

Council of Governors: Summary Sheet

Title of Paper: Proposed Changes to the Trust's Constitution

Presented By: Jayne Brown OBE, Trust Chair

Action Required:

For Information	<input type="checkbox"/>	For Ratification	<input type="checkbox"/>	For a decision	<input type="checkbox"/>
For Feedback	<input type="checkbox"/>	Vote required	<input checked="" type="checkbox"/>	For Receipt	<input type="checkbox"/>

To which duty does this refer:

Holding non-executive directors individually and collectively to account for the performance of the Board	
Appointment, removal and deciding the terms of office of the Chair and non-executive directors	
Determining the remuneration of the Chair and non-executive directors	
Appointing or removing the Trust's auditor	
Approving or not the appointment of the Trust's chief executive	
Receiving the annual report and accounts and Auditor's report	
Representing the interests of members and the public	
Approving or not increases to non-NHS income of more than 5% of total income	
Approving or not significant transactions including acquisitions, mergers, separations and dissolutions	
Jointly approving changes to the Trust's constitution with the Board	X
Expressing a view on the Trust's operational (forward) plans	
Consideration on the use of income from the provision of goods and services from sources other than the NHS in England	
Monitoring the activities of the Trust to ensure that they are being conducted in a manner consistent with its terms of authorisation and the constitution	
Monitoring the Trust's performance against its targets and strategic aims	

How does this item support the functioning of the Council of Governors?

Any changes to the Trust's constitution must be approved by means of a vote by the Council of Governors and Board of Directors

Author of Report: Sam Stoddart

Designation: Deputy Board Secretary

Date: November 2018

SUMMARY REPORT

Report to: Council of Governors
Date: 6 December 2018
Subject: Changes to the Trust’s Constitution
Author: Sam Stoddart, Deputy Board Secretary

1. Purpose

<i>For approval</i>	<i>For a collective decision</i>	<i>To report progress</i>	<i>To seek input from</i>	<i>For information/assurance</i>	<i>Other (Please state below)</i>
x					

The purpose of this paper is to request approval from the Council of Governor (CoG), by vote, to amend the current [constitution](#).

There are three proposed changes detailed in points 2.1 – 2.3 below. The first reflects the change stipulated by the Council of Governors (CoG) requiring three quarters of governors present at a meeting and voting to approve the reappointment of the NED.

Two further amendments to the constitution are being proposed to rectify omissions to the initial Trust constitution in 2008 and revision in 2013 following the reissue of the [model core constitution](#) by NHS Improvement to reflect changes in the Health & Social Care Act 2012.

2. Summary

Any amendments to the Trust constitution must be approved by both the CoG and Board of Directors (BoD) in the form of a majority vote in accordance with paragraph 45 of the Trust’s [constitution](#).

Should votes be equal both for and against, in relation to CoG “the person presiding shall have a casting vote” as stipulated in paragraph 3.12 of Annex 7, CoG Standing Orders. In relation to BoD, “the Chair of the meeting shall have a second or casting vote” as stipulated in paragraph 3.22 of Annex 7, BoD Standing Orders.

The amendments are detailed below and in appendix 1.

2.1 Amendment 1 – Annex 7, Council of Governors Standing Orders, Nomination & Remuneration Committee - Paragraph 10

At the meeting of 26 July 2018, CoG approved an amendment to the constitution to allow the reappointment of NEDs subject to positive appraisal. However, CoG determined that a further constitutional amendment was necessary to require three quarters of governors present and voting to approve reappointment. Therefore a further constitutional amendment is required to paragraph 10.4 to enact this shown in blue:

“The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Board of Directors and of the Committee as to the suitability of the available candidates, and to the proposals of the Trust as set out in standing order 10.5 below. [Reappointment of an existing Non-Executive Director is subject to the approval of three quarters of governors present and voting.](#)”

Both these constitutional amendments were presented to the Board of Directors on 9 September 2018 for approval, as required by the paragraph 45 of the constitution and approved.

