

# Report to the Meeting of the

**BOD 143/2018**

(Agenda item: 13)

# Oxford Health NHS Foundation Trust

# Board of Directors

**30 November 2018**

**CONSTITUTION REVIEW**

**For: Information**

**Executive Summary**

The Governance working group, attended by a number of Governors and the Director of Corporate Affairs & Company Secretary, and chaired by the Lead Governor has been considering necessary amendments to the Trust’s Constitution principally as a result of the Directorate restructure.

It is necessary to consider amendments to Oxford Health’s constitution to reflect the change to the staff classes as a result of the changes to the Directorates which concluded in October 2018 and which will impact on the May 2019 elections. Furthermore, the Chiltern CCG no longer exists, having been incorporated into Buckinghamshire CCG, and so has been removed pending future deliberations about the composition of the wider constituency classes.

The Council of Governors approved these changes at their 22nd November, 2018 meeting.

**The Constitution**

This Constitution represents the Constitution of Oxford Health NHS Foundation Trust as adopted in accordance with the 2006 Act and amended by the 2012 Act. It sets out the powers and functions of the Trust.

Work has been carried out on the required immediate amendments to the Trust’s Constitution that safeguard compliance with statute, and bring the Trust’s governing documents up to date with changes to the structures of the Trust. The Board of Directors and the Council of Governors are required to approve the amendments (more than half of the members voting) to the Constitution at their meetings in November 2018. Additional amendments to the Constitution will be considered later in the year with regard to the size and composition of the Council.

**Next Steps**

A final draft of the Constitution is presented for approval electronically and can be requested in hard copy from the Director of Corporate Affairs & Company Secretary. The approval of over half of members voting at the Board meeting is required in order to adopt the revised Constitution. Following formal approvals and adoption, it is necessary that NHS Improvement receive (but are not required to approve) the amended Constitution. The lead governor is required to present any changes to the powers of the governors to the September AGM/AMM in accordance with prevailing statute, however, the proposed changes do not affect governor powers. Subsequent proposals to be made before the next AGM/AMM may however do so, but these will be considered by the Governance Working Group and presented for approval in due course.

**Governance Route/Approval Process**

The Governance Working Group has supported the Director of Corporate Affairs & Company Secretary with the review of the Trust’s Constitution. In particular, the Group has considered in detail the composition of the Council of Governors; the number and constituency/classes and the wording to support a locally accepted definition of ‘Significant Transaction’. Further proposals will be submitted to future meetings.

**ACTIONS REQUIRED BY THE BOARD OF DIRECTORS**

The Board of Directors is invited to:

* Approve subject to any minor changes agreed at the meeting the proposed changes to the Constitution.
* Support a period of consultation to determine any desirable amendments with regard to the size and composition of the Council post the May 2019 elections.

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

**Lead Executive:** Kerry Rogers, Director of Corporate Affairs/Company Secretary

**BACKGROUND**

**Revisions to Constitution and associated governing documents**

1. **Constitution amendments**

Work has taken place on the amendments to the Trust’s Constitution in preparation for formal approvals at the November meetings of both the Council and the Board. This work has encompassed necessary changes as a result of the impact of the organisational restructure. Any desirable amendments with regard to the size and composition of the Council will be made following a period of consultation.

1. **Necessary amendments**

The last review of necessary amendments to the Constitution was brought about by changes to legislation namely the implementation of the Health and Social Care Act 2012: For example the change in the statutory duties of the Council of Governors. These were approved in March 2017.

A tracked change copy of the Constitution (excluding Annexes as separate files) has been presented electronically to accompany this paper as a comparison against the existing Constitution. There have been a small number of numbering/desirable housekeeping changes in the revised draft with **the following matters of significance proposed to the Council as part of the approval process.**

* **CONSTITUENCY CLASSES**

Included are four tables in Annex 2 and 4 to indicate the number of staff governors from now until 2021 (and thereafter), together with the minimum number of members for each staff class.

In relation to the number of members, paragraph [6.3.6.2](https://protect-eu.mimecast.com/s/4FrUCBr4Js1RvVTzl2o7?domain=6.3.6.2) of the Trust’s constitution provides that individuals who are eligible to be a member of the staff constituency may not become or continue as a member of more than one staff class. Annex 1 to this report reflects the transitional arrangements captured within the Constitution.

