

**Report to the Meeting of the
Oxford Health NHS Foundation Trust**

CoG 14/2020
(Agenda item: 12)

Council of Governors
Wednesday 18th November 2020

CONSTITUTION REVIEW

For: Discussion and approval

Executive Summary

The Governance working group made up of Governors including the Lead and Deputy governor and the Director of Corporate Affairs & Company Secretary has been considering necessary and desirable amendments to the Trust's Constitution.

The Constitution

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

Work has continued to be carried out on the proposed amendments to the Trust's Constitution that safeguard compliance with statute, bring the Trust's governing documents up to date with best practice and include matters of concern to the Governors. This work has continued to encompass both necessary and desirable amendments. 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 which if the changes are supported will need to take place before the 2021 election programme.

Proposed amendments to the Constitution include regard to the size and composition of the Council in particular how the number of public and patient governors should reflect on the Council; the removal of disqualification criteria for governors and for non executive directors in the spirit of partnership and system working and of the disqualification regarding the 'Patient Forum' and additionally the determination of definitions for 'significant transactions'.

Engagement Policy

In accordance with NHSI's NHS Foundation Trust Code of Governance the Council of Governors and Board of Directors have an approved engagement policy for the Council of Governors' interactions with the Board of Directors. This has been updated to append the proposed definition for Significant Transactions mentioned above and as this is part of the Constitution the Council of Governors is required to approve the changes to the Engagement Policy.

Standing Orders of the Council of Governors

These will ultimately require amendment to take account of the changes to the Constitution and to include matters of conformance with prevailing best practice. The Governance Working Group will support recommendations for change accordingly which will be presented for adoption to future Council and Board general meetings.

Next Steps

Over half of members voting at both the Council and at the Board meeting are required to support the amendments in order to adopt a revised Constitution. Following formal approvals and adoption, it is required that NHS Improvement receive (but are not required to approve) the amended Constitution. The lead governor will be required to present changes to the powers of the governors to the September 2021 AGM in accordance with prevailing statute.

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 wording to support a locally accepted definition of 'Significant Transaction', and specific disqualification criteria for Governors and Directors.

Recommendation

The Council of Governors is invited to discuss and approve that the proposed changes below are made to the Constitution and to approve adoption of the changes to the Engagement Policy to incorporate the definition of 'significant transactions'.

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

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

- 1. A risk assessment has been undertaken around the legal issues that this report presents and [there are no issues that need to be referred to the Trust Solicitors] OR: [the Trust Solicitors have been consulted and their recommendation is included within the report]*

BACKGROUND

Revisions to Constitution and associated governing documents

1. Constitution amendments

Work has concluded on proposed amendments to the Trust's Constitution in preparation for formal approvals at meetings of both the Council and the Board. This work has encompassed both necessary and desirable amendments.

i. 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.

The 2018 review included amendments needed to ensure consistency with those changes, the implementation of an engagement policy in addition to removal of repetitive clauses (so as to avoid potential inconsistencies).

ii. Desirable amendments

The desirable amendments have been put forward for inclusion and adoption based on a number of factors:

- changes to address requirements included in the current Constitution which the working group considered it advisable to address for future clarity and process.

A clean copy of the Constitution with a comparison copy showing the changes can be available once proposals have been approved. There have been various ordering and desirable housekeeping changes but **the following changes of significance are highlighted for adoption and inclusion in the Constitution.**

➤ SIGNIFICANT TRANSACTIONS

The current Constitution offers no definition of 'Significant transaction' which is permitted in statute in so much as the Constitution must itself identify no definition has been incorporated. In the spirit of transparency it is proposed that a definition is agreed which adopts the recognised description within NHS's Risk Assessment Framework used by the regulator to assess Significant Transactions, along with further local clarifications. An Addendum to the Engagement Policy is attached which includes the proposed definition for approval of the Council of Governors and subsequently at the Board of Directors.

The Council of Governors is invited to support the adoption of the definition of significant transactions as outlined in the Addendum attached to the Engagement Policy.

Amendments as follows to 16.3 of the Constitution would also be necessary:

16. Mergers, Significant Transactions and other transaction requirements

- 16.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 16.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 16.3 ~~The Constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).~~ The Engagement Policy (Annex 6) includes an addendum which describes those matters which will be deemed to be Significant Transaction for the purposes of section 51A of the 2006 Act (significant Transactions).

➤ COMPOSITION OF THE COUNCIL OF GOVERNORS

The Governance 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. The group has proposed that the composition of the public constituency be reduced by 4 and the composition of the patient constituency be increased by a commensurate number, thereby increasing the number of service user governors and proportionately reducing the number of public governors.

The Governance group wish this change to be discussed at the November 2020 Council meeting such that if it is supported, changes can be formally adopted to the Constitution in sufficient time to shape the next governor election programme.

Council of Governors

Composition

The Trust shall have a Council of Governors which shall consist of Elected Governors and Appointed Governors (as set out in paragraph 7.1.2).

The composition of the Council of Governors shall be:

- 7.1.2.1 twelve ~~(12)~~ **(8)** Public Governors representing the Public Constituency Classes as set out in Annex 1;
- 7.1.2.2 nine (9) or ten (10) Staff Governors representing the Staff Classes as set out in Annex 2;
- 7.1.2.3 Seven ~~(7)~~ **(11)** Patient Governors representing the Patient Classes as set out in Annex 3;
- 7.1.2.4 one (1) CCG Governor;

7.1.2.5 two (2) Local Authority Governors; and

7.1.2.6 five (5) Other Partnership Governors.

Changes to Annex 4 appended to this report will be necessary if the proposal is approved along with the commensurate changes to Annex 1 (public governors) and Annex 3 (patient governors) of the Constitution.

➤ **DISQUALIFICATION CRITERIA**

Removal of the following Disqualification criteria:

Governors:

7.12.3.9 is an individual who is a governor of another NHS foundation trust;

7.12.3.16 is a member of the Trust's Patients' Forum;

Non-Executive Directors:

8.8.1.8 is an executive or non-executive director of another NHS Foundation Trust, or an executive director, non-executive director, chairman, chief executive officer of another Health Service Body;

2. Recommendation

The Council of Governors is invited to:

- approve subject to any changes agreed at the meeting the proposed amendments to the Trust's Constitution.
 - To include the addition of the Addendum to the Engagement Policy which outlines the proposed definition of Significant Transactions.

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APPENDIX ONE

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

Elected governors		
<i>Constituency</i>	<i>Class</i>	<i>No of governors</i>
Public	Buckinghamshire	4
	Oxfordshire	7
	Rest of England & Wales	1
Patient	Service Users: Buckinghamshire & Other Counties	2
	Service Users: Oxfordshire	2
	Carers	3
Staff	Oxfordshire, BaNES, Swindon & Wiltshire Mental Health Services	2
	Buckinghamshire Mental Health Services	2
	Community Services	2
	Corporate Services	1
	Specialised Services	2
Subtotal: Elected		28
Appointed governors		
	Oxfordshire Clinical Commissioning Group	1
	Oxford University Hospitals NHS Foundation Trust	1
	Buckinghamshire Healthcare NHS Trust	1
	Oxfordshire County Council	1
	Buckinghamshire County Council	1
	Oxford Brookes University	1
	Voluntary / Community Organisations	
	- Buckinghamshire Mind	1
	- Age UK Oxfordshire	1
Subtotal: Appointed		8
Total number of governors		36