

Council of Governors: Summary Sheet

17th December 2015
Item No 10

Title of Paper:

Presented By:

Action Required:

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

Voting either for or against constitutional changes supports the Council in undertaking its duty as defined in paragraph 45 of the constitution.

Author of Report:

Designation of Author:

Date:

SUMMARY REPORT

Report to: Council of Governors
Date: 17th December 2015
Subject: Constitutional Amendments to align the Constitution with the Governor Code of Conduct
From: Professor Alan Walker, chair

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>
x					
<p>The Council is required to approve any amendments to the constitution by a majority vote of those present at a Council meeting. In addition, amendments must be approved by a majority vote of the Board of Directors.</p>					

2. Summary

We periodically review the content of the constitution and as a result have identified that an amendment should be made to ensure the constitution is clear in the event that a Governor's term of office needs to be terminated. The following changes help to facilitate this process in a clear and transparent way.

The Trust's constitution (paragraph 16) sets out the disqualification and removal conditions of a governor; namely being adjudged bankrupt, making a composite arrangement or being convicted within the preceding five years with a sentence of not less than three months. In addition, Annex 6 of the constitution 'Additional Provisions – Council of Governors' provides further details on removal and disqualification.

The Governor Code of Conduct details the standards of behaviour expected of governors and sets down in paragraph 15 the actions that can be taken following non-compliance of the Code.

The Trust must ensure that the terms of the Governor Code of Conduct can be constitutionally carried out and therefore an amendment to the constitution is required to allow for the Chair to take immediate action, including exclusion or suspension, in the event of serious concerns regarding a governor's conduct.

This has therefore been added to the constitution, detailing the action that must be followed following a suspension which includes:

- Confirming suspension or exclusion in writing to the governor in question;
- Commissioning an investigation where appropriate;

- Where an investigation has confirmed non-compliance with the constitution or the Governor's Code of Conduct, seeking approval of the Council of Governors (by a two thirds majority) of a statement setting out the non-compliance;
- Voting on whether to uphold a statement of non-compliance following a governor's response;
- Voting on any resolution to remove a governor from office (75% majority required).

In addition, references to Sex Offenders Act 1977, Children & Young Person's Act 1937 and Rehabilitation of Offenders Act 1974 need to be updated in line with a change in law.

3. Next Steps

Should the Council approve the constitutional amendments, approval of the Board of Directors will be sought at its January 2016 meeting. Upon approval the amendments will be duly made and the updated Constitution sent to the regulator, Monitor, for inclusion on the Foundation Trust Directory.

4. Required Actions

Governors are required to vote on the proposed amendments. For the vote to be carried, more than half of the governors present must vote in favour of their adoption.

5. Monitoring Arrangements

The Company Secretary is responsible for monitoring the Trust's constitution.

6. Contact Details

Sam Stoddart
Deputy Board Secretary
Tel: 2718825

Details of Proposed Amendments

Additional Provisions – Council of Governors

Page	Paragraph	Current detail	Proposed changes	Reason
60	3.1.2	they cease to be eligible to be a Member of the Trust or cease to be eligible to be a member of their governor constituency, save in the case of Appointed Governors;	they are an elected governor and they cease to be a member of the constituency or class by which they were elected;	Provide clarity and reduce repetition
60	3.1.3	in the case of an Appointed Governor, the appointing organisation withdraws its appointment of them;	in the case of an Appointed Governor, the appointing organisation withdraws its appointment of them by notice in writing to the Trust;	Provide further clarity
60	3.1.5	they have within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a Health Service Body and/or any public sector body;	they have within the preceding two years been lawfully dismissed otherwise than by reason of redundancy or ill health from any paid employment with a Health Service Body and/or any public sector body;	Provide further clarity
60	3.1.7	they have had their name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 2 of that Act ... ;	they have had their name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 7 of that Act	Correcting error
60	3.1.10	They have been placed on the registers of Schedule 1 Offenders pursuant to the Sex Offenders Act 1977 and/or the Children & Young Person's Act 1937 and their conviction is not spent under the Rehabilitation of Offenders Act 1974	They are included in any barred list established in connection with the Safeguarding Vulnerable Groups Act 2006 or is on an equivalent list maintained under the law of Scotland or Northern Ireland.	To reflect the changes in law
60	3.1.18	information revealed by a Criminal Records Bureau check is such that it would be inappropriate ...;	information revealed by a Disclosure and Barring Service check is such that it would be inappropriate ...;	To reflect a change in terminology
61	3.1.19	they are a partner or spouse or otherwise related to an existing Director;	they are a Director of the Trust or another Foundation Trust;	To provide further clarity
61.	3.1.20 (new)		they are a Governor of another Foundation Trust;	To provide further clarity and reflect statutory requirements

