

Council of Governors

13 October 2016

Constitution

1. Introduction and Background:

The Trust's Constitution was initially approved by the then Trust Board at its September 2014 meeting and subsequently ratified by Monitor as an integral part of the NHS Foundation Trust authorisation process. Prior to approval, the document had been subject of review by a "reading group" formed of non-executive and executive directors and the "shadow" Lead Governor together. Detailed legal scrutiny by both the Trust's and Monitor's legal advisers, provided assurance both of legislative and regulatory compliance.

The Constitution consists of the core Constitution together with eight annex which detail as follows:

- Annex 1: The Public, Patient, Service User and Carer Constituency – geographical definition and minimum number of members
- Annex 2: The Staff Constituency – class make up and minimum number of members
- Annex 3: The Composition of the Council of Governors
- Annex 4: The Model Election Rules
- Annex 5: Additional Provisions of the Council of Governors
- Annex 6: The Standing Orders for the Practice and Procedure of the Council of Governors
- Annex 7: The Standing Orders for the Practice and Procedure of the Board of Directors
- Annex 8: Further Provisions

The core Constitution is required to mirror the Monitor (NHS Improvement) Model Core Constitution (the MCC) as amended from time to time though allowing for specific local additions. The current MCC is that dated September 2014 and was reflected in the development of the Trust's Constitution. Likewise the Model Election Rules are nationally set with the current rules being those incorporated into the Trust's approved Constitution.

Since authorisation two amendments have been made to the Constitution, approved by the Board of Directors and the Council of Governors, summarised as follows:

- the reduction in the size of the Council of Governors from 41 to 37 Governors achieved by stepping down NHS commissioners (x4) as partner organisations (*July 2015*)

- Enabling members of the Board of Directors to serve on the Board of an NHS Trust (*Feb. 2016*)

As good practice it is important to review the Constitution on a regular annual basis to ensure it remains fit for purpose, is compliant with regulatory requirements and effectively fulfils the requirements of the Trust as a membership based organisation.

Proposed amendments to the Constitution were considered and supported by the Board of Directors at its meeting on 29 September 2016 and are submitted to the Council of Governors for its consideration and approval. Any amendments to the Constitution require the approval of both the Board of Directors and the Council of Governors (it should be noted that any amendments to the role and functions of the Council of Governors would require approval via a ballot of members – no such amendments are being proposed).

Once agreed, the amended Constitution is subsequently required to be submitted to NHS Improvement (NHSI) (but does not require NHSI approval) and made publically available.

2. Proposed amendments:

Annex 1 sets out proposed amendments to the Constitution as considered and supported by the Board of Directors at its meeting held on 29 September 2016. These are therefore recommended to the Council of Governors for its consideration and approval.

In further reviewing the Constitution, a small number of typographical errors have been noted but not set out within this report. These will be appropriately corrected.

3. Council of Governors composition

The Board was asked to give consideration to the future size and composition of the Council of Governors, the outcome of this consideration being detailed within the recommendations set out in Annex 1.

Annex 2 of this report details the composition of the Council on establishment (March 2015) and as subsequently amended (July 2015).

The composition and size of a Council of Governors is not nationally directed. It is thus open to each individual Trust to determine ensuring it has a Council fit for purpose, representative of its membership and with the capacity and capability to fulfil its duties and responsibilities. The only stated requirements are that:

- a Council must comprise of elected representatives of the Trust's membership (Public, Patient, Servicer Users, Carers and Staff). There is an option to have a separate Patient, Servicer Users, Carers constituency. There must be a minimum of 3 staff governors.

- appointed representatives of key stakeholder organisations to “help tailor [the Council’s] governance to local circumstances. These appointed governors are representative of organisations with whom the Trust may wish to have a “strong relationship”. They can be from any organisation, provided they are drawn from one or more qualifying local authority and where the Trust includes a university medical or dental school, one appointed governor is from the university / school. Other organisations may include for example: local voluntary groups, police, trade unions or charities
- the size of the Public, Patient, Service Users & Carers Constituency must be greater than the total of the Staff and Partner Constituencies combined (our current composition allows for this with “headroom” of 5 in the event of vacancies arising in the Public, Patient, Service Users & Carers Constituency).