2.2 Amendment 2 - Board of Directors – qualification for appointment as a non-executive director – paragraph 25

To include a new paragraph at 25.3 to read

“Where any of the Trust’s hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university”

Existing paragraph 25.3 renumbered to 25.4

2.3 Amendment 3 – Significant Transactions – paragraph 46

To include a new paragraph at 46.2 to read

“The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.”

Existing paragraph 46.2 renumbered to 46.3

3. Next Steps

All the above changes and those presented to CoG at its meeting of 26 July 2018 were approved by the Board at its meeting of 13 September 2018 and 14 November 2018.

CoG is asked to approve the three further amendments to the constitution. Subject to approval NHS Improvement will be informed of the amendments and the revised constitution published on the Trust website.

4. Required Actions

CoG is asked by way of a majority vote to approve the amendments in line with the requirements of paragraph 45 of the Trust’s [constitution](#).

5. Monitoring Arrangements

It is the responsibility of the Director of Corporate Governance (Board Secretary) to ensure that the Trust's Constitution is fit for purpose and regularly reviewed.

6. Contact Details

For further information, please contact:

Margaret Saunders

Director of Corporate Governance (Board Secretary)

Email: Margaret.Saunders@shsc.nhs.uk

Page N°	Paragraph N°	Currently Reads	To be changed to	Reason
77	10.1	Subject to the provisions of paragraph 27 of the Constitution in relation to the appointment of the Initial Chair and Non-Executive Directors of the Trust the Chair and other Non-Executive Directors shall be appointed following a process of open competition conducted in accordance with standing order 10.4 below.	Subject to the provisions of paragraph 27 of the Constitution in relation to the appointment of the Initial Chair and Non-Executive Directors of the Trust the Chair and other Non-Executive directors shall be appointed in accordance with standing order 10.1 below.	To provide an additional appointment option for the Council of Governors as well as maintaining skills and experience within the board
77	10.3.2	To seek by way of open advertisement and other means candidates for office and to assess and select for interview such candidates as are considered appropriate and in doing so the Committee shall have regard always to the Trust's proposals standing order 10.6 below and be at liberty to seek advice and assistance from persons other than members of the Committee or of the Council of Governors	On expiry of the Non-Executive Director's first term of appointment, the Committee shall consider whether to recommend to the Council of Governors to reappoint the Non-Executive Director. This recommendation can only be made if the Non-Executive Director has been subject to a positive appraisal. If the Council of Governors does not so appoint, if the individual does not wish to continue or if the committee does not consider the reappointment appropriate, then suitable new candidates will be identified in accordance with the procedure outlined 10.3.1 above."	To provide an additional appointment option for the Council of Governors as well as maintaining skills and experience within the board
78	10.4	The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its	The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of	In order to provide a greater level of assurance, a significant majority of governors is required to approve the

Page N°	Paragraph N°	Currently Reads	To be changed to	Reason
		decision it shall have regard to the views of the Board of Directors and of the Committee as to the suitability of the available candidates, and to the proposals of the Trust as set out in standing order 10.6 below	the Board of Directors and of the Committee as to the suitability of the available candidates, and to the proposals of the Trust as set out in standing order 10.5 below. Reappointment of an existing Non-Executive Director is subject to the approval of three quarters of governors present and voting.	reappointment of an existing Non-Executive Director
11	25.3	they are not disqualified by virtue of paragraph 31 below	to be renumbered to 25.4	
11	25.3	new	here any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and	Included in the original core constitution but omitted when the Trust produced its first iteration of the constitution in 2008.
17	46.2	The constitution does not contain any descriptions of the term "significant transaction" for the purposes of Section 51A of the 2006 Act	to be renumbered to 46.3	
17	46.2	new	"The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction."	Omitted when the constitution was amended to reflect changes to the model core constitution following the Health & Social Care Act 2012