In relation to the number of governors, and to manage a period of transition, it is proposed that two new governors will be elected from the new community services class in May next year, as well as one new governor in the specialised services class. As a result of the necessary changes, a consequential amendment to the table in Annex 1 and 4 as a result of the amendment to the number of staff governors is presented for approval.

The Director of Corporate Affairs & Company Secretary has considered where the definition of “Staff Class” is used in the constitution and has made some minor amendments to:

* the definition of Staff Class on page 10;
* clause 6.3.6.1;
* clause 6.3.7; and
* clause 7.1.2.2.

The overall number of governors has been updated in the Trust’s constitution to reflect changes to the other categories of governors, namely, Chiltern CCG which no longer exists and impacts on the number of CCG governors. The composition of the CoG has been considered to ensure that there remains a majority of public governors.

In the event that a particular governor resigns, vacates or is otherwise disqualified from continuing to act as a governor, then paragraph 7.14.2 applies, namely the CoG can decide either:

* to call an election within 3 months to fill the vacancy unless an election is due within 9 months in which case the seat shall stand vacant until that election;
* invite the next highest polling candidate in the relevant class to fill the vacancy; or
* leave the seat vacant until the next scheduled elections are held.
* **COMPOSITION OF THE COUNCIL OF GOVERNORS**

The working group has given due consideration to the composition of the Council of Governors. The size of the Council is considered to be large but not proving to be unwieldy, but it will require adjustment by 2020 to safeguard a majority of public governors (pubic and patient classes) on the Council. At the October 2018 Governance Working Group meeting members agreed **not to change the Constitution at this time pending a consultation about the number of governors in each class and the composition of the patient and partner governor constituencies.**

1. **Recommendation**

The Board of Directors is invited to:

* Approve subject to any minor changes agreed at the meeting the proposed changes to the Constitution.
* Support a period of consultation to determine any desirable amendments with regard to the size and composition of the Council post the May 2019 elections.

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

**Annex 1**

**Transitional Arrangements**

As noted below, Oxford Health will have governors who will (subject to the application of any termination/ disqualifying events) sit on the council of governors until May 2021 as staff governors elected under the old staff class regime (i.e. the three older adult services governors, the two children and young people service governors and the corporate service governor). If Oxford Health’s revised constitution dispenses with the old staff class regime (as the current revised document proposes), this will inadvertently remove the constitutional right for the above mentioned governors to continue to hold office.

Provision [7.10.1.4](https://protect-eu.mimecast.com/s/Nkq4CRl9qIJ0NrHrucLE?domain=7.10.1.4) of Oxford Health’s constitution specifically provides that elected governors shall cease to hold office if they cease to be a member of the constituency (or relevant class within a constituency) by which they were elected. As the old governors are not members under the new class (i.e. the old staff classes continue to apply to their appointments), they would lose their right to hold office if the old staff class regime is removed. In order to avoid this from happening, the coming into force of the relevant staff class regimes has been staggered in the constitution so that it is clear that this particular regime applies for the period to May 2019, this regime for the period May 2019 up until May 2020 and so on.

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| --- | --- | --- | --- | --- |
| **Staff Classes** | **Governor composition under Oxford’s existing constitution** | **Proposed governor composition following****election in May 2019** | **Proposed governor composition following****election in May 2020** | **Proposed governor composition following****election in May 2021** |
| Adult Services (all disciplines) class | 2 | 0 (2 governors vacate) | 0 | 0 |
| Older Adult Services (all disciplines) class  | 4 | 2 (1 governor vacates, 1 vacancy) | 1 (1 governor vacates) | 0 (last governor vacates May 21) |
| Children and Young People Services (all disciplines) class  | 2 | 2 (no change) | 1 (1 vacates) | 0 (last governor vacates May 21) |
| Corporate Services (all disciplines) class | 1 | 1 (no change) | 1 (no change) | 0 (last governor vacates May 21) |
| **Total governors from original classes**  | **9** | **5** | **3** | **0** |
| Mental Health Services Oxfordshire & West class |  | 1 (1 new election) | 2 (1 new election) | 2 |
| Mental Health Services Buckinghamshire class |   | 1 (1 new election) | 2 (1 new election) | 2 |
| Community Services class |   | 2 (2 new election) | 2 | 2 |
| Corporate Services class |   | 0 | 0 | 1 |
| Specialist Services class |   | 1 (1 new election) | 2 (1 new election) | 2 |
| **Total governors from new classes** | **0** | **5** | **8** | **9** |
|   |   |   |   |   |
| **Total number of governors in post** | **9** | **10** | **11** | **9** |