An analysis of the composition of a sample of other NHS Foundation Trusts, indicates that over time the size of Councils has reduced, with Council sizes commonly now comprising 25-30 governors. Some Councils comprise c.15-20 Governors whilst others have in excess of 50. There does not appear any strong correlation between the size of a Council and the Trust’s size (financial, staffing, geography, membership etc.), complexity (single or multiple sites), sector (acute, mental health, integrated) or its date of establishment as a Foundation Trust. Local circumstances, politics, experience, ability to elect / appoint governors and culture appear to be key determinant factors.

Feedback from a number of organisations is that the reduction has been as a consequence of 3 prime factors:

- The challenge of securing sufficient candidates to ensure a fully populated Council and to allow for a democratic process through choice of candidates,
- To provide for a more business focussed Council ie smaller equals more focussed
- The capacity and capability to provide for the necessary level of support to Governors individually and to the Council as a whole.

To date in election processes the Trust has, with a couple of exceptions, been able to secure sufficient candidates both to ensure a full composition and also to provide the membership with a choice of candidates in elections. Time will tell whether this experience continues.

The review of the Council of Governors undertaken in early 2016 sought to identify how the functioning of the Council could be further enhanced. Actions taken in response, primarily the introduction of the monthly “development session” approach to replace the previous working group structures, aim to ensure a more inclusive, connected, efficient and effective Council.

Feedback from the review was that Governors and the Council as a whole felt well supported by the Trust in undertaking its role.

Attendance at the last 4 meetings of the Council has been as follows:

Constituency	% attendance
Public, Patient, Service User & Carer	73.6
Staff	66.7
Partners	28.0
Overall	62.8

In terms of the review of the Constitution, it is probably helpful to consider the 3 Constituencies separately as each has its own particular issues and considerations.

- **Public, Patient, Service User & Carer:**

In all election processes to date there have been consistently a good number of nominations which has provided for a competitive election process. Turnover of governors over the last 18 months has been disappointingly high though in the significant majority of cases resignation from the Council has been due to unforeseeable factors including relocating outside of constituency boundary, death and external workload pressures.

As noted above, attendance levels from this constituency at Council meetings have been high. There is active engagement across the breadth of Council activities.

- **Staff:**

A key strategic objective of the Trust is to “make the Trust a great place to work” this supported by an engaged and informed workforce. Staff Governors undertake a defined and important representative role in support of this objective. An important element of the Trust’s strategy relates to the staff voice. The staff governor role is an important avenue for this voice and as such any reduction in the number of staff governors could be deemed as being of detriment to the staff voice.

The current staff governor group have demonstrated a strong commitment to and attendance at Council meetings etc. *(Nb. Various issues resulted in a lower than normal staff governor attendance at the July 2016 meeting of the Council and as such adversely impacted on the attendance rate detailed above).*

The Board of Directors has noted and acknowledged the increasing challenge faced by staff governors with regard to the time to undertaken the governor role due to operational pressures and resource constraints. A commitment has been made to ensure that appropriate steps are taken to enable staff governors to undertake their responsibilities effectively, recognising that the safety of patient care at all times is paramount.

- **Partners:**

Nationally engagement by partner organisations has been a consistent challenge to Trusts due to a range of factors including competing commitments, a lack of clarity of the specific role to be played by partner governors and the existence of other effective engagement mechanisms. The Trust very much welcomes the commitment that Partner organisations and their representatives have given to the work of the Council.

There is currently a vacant partner position, this previously held by Amaani Tallawah. The Board recommends that this position be removed.

