

Council of Governors: Summary Sheet

Title of Paper:

Amendment to the Trust's Constitution

Presented By:

Professor Alan Walker CBE, Chair

Action Required:

For Information

For Ratification

For a decision

For Feedback

Vote required

For Receipt

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 acquisitions, mergers, separations and dissolutions	
Jointly approving changes to the trust's constitution with the Board	X
Expressing a view on the Trust's 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?

According to paragraph 45 of the constitution, any amendments to the constitution must be agreed by more than half of the members of the Council of Governors voting.

Author of Report:

Sam Stoddart

Designation of Author:

Deputy Board Secretary

Date:

2nd July 2015

SUMMARY REPORT

Report to: Council of Governors

Date: 16th July 2015

Subject: Amendment of the Trust's Constitution

From: Professor Alan Walker, Chair

Prepared by: 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</i>	<i>Other (please state below)</i>
✓ (vote required)					
<ul style="list-style-type: none"> • The Council are asked to approve the constitutional amendments. This must be done by vote. 					

2. Summary

As a result of the Local Authority's notice to end its Section 75 agreement with the Trust and their further indication that they will no longer be nominating individuals to sit on the Board, it is necessary to remove section 10.6 of the constitution which confers on the Local Authority the right to nominate members to sit as a non-executive director of the Trust Board.

It is a legal requirement that all Boards of Directors are constituted in such a way that the number of non-executive directors always exceeds the number of executive directors (paragraph 23.8 of the constitution). Without an amendment to the constitution, after the term of office ends for non-executive director Cllr Mick Rooney, the Board will not be able to fulfil this requirement.

As this amendment must take place, the opportunity has been taken to review the constitution with a view to making good errors, ambiguities, formatting issues and updating model rules for elections.

The amendments fall into a number of categories, namely:

1. Legal requirement
2. Amending referencing errors
3. Amending inaccuracies or ambiguities
4. Updating to reflect new practice

A full list of amendments and the reasons for them is attached in appendix 1. However, the Board is asked to note the following in each category:

Legal

- a) Removal of paragraph 10.6 and all references to it allowing the Local Authority to appoint a member to the Trust's Board.
- b) Inclusion of Monitor in paragraph 1 'Interpretations and Definitions'. This should have been included following the Health and Social Care Act 2012 which necessitated constitutional amendments

Referencing Errors

These are numerous and clearly detailed in appendix 1.

Inaccuracies and/or ambiguities

- a) The membership eligibility criteria refers to service users (and their carers) needing to have attended a Trust hospital. This has been changed throughout the constitution to stipulate attending Trust services, as was the original intention. This was an error in the original constitution.
- b) The constitution confers on Voluntary Action Sheffield (VAS) two stakeholder governors which was incorrect from the outset. VAS were the conduit through which the Trust chose to identify two voluntary sector governors (they were used a recruitment agency), the seats were not conferred on VAS itself. This was an error in the original constitution and requires amendment to ensure the stakeholder governors have a constitutional standing. The constitution now states a further two stakeholder governors to be determined by the Trust.
- c) Whilst some parts of the constitution make clear the circumstances under which governors can no longer serve, the annexes which provide further detail are more ambiguous specifically in relation to a governor no longer being eligible to be a member in their elected constituency. This ambiguity has been addressed so that it is clear that if a governor moves out of their constituency they can no longer remain as a serving governor.
- d) The section in Annex 9 relating to amendment of the constitution should have been removed when the constitution was last updated following the Health and Social Care Act 2012. The pertinent paragraphs have been removed and it has been renamed as review of the constitution.
- e) The requirement for a signature on membership forms has been removed as this has never been required of members and cannot be achieved with electronic forms.

Updating

- a) With the significant strides forward in electronic communication, the model rules for elections have been updated to allow Trusts to undertake electronic voting should they wish. Annex 5 has therefore been changed in its entirety to include the new model rules to allow the Trust flexibility in future elections.
- b) The constitution refers to the Primary Care Trust. All references to this have been changed to Clinical Commissioning Group.

3. Next Steps

Should the Board vote to approve the amendments, the Council of Governors at their meeting of 16th July will be required to vote on the amendments. If approved by the Council of Governors, the amendments will come into force immediately. As these amendments do not confer and take away any powers on the Council of Governors, approval of the membership is not required.

4. Required Actions

The Council are asked to vote to accept the constitutional amendments detailed in appendix 1 which have been approved by the Board of Directors at their meeting of 1st July.

5. Monitoring Arrangements

Monitor will be informed of the amendments and an updated constitution will be made available on the Trust's website.

6. Contact Details

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Appendix 1 – Summary of Changes to the Constitution