Page	Paragraph	Current detail	Proposed changes	Reason
61	3.1.21 (3.1.19 renumbered)	they are a partner or spouse or otherwise related to an existing Director;	they are a partner or spouse or otherwise related to a Director of the Trust;	To provide further clarity
61	3.1.22 (new)		they lack the capacity the capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor.	To provide clarity and reflect statutory requirements
61	4.2	If the Council of Governors resolves to terminate their term of office for reasonable cause on the grounds that in the reasonable opinion of three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose that their continuing as a Governor would or would be likely to:	A Governor's term of office shall be terminated if the Council of Governors resolves by two-thirds majority of those present and voting that:	To read more clearly
61	4.2.1	prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or	their continuing in office as a governor would or would be likely to prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or	To read more clearly
61	4.2.2	prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or	their continuing in office as a governor would or would be likely to prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or	To read more clearly
61	4.2.3	adversely affect public confidence in the goods and services provided by the Trust; or	their continuing in office as a governor would or would be likely to adversely affects public confidence in the goods and services provided by the Trust; or	To read more clearly
61	4.2.4	otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or	their continuing in office as a governor would or would be likely to otherwise bring the Trust into disrepute or is detrimental to the interest of the Trust; or	To read more clearly
62	4.2.6	the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and their continuance in office would not be in	deleted	Duplication of para 3.1.13

Page	Paragraph	Current detail	Proposed changes	Reason
		the best interests of the Trust.		
62	4.2.7		renumber to 4.2.6	renumber
62	4.2.8		renumber to 4.2.7	renumber
62	4.2.9	they have committed a material breach of any code of conduct applicable to Governors of the Trust.	renumber to 4.2.8 they have committed a material breach of the Trust's constitution or any standing orders or any code of conduct applicable to Governors of the Trust.	renumber and further clarify
62	4.3	Upon a Governor resigning under paragraph 4.1.1 above or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and their name shall be forthwith removed from the Register of Governors.	Where there are concerns about a governor's conduct (including but not limited to where any of the circumstances in 4.2 above apply), the Chair shall be authorised to take such action as may be immediately required, including but not limited to suspension of the Governor concerns and/or exclusion from Trust property until the matter can be investigated and/or so that the investigation of any other third party may be completed. Any suspension of a Governor shall be confirmed to them in writing in such form as the Chair may decide in the circumstances. The Chair shall be authorised to make such arrangements as they consider appropriate for an investigation. No investigation shall be undertaken by the Trust that might reasonably foreseeably jeopardise or interfere with any investigation carried out by a third party who has primary responsibility for the investigation of the conduct, or alleged conduct, giving rise to the concern unless or until their investigation is complete.	To ensure that the Governor Code of Conduct can be constitutional enacted.
62	4.4 (new)		Where an investigation (whether carried out by or on behalf of the Trust or a third party) identifies that a Governor has conducted themselves in such a way as to have failed to comply with this constitution and/or any code of conduct applying to Governors,	To ensure that the Governor Code of Conduct can be constitutional enacted.

Page	Paragraph	Current detail	Proposed changes	Reason
			and/or standing orders, the Council of Governors shall be asked to decide, by a two-thirds majority of those present and voting, to approve a statement setting out the Governor's non-compliance	
62	4.5 (new)		The Governor concerned shall be notified in writing of the non-compliance and shall be invited to respond within a defined appropriate and reasonable timescale. The Governor shall be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.	To ensure that the Governor Code of Conduct can be constitutional enacted.
62	4.6 (new)		The Governors, by a two-thirds majority of those present and voting, shall consider the Governor's response and shall decide whether to uphold the statement of non-compliance.	To ensure that the Governor Code of Conduct can be constitutional enacted.
62	4.7 (new)		Where the Council of Governors decides to uphold the statement of non-compliance it may impose such sanctions as shall be deemed appropriate. Such sanctions may include the issuing of a written warning as to the Governor's future conduct and consequences, suspension from office for a period to be determined by the Council of Governors, non-payment of expenses and removal from office.	To ensure that the Governor Code of Conduct can be constitutional enacted.
62	4.8 (new)		If the Chair is minded to propose a resolution under paragraph 4.2 and the Governor concerned disagrees with the proposal, the Chair shall offer the Governor in question the opportunity to have the evidence reviewed by an independent assessor. The Chair and the Governor concerned shall seek to agree on a mutually acceptable independent assessor. If no agreement can be reached within 14 days of an individual being proposed, the Chair shall decide. The independent assessor shall be provided with	To ensure that the Governor Code of Conduct can be constitutional enacted.

Page	Paragraph	Current detail	Proposed changes	Reason
			terms of reference for the review, to be approved by the Chair, requiring the review principally to determine whether or not the proposal is reasonable.	
63	4.9 (new)		Where it is proposed to remove a Governor from office (including following any review by an independent assessor) under paragraph 4.2, the Chair (or in their absence, the Vice Chair), shall put forward a proposal to be considered in a meeting of the Council of Governors convened for that purpose. A majority of 75% of the Governors present and voting at that meeting shall be required to pass such a resolution.	To ensure that the Governor Code of Conduct can be constitutional enacted.
63	4.10 (previously 4.3)		Upon a Governor resigning under paragraph 4.1.1 above or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and their name shall be removed from the Register of Governors.	Renumbered
63 (previously 62)	4.11 (previously 4.4)	The Standing Orders adopted by the Council of Governors may contain provisions governing its procedure for termination under these provisions and for a Governor to appeal against the decision terminating their tenure of office.	The Standing Orders adopted by the Council of Governors may provide further for the process to be adopted in cases relating to the termination of a Governor's tenure.	Renumbered and altered to read more clearly
63 (previously 62)	4.12 (previously 4.5)	A Governor who resigns or whose tenure of office is terminated under this paragraph 4 shall not be eligible to stand for re-election for a period of three years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of whichever is the later.	A Governor who resigns or whose tenure of office is terminated before it expires shall not be eligible to stand for re-election for a period of three years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of whichever is the later	Renumbered and altered to read more clearly