With regard to University representation, it is important the Trust develops and maintains a strong relationship with both the University of Nottingham and Trent University, working closely with both. The University of Nottingham is represented on the Board of Directors through Patrick Callaghan. The Board of Directors recommends the benefit to be gained from Trent University being represented on the Council of Governors. Contact has been made with both universities with regard to this proposal.

- **Composition : concluding comments:**

Whilst recognising the current Council's composition as being above the national average, we are however a large, complex and geographically wide-spread trust and with a reputation for a strong engagement culture.

There is a danger when considering the size of the Council to “think of a number” and make the component numbers then fit. The current size of the Trust's Council has not created issues or concerns and has allowed for a broad range of experiences, expertise, knowledge and perspectives to be brought to the table. To reduce the Council to an arbitrary number which fits with the current understanding of the average scale of a Council would risk losing some of these benefits. Going forwards the focus needs to be on maximising the value gained from this breadth and diversity. In terms of cost, it is considered only negligible saving would be made from reducing the Council's size and as such should not be deemed a significant factor.

Since the establishment of the former Members' Council in c. 2009 through to date, we have experienced a strong governor commitment and also not experienced a shortfall in candidates for elections. It will be interesting to see how the new Council monthly development session approach progresses – its aim is to allow for a more robust, informed and engaged Council.

It is thus recommended that the composition of the Public, Patient, Service User & Carer and Staff constituencies remain as current, to be reviewed again in 2017 as part of the regular review of the Constitution. The proposed amendments to the partner governor composition are as set out above and in Annex 1

5. Recommendation:

The Council of Governors is recommended to:

- **APPROVE** the proposed amendments to the Constitution (as set out within Annex 1) subject to finalised wording

Annex 1

Proposed amendments to the Constitution

Annex	Section	Current wording	Proposed amendment										
Core Constitution	11	<p>Annual Members Meeting:</p> <p>The Annual Members Meeting shall be open to members of the public</p>	<p>Proposed addition for clarification:</p> <p>Only eligible members of the Trust will be permitted to vote at the Annual Members Meeting</p>										
Annex 1	The Public, Patient, Service User and Carer Constituency		No amendments proposed										
Annex 2	The Staff Constituency		No amendments proposed										
Annex 3	The Composition of the Council of Governors		<p>To retain current composition of the Public, Patient, Service User & Carer and Staff Constituencies ie 21 and 8 Governor representatives respectively.</p> <p>To release the current 3rd sector partner vacancy.</p> <p>To replace University of Nottingham with Trent University as the academic / research / education sector stakeholder partner representative.</p> <p>Subject to Council approval, the above will reduce the Council to 36 Governors comprising as follows:</p> <table border="1" data-bbox="1288 1134 2058 1337"> <thead> <tr> <th>Constituency</th> <th>Governors</th> </tr> </thead> <tbody> <tr> <td>Public, Patient etc.</td> <td>21</td> </tr> <tr> <td>Staff</td> <td>8</td> </tr> <tr> <td>Partner</td> <td>7</td> </tr> <tr> <td>TOTAL</td> <td>36</td> </tr> </tbody> </table>	Constituency	Governors	Public, Patient etc.	21	Staff	8	Partner	7	TOTAL	36
Constituency	Governors												
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Partner	7												
TOTAL	36												

