

## BOARD OF DIRECTORS MEETING (Open)

Date: 12 September 2018

Item Ref:

14

<b>TITLE OF PAPER</b>	<b>Proposed amendments to the Trust's Constitution</b>
<b>TO BE PRESENTED BY</b>	Margaret Saunders, Director of Corporate Governance (Board Secretary)
<b>ACTION REQUIRED</b>	Approval is sought by a majority vote in accordance with paragraph 45 of the Trust's constitution

<b>OUTCOME</b>	To enact changes, approval will be sought of the Council of Governors at its meeting of 18/10/18
<b>TIMETABLE FOR DECISION</b>	12 September 2018
<b>LINKS TO OTHER KEY REPORTS / DECISIONS</b>	
<b>STRATEGIC AIM STRATEGIC OBJECTIVE BAF RISK NUMBER &amp; DESCRIPTION</b>	<p>Strategic Aim: Value for Money</p> <p>Strategic Objective: We will improve the productivity and efficiency of our services</p> <p>BAF Risk Number: A401ii</p> <p>BAF Risk Description: Trust governance systems are not sufficiently embedded</p>
<b>LINKS TO NHS CONSTITUTION &amp; OTHER RELEVANT FRAMEWORKS, RISK, OUTCOMES ETC</b>	<p><a href="#">NHS Foundation Trust Code of Governance</a></p> <p><a href="#">Trust's Constitution</a></p> <p><a href="#">Provider Licence</a></p>
<b>IMPLICATIONS FOR SERVICE DELIVERY &amp; FINANCIAL IMPACT</b>	The Trust's constitution must align to the model constitution issued in April 2013.
<b>CONSIDERATION OF LEGAL ISSUES</b>	The Trust is required under the terms of its authorisation to have a constitution which is subject to review at appropriate intervals.

<b>Author of Report</b>	Sam Stoddart
<b>Designation</b>	Deputy Board Secretary
<b>Date of Report</b>	29 August 2018

## SUMMARY REPORT

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**Report to:** BOARD OF DIRECTORS

**Subject:** Proposed amendments to the Trust Constitution

**Author:** Sam Stoddart, Deputy Board Secretary

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### 1. Purpose

<i>For Approval by vote</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					

The purpose of this paper is to request approval from the Board of Directors (BoD), by vote, to amend the current [constitution](#)

There are four proposed changes detailed in points 2.1 – 2.4 below which are designed to provide a further option, in addition to those within the constitution, regarding the reappointment of Non-Executive Directors (NEDs) and reflect the changes required by the Council of Governors (CoG) in relation to that proposed option plus alignment with the model core constitution laid down by NHS Improvement.

### 2. Summary

Any amendments to the Trust's constitution must be approved by both the CoG and 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.

Four amendments are being brought before BoD detailed below and in appendix 1.

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

BoD is asked to note that amendment 1 was approved by majority vote at CoG on 26 July 2018.

The proposed amendment is to provide an additional option in relation to the reappointment of NEDs subject to positive appraisal. As such paragraph 10.1 of the Standing Orders will need to be 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 (~~following a process of open competition conducted~~) in accordance with standing order 10.4 below”

A further amendment is required to paragraph 10.3.2 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.”

## **2.2 Amendment 2 – Annex 7, Council of Governors Standing Orders, Nomination & Remuneration Committee - Paragraph 10**

At its meeting of 26 July 2018, CoG approved amendment 1 above. However, it agreed that reappointment must be subject to a majority vote of three quarters of governors present and voting. Therefore a further constitutional amendment is required to paragraph 10.4 as follows (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.](#)”

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

## **2.3 Amendment 4 - 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, and”

Existing paragraph 25.3 renumbered to 25.4

## **2.4 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**

BoD is asked to approve all 4 amendments to the constitution following which amendments 2.2, 2.3 and 2.4 will be presented to CoG at its meeting of 18 October 2018. Subject to approval NHS Improvement will be informed of the amendments and the revised constitution published on the Trust website.

## **4. Required Actions**

BoD 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)

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## Summary of Amendments to the Trust's Constitution

## Appendix 1

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 10.4 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 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	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