

Council of Governors: Summary Sheet

Title of Paper: Proposals to amend NED Reappointment Process

Presented By: Margaret Saunders, Director of Corporate Governance (Board Secretary)

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	X
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?

The Council of Governors is responsible for the appointment of NEDs and for jointly approving any changes to the Trust's Constitution (paragraph 45.1.1)

Author of Report: Sam Stoddart

Designation: Deputy Board Secretary

Date: July 2018

SUMMARY REPORT

Report to: Council of Governors

Date: 26 July 2018

Subject: Non-Executive Director (NED) Reappointment Process

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					

To present a proposal from the Nomination & Remuneration Committee (NRC) to amend the Trust's constitution to allow for reappointment of NEDs subject to positive appraisal.

2. Summary

The Trust's constitution, Annex 7 Standing Orders of the Council of Governors (CoG), sets out the process by which Non-Executive Directors (NEDs) are to be appointed. Specifically paragraphs 10.1 and 10.3.2 stipulate that this should be by way of an open recruitment process.

The Trust has considered this position and has debated the benefits of amending the Constitution to allow for the reappointment of NEDs following the first term of office and subject to a positive appraisal. The benefits of adopting this position include continuity of the board, extending organisational memory, retaining the skills of NEDs and enabling the development of first term high performing NEDs. The practice of NED reappointment is not uncommon. Other Trusts who adopt this include Bradford District Care NHS FT, Sheffield Teaching Hospitals NHS FT, North East London NHS FT and Cambridgeshire & Peterborough NHS FT.

This proposal was considered by NRC on 23 May 2018, where, after a robust and detailed discussion, it was agreed by majority vote to recommend the proposal to the Council of Governors (CoG) with the proviso that the NED appraisal process is reviewed to ensure that it is sufficiently robust to provide assurance to CoG that NEDs are performing at a level to warrant their reappointment. Work was therefore undertaken by a small working group of NRC to review the appraisal process and a separate paper is presented to CoG in relation to this item.

NRC wishes to stress to CoG amendment of the Trust's constitution does not compromise CoG's right to insist on an open recruitment process; if approved this

would provide another mechanism available to CoG by which NEDs can be appointed.

3. Required Actions

- (a) Annex 7, Council of Governors Standing Orders, Paragraph 10.1 currently states:

“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”

It is proposed that this is amended to read:

“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 10.4 below”

For CoG’s information, paragraph 10.4 states:

“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.”

- (b) Annex 7, paragraph 10.3 – functions of the Committee - paragraph 10.3.2 currently states:

“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 proposal in 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.”

It is proposed that this is amended to read:

“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.”

For CoG’s information, paragraph 10.3.1 states:

“to determine the criteria and process for the selection of the candidates for office as Chair and other Non-Executive Director of the Trust having first consulted with the

Board of Directors as to those matters and having regard to such views as may be expressed by the Board of Directors.”

As required under paragraph 45 of the constitution, the Trust may make amendments to the constitution only if:

45.1.1 More than half of the members of the Council of Governors of the trust voting approve the amendments, and

45.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments

Therefore CoG is required to vote on the proposal to amend the constitution.

4. Next Steps

Should the proposal be accepted by the CoG, the constitutional amendments will be presented to the Board of Directors at its meeting of 12 September 2018 for approval. If granted, the Constitution will be amended and NHS Improvement notified.

5. Monitoring Arrangements

It is the role of the Director of Corporate Governance (Board Secretary) to ensure any changes to the Trust's constitution are agreed in line with constitutional requirements and to oversee the appointment of non-executive directors.

6. Contact Details

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