Annex 4	Model Voting Rules (MER)		No amendments proposed – the MER remain current
Annex 5	4	<p>Council of Governor vacancies:</p> <p>Current wording details that where a vacancy arises on the Council, the person who received the next highest number of votes at the most recent election for the Constituency be elected as a “replacement governor”. This Governor will hold the position until the next annual election at which time the seat will fall vacant and be subject to election for the unexpired period of office.</p> <p>If the individual concerned does not accept the position, it would then be offered to the person with the next highest number of votes and so on.</p> <p>If no one accepts then the Trust shall hold an election for the vacancy as soon as reasonably practicable thereafter. However where an elected Governor ceases for whatever reason to hold office within the last twelve months of his/her term of office, the office shall remain vacant until the next scheduled election takes place – unless this causes the total number of Public, Patient, Service User and Carer Constituency Governors to be equal to or fewer than the other Governors – in this situation an election for the vacant position shall be held as soon as reasonably practicable.</p> <p>No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.</p>	<p>Proposed amendment:</p> <p>Guidance received has been that unsuccessful candidates from the most recently contested election held for the constituency in question should only be considered within 6 months of the election being held ie. if a vacancy arises within 6 months of an election having been held, previously unelected candidates may be approached (in the order of votes received) to take up the vacant position. Where such candidate is elected through this process, they then hold the position for the remainder of the intended period of office.</p> <p>In the above situation a further criteria could be added that only those who secured say a minimum of 10% of votes cast be eligible for election by this route.</p> <p>If a vacancy arises longer than 6 months after the election process, the position shall remain vacant until the next scheduled election process. We are now in a position where elections will be held annually – as such the longest period a vacancy will be held period to an election process is 6 months.</p>
	5	Role and responsibilities of Governors include:	Proposed amendment:

		<p>5.1.1 ii to decide the remuneration and allowances, and the other terms of office, of the Non-Executive Directors.</p> <p>5.1.3.ii. developing the Trust`s membership</p>	<p>5.1.1 ii For the purposes of additional clarity to detail “ot the Chair and Non-Executive Directors”</p> <p>5.1.3.ii. supporting the development of the Trust`s membership</p>
Annex 6	4.3	<p>Notice of meetings:</p> <p>Notice of meetings to governors to be in writing</p>	<p>Proposed amendment:</p> <p>Reflecting that the agreed prime means of governor communication is electronic to allow that notice of meetings may also be provided by electronic communication.</p>
	4.9	<p>Report from the Board of Directors:</p> <p>Current wording details as follows:</p> <p>Unless otherwise agreed, at each meeting of the Council of Governors, the Board of Directors is required to report to the Council of Governors on the Trust`s general progress and forward planning.</p>	<p>Proposed amendment:</p> <p>To read:</p> <p>Unless otherwise agreed by the Council of Governors, at each meeting of the Council of Governors, the Chief Executive or nominated representative shall present a report on the Trust`s general progress and forward planning.</p>
	4.13	<p>Council of Governors termination of tenure:</p> <p>The constitution details those circumstances when and the process by which a Governor`s tenure may be terminated. The pre-amble reads that a Governor`s term of office shall be terminated immediately if</p> <p>4.13 (iii) he has failed to attend two successive meetings of the Council of Governors unless the Council of Governors</p>	<p>Proposed amendment:</p> <p>This provision has not been strictly applied since the Council`s formation. Whilst attendance at formal Council meetings is recognised as important and emphasised as such, issues do arise which prevent attendance. The wording as currently included in the Constitution provides for a rigid, inflexible and potentially burdensome process by which when 2 meetings are missed, a report would need to</p>

		<p>are satisfied by a majority of three quarters that:</p> <ul style="list-style-type: none"> ○ The absence was due to a reasonable cause; and ○ He will be able to start attending within such time period as other Governors consider reasonable. 	<p>be presented to the next meeting of the Council, at which the governor(s) concerned may well be in attendance.</p> <p>It is recommended that this clause be redrafted to reflect that monitoring of attendance at meetings of the Council of Governors is undertaken. Where the level of attendance gives rise to concern, this will be addressed initially by the Chair and Lead Governor with the governor concerned. Should attendance fail to improve or adequate assurance with regard to future attendance, then reference would then be made to the Council of Governors to consider the tenure position.</p>
	5.8	<p>Lead Governor and Deputy Lead Governor: (election process)</p> <p>Current wording details that In the event of there being two or more nominations for the position of Lead or Deputy Lead Governor a secret postal ballot shall be held of all the Governors with each Governor having one vote. The ballot will be overseen by the Secretary.</p>	<p>Propose revision to:</p> <p>In the event of two or more nominations for the position of Lead or Deputy Lead Governor, an election process in a form agreed by the Council of Governors will be undertaken. The process will be overseen by the Secretary.</p>
	Addition		<p>The Council of Governors` Standing Orders do not currently contain a clause setting out the process to enable urgent decisions to be taken by the Council (other than through the convening of an extraordinary and quorate meeting).</p> <p>It is proposed that where such a decision is required to be taken by the Council and which cannot await the next scheduled formal meeting of the Council, a section of the next CoG development session be formally designated a formal general meeting for this specific purpose.</p>

