

**PAPER  
MC 15/2009**

## **Report to the Meeting of the Members' Council**

**For Consultation**

**22<sup>nd</sup> July 2009**

### **Proposal to Amend Trust Constitution**

#### **Executive Summary**

This report presents a proposed amendment to section 10.5.8 of the Trust's Constitution.

The Members' Council is requested to consider the proposal before the Board of Director's takes a decision on it.

#### **Background**

At previous meetings of the Members' Council it was reported that the Trust's Constitution would be reviewed with any proposed changes put to Monitor, the Independent Regulator of NHS Foundation Trusts. Under section 23 of the Constitution, the Trust may make amendment to its Constitution with the approval of Monitor. The proposal for amendment may only be put to Monitor if it has been agreed by the Board of Directors who must consult the Members' Council.

Governors and Directors (who had indicated that they would like to be involved) have been asked to suggest amendments and work with the Trust Secretary and others to draft up proposals. It is anticipated that the proposed amendments will be presented to the Members' Council at a meeting towards the end of 2009.

However, the Board would like to propose one amendment now because it will affect the information to be sent out on the appointment of the new Chair.

## **Rationale for Proposal**

The current provision in the Constitution means that Non-Executive Directors and Chairs may only serve a maximum of six years. On careful reflection this was considered to short and that the Trust was in danger of losing relevant skills and experience too soon. The proposal to extend the total period of office to nine years helps ensure that the Trust had the right balance on Non-Executive experience.

Importantly, in making this proposal, the Trust relied on Monitor's 'Code of Governance'. All NHS foundation trusts are expected to 'comply or explain' with the Code (any departures from the Code must be reported in foundation trust's annual reports). The Code is based on best practice (both public and private) and was developed following extensive consultation. Code principle C.2 sets out that all directors and governors must be submitted for re-appointment or re-election at regular intervals. Under this, Code provision C.2.2 sets out:-

- that Non-Executive Directors, including the Chair, should be appointed at intervals of no more than three years;
- the Chair should confirm to Governors that, following formal performance evaluation, the performance of the individual proposed for re-election continues to be effective and demonstrates commitment; and
- any term beyond six years (e.g. two three year terms) should be subject to closer review.

Further the Code indicates that after nine years it is unlikely that the individual concerned would be considered 'independent'. Given this, the proposal is to make the maximum period of office nine years.

## **Proposed Amendment**

It is proposed to request that Monitor amend section 10.5.8 of the Constitution to read:

"Subject to the foregoing, the Chair and the non-executive Directors shall be appointed for a period of office of three years in the first instance at a general meeting of the Members' Council, with the expectation of a second term of three years being served, subject to a recommendation from the Chair to the Members' Council at a general meeting based on satisfactory appraisals. A third term of three years may be served, subject to broader review taking into account the needs of the Board and the Trust. The maximum period of office of any Non-Executive Director shall not exceed nine years."

The current reading of 10.5.8 is:-

*Subject to the foregoing, the Chair and the non-executive Directors shall be appointed for a period of office and in accordance with the terms and conditions of office decided by the Members' Council at a general meeting. The maximum aggregate period of office of any non-executive Director shall not exceed 6 years.*

**Recommendation**

The Council is requested to consider the proposed amendment to 10.5.8 before the Board of Director's takes a view on it.

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**Date: 13 July 2009**