corporate roles e.g. human resources, finance, estates and facilities and those who provide administrative support in the Trust.’

2.4 `Annex 4 – FTN Model Rules for Elections’

It is proposed that some amendments are made to formatting. Track changes have been made to this section of the constitution to highlight the suggested amendments.

2.5 `Annex 5 – Additional Provisions – Council of Governors’

The Council of Governors has established a Nominations Committee to assist in the process of appointment of Non-Executive Directors (including the Chair). Annex 5 of the constitution refers to this committee as the ‘Appointments Committee’. It is proposed, therefore, that references to the ‘Appointments Committee’ are replaced with ‘Nominations Committee’.

2.6 `Annex 6 – Standing Orders for the Council of Governors`

On occasion, there may be a matter which requires consideration by the Council of Governors between its scheduled meetings, with a risk that an additional meeting may not be quorate. Consequently, it is proposed that the Council of Governors be provided with the opportunity to pass written resolutions outside of scheduled meetings.

It is proposed, therefore, that Annex 6 incorporates a section about Written Resolutions. The proposed wording to be used is:

4.9 Written Resolutions

4.9.1 *The Council may use the process for adopting a written resolution set out in this paragraph **Error! Reference source not found.** to enable them to transact business between meetings of the Council. The process for adopting a written resolution shall not be used to replace meetings of the Council.*

Proposing written resolutions

4.9.2 *At the Chairman's request, the Secretary shall propose a written resolution to the Governors.*

4.9.3 *A written resolution is proposed by giving notice of the proposed resolution to the Governors. Such notice shall stipulate:*

- (a) *The proposed resolution; and*
- (b) *The long-stop date by which the written resolution is to be adopted, which shall be not less than ten (10) days from the date the written resolution is dispatched by the Secretary.*

4.9.4 *Notice of a proposed written resolution must be given in writing to each Governor. Notice by email or post is permitted.*

Adopting written resolutions

4.9.5 *A proposed written resolution shall be adopted when it has been signed and returned to the Secretary by email or post by a majority of the Governors. Where a Governor returns the proposed written resolution to the Secretary by email, the written resolution shall be deemed to have been duly signed by the relevant Governor even in the absence of a physical signature.*

4.9.6 *For the avoidance of doubt, the proposed written resolution shall lapse if it has not been signed and returned by the requisite number of Governors pursuant to paragraph **Error! Reference source not found.** above, by the longstop date.*

4.9.7 *If a written resolution is adopted, it shall be:*

4.9.7.1 *reported to the next meeting of the Council; and*

4.9.7.2 *treated as if it was a decision taken at a Council meeting in accordance with these Standing Orders.*

The Secretary shall ensure that the Trust keeps a record, in writing, of all written resolutions for at least six (6) years from the date of their adoption.

2.7 `Annex 6 – Standing Orders for the Council of Governors`

Standing Order (SO) 5 of Annex 6 suggests that the Council of Governors can arrange for its functions to be exercised by delegation. This is not in fact the case and Hempsons has advised the Trust that SO5 needs to be amended to reflect this. The Council of Governors can ask one or more Governors or a working group to assist it with the exercise of its functions but it cannot “delegate” its functions to one or more governors or to committees of the Council of Governors.

Hempsons has also recommended that within this section, all references to `committees` are replaced with `working groups`. This would not require the names of the Remuneration or Nominations committees to change as these are referred to separately within the constitution. The name of the `Membership Development Committee` would, however, need to change to the `Membership Development Working Group`.

3. Recommendation

That the Board:

- Approves the proposed amendments to the constitution;
- Notes that the Council of Governors will be asked to approve the proposed amendments at its meeting on 11 August 2016;
- Notes that once the amendments have been approved, the draft Council of Governors' Governance Manual will be updated accordingly; and
- Notes that the approved copy of the constitution will be sent to NHS Improvement for their website.