			<p>It is further proposed a clause be incorporated which would allow for decisions to be taken in situations where the approach above does not result in a quorate meeting and or the urgency of the required decision dictates. In these situations it is proposed that:</p> <ul style="list-style-type: none">a. A decision to be taken where justified by the Lead Governor and Chair following consultation with “x” other governors (urgent meeting of the Steering Group)b. Where the decision to be taken is one which would ordinarily be required under the Constitution to be subject to a vote by the Council, that such a vote be conducted electronically outside of the meeting and overseen by the Company Secretary (for those Governors who do not have access to or preference would be not to utilise IT, a paper vote would be enabled). <p>Any decision taken under such an approach would be reported to the next meeting of the Council.</p> <p>It is stressed the use of the above approach be only utilised in exceptional circumstances, with the expectation that all CoG business will be conducted at its quarterly formal meetings.</p> <p>Subject to Board and Council support wording to reflect the above approach would be developed in conjunction with the Trust`s legal advisers.</p>
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Annex 7	Standing Orders of the Board of Directors		No amendments proposed (though see “general” below)
Annex 8	1	<p>Eligibility for membership of the Trust</p> <p>The Constitution details circumstances where an individual is or becomes ineligible for membership of the Trust. These include:</p> <ul style="list-style-type: none"> • Aggressive or violent behaviour against staff or other persons and as a consequence removed or excluded • Confirmed as an “vexatious complainant • Fails to meet membership criteria • Deemed to have acted in a manner contrary to the interests of the Trust 	<p>Propose the addition of the following criteria:</p> <p>Persistently acts in a manner which is deemed overly disruptive and or detrimental to the business, operation and functioning of the Trust and its services</p>
	7	<p>Members Meetings</p> <p>Current wording details that the Annual Members Meeting and Special Members Meetings are not open to members of the public – this is contrary to the Model Core Constitution</p>	<p>Amend to allow members of the public to attend (consistent with s.11.1 of the Core Constitution)</p> <p>Add a clause to clarify that only members of the Trust are entitled to vote at the Annual Members Meeting and Special Members Meetings.</p>
General		Various references refer to “in writing”	<p>Proposed amendment:</p> <p>Confirmation that “in writing” also includes e-mail communication unless otherwise indicated.</p>

Council of Governors Composition

Constituency	Sub-Constituency		March 2015	July 2015 to date
Public, Patient, Service Users & Carers (Elected)	Nottingham City		6	6
	Nottinghamshire		11	11
	South Yorkshire & Rest of East Midlands		2	2
	Rest of England & Wales		2	2
Sub-total			21	21
Staff (Elected)	Nursing		2	2
	AHP		2	2
	Medical		1	1
	Clinical Support		2	2
	Non-Clinical Support		1	1
Sub-total			8	8
Partners (Appointed)	NHS commissioners	○ NHS England (Leics and Lincs)	4	-
		○ NHS England (Notts and Derby.)		
		○ Nottingham City CCG		
		○ Mansfield & Ashfield CCG		
	Local Authority	○ Notts. County Council	2	2
		○ Nottm City Council		
	3 rd Sector	○ Carers Federation	3	3
○ Framework				
○ Vacancy				
Education	○ University of Nottingham	1	1	
Enterprise	○ Chamber of Commerce	1	1	
Criminal Justice System	○ Police & Crime Commissioner (Nottinghamshire)	1	1	
Sub-total			12	8
TOTAL			41	37