

# Report to the Meeting of the

**CoG 10/2017**

(Agenda item: 14)

# Oxford Health NHS Foundation Trust

# Council of Governors

**8th March, 2017**

**NED appointments; re-appointments and appointments to SID & Vice/Deputy Chair roles**

**For: approval**

**Executive Summary**

The principles of good practice and statutory provisions with regard to the appointment and re-appointment of non-executive directors are set out in the Trust’s Constitution (to be amended) and the NHS Code of Governance.

* **Trust’s Constitution and Code of Governance**

Outlined below in Appendix one to the report for ease of reference, is the relevant extract of the Trust’s Constitution in connection with non-executive directors’ Terms of Office and the extracts of the code that determine the role of Governors in the appointment and reappointment of non-executive directors.

**Background**

It is for the council of governors at a general meeting of the council **to appoint,** or remove the chair and the other non-executive directors – which includes their **re-appointment**.

In consultation with the council of governors, the board appoints one of the non-executive directors as **the senior independent director**. They are an alternative point of contact for governors (and directors) when:

* they have concerns that have not been resolved through normal channels
* contact with the chair, chief executive, or company secretary is inappropriate
* discussing the chair’s performance appraisal, remuneration or allowances.

The constitution also states that the council of governors, at a general meeting shall appoint one of the Non-Executive Directors as **Vice/(Deputy) Chairman**.

**Purpose**

**APPOINTMENT OF NON-EXECUTIVE DIRECTORS**

**This report clarifies that the non-executive directors are appointed by the Council of Governors at general meeting.** Following a robust recruitment and selection process and interviews taking place on 28th February and 1st March 2017, the Nominations and Remuneration Committee **hereby recommend to the Council of Governors that the following individuals are appointed as voting non-executive directors to the Oxford Health NHS Foundation Trust Board of Directors**:

1. **Chris Hurst** – financially qualified NED position. To succeed Lyn Williams and become a member of the Audit Committee and Chair of the Finance and Investment Committee. To commence as soon as possible, with a preferred start date before Lyn’s departure at the end of March 2017. Terms and Conditions in accordance with existing terms for NED roles and committee chairmanship.
2. **Bernard Gurton** – HR background. To succeed one of Anne Grocock/Mike Bellamy who both retire in January 2018. To commence at a date to be agreed to allow for a period of handover. Terms and Conditions in accordance with existing terms for NED roles and committee chairmanship.

The final phase of interviews for the 3rd successor NED will take place in May 2017 with recommendations to the June CoG meeting.

The Nomination and Remuneration Committee also recommend to the CoG that it support the establishment of a **non-voting Associate Non-Executive Director** role in order to develop wider access to opportunities to support equality and diversity on the Board of Directors and to grow future Board talent. The Committee **hereby recommend to the Council of Governors that the following individual be appointed as a non-voting Associate non-executive director**:

1. **Lucy Weston** – Housing Association background. To commence on a date to be agreed with associated Terms and Conditions reflective of the associate status of the role, and therefore a proposed remuneration of up to 50% of the current NED ‘standard’ remuneration.

**Summary CVs** for each of the above individuals will be provided confidentially to council members.

**RE-APPOINTMENT OF NON-EXECUTIVE DIRECTOR**

**This Report clarifies that the non-executive directors are reappointed by the Council of Governors at general meeting.** The Nominations and Remuneration Committee met in November 2016 to consider NED performance and NED re-appointments.

In accordance with due process and in alignment with the Trust’s Constitution, the Nominations and Remuneration committee have previously received the outcome of the appraisals of each of the non-executive directors, undertaken by the Chairman. The Council was apprised of this in connection with approvals to remuneration policy at its November 2016 meeting.

The Committee met on 1st March 2017 and were advised that the non-executive, Sir Jonathan Asbridge, who is approaching the end of his first term of office (total 3 years) and following a positive appraisal outcome previously reported upon, had confirmed his willingness to continue for a second term of office (3 years) in order to support a period of continuity on the Board, and consequently, in accordance with due process, the Chairman recommended he be re-appointed.

This recommendation recognised both Jonathan’s positive appraisal and commitment, and in particular the need for continuity on the Board during a period of significant system wide change and its potential impact on the Trust. Full consideration to succession planning, taking into account the future challenges, risks and opportunities facing the trust and the skills and expertise required within the board of directors to meet them, had been debated at the November meeting of the Committee.

It was supported by the Committee members present that Jonathan be re-appointed for a second term of 3 years, subject to routine annual performance appraisals. The Nominations and Remuneration committee hereby **recommend to the Council of Governors that they approve re-appointment of Sir Jonathan Asbridge for a second term ending 30th June, 2020**.

