

PUBLIC BOARD MEETING

26 JULY 2018

Paper Title:	Proposed Changes to the Constitution
Section:	Public
Lead Director:	Mike Smith, Chair
Paper Author:	Stella Jackson, Deputy Trust Secretary
Agenda Item:	15
Presented For:	Approval
Paper Category:	Governance & Compliance

Executive Summary:
<p>This report provides details of proposed changes to the Trust's constitution. The main changes relate to the disqualification criteria for Directors. The remaining changes are intended to correct any minor inaccuracies/anomalies.</p>

Recommendations:
<p>That Trust Board:</p> <ul style="list-style-type: none"> • Notes the changes will require approval by the Council of Governors, at its meeting on 19 July 2018; and • Approves the proposed changes to the Constitution.

Governance/Audit Trail:

Meetings where this item has previously been discussed (please mark with an X):					
Audit Committee		Quality & Safety Committee		Remuneration Committee	Finance, Business & Investment Committee
Executive Management Team	√	Directors		Chair of Committee Meetings	Mental Health Legislation Committee
Council of Governors	√				

This report supports the achievement of the following strategic aims of the Trust: <i>(please mark those that apply with an X):</i>	
Quality and Workforce: to provide high quality, evidence-based services delivered by a diverse, motivated and engaged workforce.	
Integration and Partnerships: to be influential in the development of new models of care locally and more widely across the West Yorkshire and Harrogate H&CP	
Sustainability and growth: to maintain our financial viability whilst actively seeking appropriate new business opportunities	

This report supports the achievement of the following Regulatory Requirements:	
Safe: People who use our services are protected from abuse and avoidable harm	
Caring: Staff involve people who use our services and treat them with compassion, kindness, dignity and respect	
Responsive: Services are organised to meet the needs of people who use our services	
Effective: Care, treatment and support achieves good outcomes, helps to maintain quality of life people who use our services and is based on the best available evidence.	
Well Led: The leadership, management and governance of the organisation make sure it's providing high-quality care that is based around individual needs, encourages learning and innovation, and promotes an open and fair culture.	√
NHSI Single Oversight Framework	

Equality Impact Assessment :
Not applicable.

Freedom of Information:
Publication Under Freedom of Information Act
This paper has been made available under the Freedom of Information Act.

Proposed Changes to the Trust's Constitution

1. Background and Context

The constitution governs the work of the Council of Governors and the Board. It is good practice to review this on a regular basis in order to ensure it remains fit for purpose. The changes proposed by a recent review are detailed below.

The constitution currently provides that neither an Executive Director nor a Non-Executive Director can be a Director of another NHS body. This requirement originally echoed the requirements of the NHS Trusts Membership and Procedure Regulations 1990. These Regulations were amended in 2014 and this basis of ineligibility was removed. However, it should be noted that the Regulations do not apply to NHS Foundation Trusts and it is probable that many NHS Foundation Trusts, including Bradford District Care NHS Foundation Trust, chose to insert such a ground for ineligibility because they were following the precedent set by NHS trusts.

Such a Regulation poses a number of problems:

1. It could restrict the pool of experienced and talented individuals from which the Trust could recruit/seek nominations;
2. It also imposes restrictions on those who join the organisation in a NED capacity and risks losing the benefit of concurrent portfolio experience. Ultimately, this could lead to the Trust being unable to retain individuals who wish to pursue other opportunities within the health sector; and
3. It would prevent Directors of this Trust becoming Directors of another NHS body under any West Yorkshire and Harrogate Health and Care Partnership arrangements.

The Deputy Trust Secretary sent an email to those company secretaries who are part of the NHS Providers Company Secretary network to determine whether any trusts had removed this requirement from their own constitutions and three trusts responded to say they had and had received legal approval to do so. Those trusts also shared the disqualification criteria as contained within their constitutions. This highlighted a small number of disqualification areas (which were common to all) had not been incorporated within the Trust's constitution.

2. Proposed Changes

The constitution (attached at Annex A) contains the following proposed changes. A number of these are proposed as a result of a review of three other Foundation Trust constitutions. The remainder are intended to correct any minor inaccuracies/anomalies or were originally included in the disqualification criteria within Annex 5 `Additional Provisions – Council of Governors' of the Trust's constitution relating to the disqualification criteria applicable to both Governors and Directors – the latter are highlighted by an asterisk:

- Paragraph 19 – this paragraph refers to the Panel to be convened by Monitor to review any issue referred to it by Governors. As no issues were ever referred, the Panel has been disbanded and it is proposed, therefore, that this paragraph is removed;
- Paragraph 30.1.4 – this currently provides that the same disqualification criteria should apply to Governors and Directors. As the disqualification criteria for each will differ (please see paragraph 1 above), it is proposed that this reference is removed and that the disqualification criteria for Directors is specified separately (as detailed at paragraphs 30.1.1-30.1.3 and below);

- Paragraph 30.1.5 – this provides that a person who is the spouse, partner, parent or child or an (existing) Director of the Foundation Trust would not be able to be a (new) member of the Board;
- Paragraph 30.1.6 – this provides that a person who is disqualified under the Company Directors Disqualification Act cannot be a Director;
- Paragraph 30.1.7 - this provides that a Non-Executive Director (NED) must be a member of the Trust;
- Paragraph 30.1.8* – this provides that a person cannot be a Director if their tenure with a health service body has been terminated on the grounds that the appointment was not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- Paragraph 30.1.9* – this provides that a person cannot be a member of the Board should they be subject to a Sex Offender Order or if their name is on the Sex Offenders list (this is also a requirement of Governors);
- Paragraph 30.1.10* – this clause provides that a person who has been dismissed from employment with a health service body (within the previous two years) for any reason other than redundancy cannot be a Director;
- 30.1.11 – this provides that a NED will be disqualified if they refuse, without reasonable cause, to fulfil any training requirements expected of them;
- 30.1.12 – this provides that a Director will be disqualified should they not meet the standards set out in the Fit and Proper Person test;
- 30.1.13* – this provides that a person will be disqualified should they have had their name removed from any List prepared pursuant to sections 91, 106, 123 or Chapter 6 of the NHS Act 2006, and has not subsequently had his name included in such a list (the lists relate to persons performing medical services, dental services, ophthalmic services or pharmaceutical services);
- Annex 1 – this contains a spelling error. The W is currently missing from the word 'Wrose';
- Annex 5 – paragraph 3 under the 'Termination of Office and Removal of Governors' heading currently provides that Governors could be disqualified (pending Council of Governor approval) for missing two meetings in any one year. It is proposed that the wording is amended to clarify that the disqualification criteria only relates to Council of Governor meetings;
- Annex 5 – it is proposed that references to the 'Appointments Committee' under the heading 'Appointment of Non-Executive Directors (including the Chair and Deputy Chair)' are replaced with 'Nominations Committee' as this reflects the terminology used for this Committee; and
- The page numbers within the index and as appropriate throughout the document will require updating once a decision is made regarding the proposed amendments.

The constitution provides that any changes to it also require the approval of the Council of Governors.

3. Implications

3.1 Legal and Constitutional

Legal approval of the proposed amendments has not been sought as the amendments are not technical in nature and legal approval was given to the other trusts which have incorporated the above director disqualification clauses into their constitutions.

4. Next Steps

Once approved, the Constitution will be uploaded to the website and a copy will be forwarded to NHS Improvement.