Old Page N°	New Page N°	Paragraph N°	Amendment	Reason
1	1	Appointed Governors	PCT to change to Sheffield Clinical Commissioning Group	To reflect organisational change
1	1	Carer	Change the word hospitals to services	Membership available to users and carers of all the Trust's services, not just its hospitals
2	2	Chairman	References to change from 21 and 22 to 26 and 27	Incorrect reference
2	2	Chief Executive	Reference to change from 24 and 25 to 29 and 30	Incorrect reference
2	2/3	Health Service Body	PCT to change to a Clinical Commissioning Group	To reflect organisational change
3	3	Member	Reference to change from paragraph 5 to paragraph 1	Incorrect reference
n/a	3	Monitor	Addition of definition in line with updated model core constitution	Amendment to reflect the revised model core constitution published April 2013
3	2	Primary Care Trust Governor	Change to Clinical Commissioning Group governor	To reflect organisational change
3	2	The Primary Care Trust	Change to Clinical Commissioning Group	To reflect organisational change
4	4	Service Users	Change the word hospitals to services	Membership available to users and carers of all the Trust's services, not just its hospitals
8	8	13.3	Delete last sentence 'For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections' and continue the previous sentence with 'for the purposes of paragraph 45 of the constitution'.	Amendment to reflect the revised model core constitution published April 2013
9	9	17.1	Line 2 change paragraph reference from 22 and 23 to 26 and 27 Line 4 change paragraph reference from 24 to 28	Incorrect reference
11	11	24	Text should be numbered 24.1 to align with the numbering structure	Align numbering structure
11	11	25.3	Change reference from paragraph 27 to 31	Incorrect reference
13	13	34.1	Change 'be virtue' to 'by virtue' (1 st line)	Typo
16	16	36.5.2	Incorrectly numbered, should read 42.5.2	Incorrect numbering
20	19	Table 1	On the Sheffield South West row change Eccelshall to Ecclesall	Spelling error
27	26	Table 1	Change the word 'hospitals' to 'services' as detailed in both the service user and carer class descriptions	Membership available to users and carers of all the Trust's services, not just its hospitals
29	28/29	2.2, 2.3, 2.4, 2.5, 2.7, 2.8.1, 2.8.2	All references to the Primary Care Trust to be changed to Clinical Commissioning Group or CCG (where appropriate)	To reflect organisational change
30	29	2.12.1	To read Sheffield Health & Social Care Trust	Incorrect name
30	29	2.12.4	Change Voluntary Action Sheffield to	Constitutional error which

Old Page N ^o	New Page N ^o	Paragraph N ^o	Amendment	Reason
			'Two other stakeholder organisations to be determined by the Trust'	has been in place since authorisation and requires resolution
31	30	Table 4.15	Change Primary Care Trust to Sheffield Clinical Commissioning Group	To reflect organisational change
31	30	Table 5.1	Add 'Health and Social Care'	Correct name
31	30	Table 5.4	Change Voluntary Action Sheffield to Stakeholder Organisations	Constitutional error which has been in place since authorisation and requires resolution
33 – 58	31 – 57	Annex 5	Replace Model Rules for Elections with new version published in 2014	To enable the Trust to enable electronic voting in its elections
60	59	1.2.1	Addition of 'from which he was elected' after 'Trust Constituency' on the first line	To give greater clarity to the reasons for disqualification and remove ambiguity
61	60	3.1.2	Change from 'he ceases to be eligible to be a Member, save in the case of Appointed Governors;' to 'he ceases to be eligible to be a Member of the Trust or ceases to be eligible to be a member of his governor constituency, save in the case of Appointed Governors.'	To give greater clarity to the reasons for disqualification and remove ambiguity
67	66	Standing Orders Cover page	Amend Trust's name from Sheffield Care Trust to Sheffield Health & Social Care Trust	Incorrect name
70	69	2.1.1	Paragraph reference changed from 21 to 26	Incorrect reference
70	69	2.1.2	Paragraph reference changed from 24 to 29	Incorrect reference
70	69	2.1.3	Paragraph reference changed from 29.1 to 35.1	Incorrect reference
70	69	2.1.4	Paragraph reference changed from 33 to 39.2	Incorrect reference
70	69	2.1.5	Paragraph reference changed from 35 to 43	Incorrect reference
70	69	2.3	Paragraph reference changed from 21 to 26	Incorrect reference
70	69	2.4	Paragraph reference changed from 29 to 35	Incorrect reference
70	69	2.5	Paragraph reference changed from 23 to 28	Incorrect reference
70	69	2.6	Paragraph reference changed from 23 to 28	Incorrect reference
72	71	3.2	Paragraph reference should read 7.2 and not 14	Incorrect reference
74	73	5.1	Paragraph reference changed from 16 to 20	Incorrect reference
77	76	10.1	Paragraph reference changed from 22 to 27	Incorrect reference
77	76	10.2	Delete 'and such other functions as are provided for in standing order 10.6 below' located at the end of the paragraph	Defunct following removal of LA NED
77	76	10.3.1	Delete 'including the Trust's proposal as set out in standing order 10.6 below' from	Defunct following removal of LA NED

Old Page N ^o	New Page N ^o	Paragraph N ^o	Amendment	Reason
			the last sentence	
77	76	10.3.2	Delete 'and in doing so the Committee shall have regard always to the Trust's proposal in standing order 10.6 below' from lines 3 and 4	Defunct following removal of LA NED
78	76	10.4	Delete ' and to the proposals of the Trust as set out in standing order 10.6 below' from the last sentence	Defunct following removal of LA NED
78		10.6	Remove this section and it's sub-paragraphs (in relation to the appointment of a NED from the Local Authority)	Ending of Section 75 agreement which necessitated the need for the LA NED
92	89	6.6	Change the word 'effect' to 'affect' (2 nd line)	Grammatically incorrect
106	101	1.9	Change the word hospitals to services	Membership available to users of all the Trust's services, not just its hospitals
106	101	2.2.2	Delete 'and signed' from the first line Delete '(or in the Trust's discretion signed on behalf of the applicant)' from the second line	Membership forms do not require a signature
107	102	2.32	Paragraph reference changed from 7 to 6	Incorrect reference
112	107	7	Change title from Amendment (of Constitution) to Review (of Constitution)	Should have been deleted following the 2012 Care Act update to the constitution
112	107	7.1 & 7.2	Delete	
112	107	7.3	ReNUMBER to 7.1	Align numbering