**APPOINTMENT OF SENIOR INDEPENDENT DIRECTOR AND VICE CHAIRMAN**

**This Report clarifies that in consultation with the council of governors, the board appoints one of the non-executive directors as the senior independent director and that the council of governors, at a general meeting shall appoint one of the Non-Executive Directors as Vice/(Deputy) Chairman**

At the Nominations and Remuneration Committee meeting on 1st March, the Chairman reminded members that Lyn Williams, who was due to retire at the end of March was currently both Senior Independent Director and Deputy Chairman, thus requiring new appointments to the role(s) to be determined and approved/ supported. The Chairman outlined his recommendation to split the 2 roles, supporting Anne Grocock to take on the role of Senior Independent Director and Mike Bellamy as Vice/Deputy chairman. It was recommended that they each be appointed to these roles following Lyn’s departure until their retirements on 31st January 2018. It was clarified that at that time, further recommendations for succession would be recommended to the council of governors. The Nominations and Remuneration committee hereby **recommend to the Council of Governors that they approve the appointment of Anne Grocock and Mike Bellamy as SID and Vice/Deputy chairman respectively until 31st January 2018.**

**Recommendation**

The Council of Governors is invited to approve:

1. The appointment of both Chris Hurst and Bernard Gurton as non-executive directors on the terms outlined.
2. The establishment of a non voting, Associate Non Executive position and the appointment of Lucy Weston to that position on the terms outlined.
3. The re-election of Sir Jonathan Asbridge for a second term, and for a period totalling 3 years to 30th June, 2020.
4. The appointment of Anne Grocock as Senior Independent Director until 31st January 2018.
5. The appointment of Mike Bellamy as Vice/Deputy Chairman until 31st January 2018.

**Author and Title:** Kerry Rogers, Director of Corporate Affairs/Company Secretary

**Lead Director:** Martin Howell, Chairman, on behalf of the Nominations and Remuneration Committee

**APPENDIX ONE**

**Oxford Health Constitution**

The relevant extract of the Constitution is outlined below:

**Terms of Office**

Subject to paragraph 8.6.3, the Chairman and the other Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office (including as to remunerations and allowances, which shall be published in the Annual Report) decided by the Council of Governors in general meeting.

Non-Executive Directors: ***(subject to change following approval of Constitution)***

8.6.3.1 shall be appointed for a period of up to 3 years;

8.6.3.2 are, subject to paragraphs 8.6.3.3 and 8.6.3.4 eligible for re-election at the end of the period referred to in paragraph 8.6.3.1;

8.6.3.3 shall not, except in exceptional circumstances, hold office

 for a period in excess of 6 years; and

8.6.3.4 where appointed for more than 6 years shall, at the discretion of the Council of Governors, be so appointed either on the basis of:

a) annual re-appointment; or

b) a competitive process

 up to a maximum 9 years.

**Code of Governance**

The relevant extracts of the Code are outlined below:

**B.2.1.** The nominations committee or committees, with external advice as appropriate, are responsible for the identification and nomination of executive and non-executive directors. The nominations committee should give full consideration to succession planning, taking into account the future challenges, risks and opportunities facing the NHS foundation trust and the skills and expertise required within the board of directors to meet them.

**B.2.2.** Directors on the board of directors and governors on the council of governors should meet the “fit and proper” persons test described in the provider licence. For the purpose of the licence and application criteria, “fit and proper” persons are defined as those without certain recent criminal convictions and director disqualifications, and those who are not bankrupt (undischarged). Trusts should also abide by the updated guidance from the CQC regarding appointments to senior positions in organisations subject to CQC regulations.

**B.2.3.** There may be one or two nominations committees. If there are two committees, one will be responsible for considering nominations for executive directors and the other for non-executive directors (including the chairperson). The nominations committee(s) should regularly review the structure, size and

composition of the board of directors and make recommendations for changes where appropriate. In particular, the nominations committee(s) should evaluate, at least annually, the balance of skills, knowledge and experience on the board of directors and, in the light of this evaluation, prepare a description of the role and capabilities required for appointment of both executive and non-executive directors, including the chairperson.

**B.2.13** The governors are responsible at a general meeting for the appointment, re- appointment and removal of the chairperson and the other non-executive directors.

**B.6.c** The council of governors, which is responsible for the appointment and re- appointment of non-executive directors, should take the lead on agreeing a process for the evaluation of the chairperson and the non-executives, with the chairperson and the non-executives. The outcomes of the evaluation of the non-executive directors should be agreed with them by the chairperson. The outcomes of the evaluation of the chairperson should be agreed by him or her with the senior independent director. The outcomes of the evaluation of the non-executive directors and the chairperson should be reported to the governors. The governors should bear in mind that it may be desirable to use the senior independent director to lead the evaluation of the chairperson.

**B.7.a** All non-executive directors and elected governors should be submitted for re- appointment or re-election at regular intervals. The performance of executive directors of the board should be subject to regular appraisal and review. The council of governors should ensure planned and progressive refreshing of the non-executive directors.

**B.7.1**. In the case of re-appointment of non-executive directors, the chairperson should confirm to the governors that following formal performance evaluation, the performance of the individual proposed for re-appointment continues to be effective and to demonstrate commitment to the role. Any term beyond six years (eg, two three-year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. Non-executive directors may, in exceptional circumstances, serve longer than six years (eg, two three-year terms following authorisation of the NHS foundation trust) but this should be subject to annual re-appointment. Serving more than six years could be relevant to the determination of a non-executive’s independence.

**B.7.4** Non-executive directors, including the chairperson should be appointed by the council of governors for the specified terms subject to re-appointment thereafter at intervals of no more than three years and subject to the 2006 Act provisions relating to removal of a director