

NORTHUMBERLAND TYNE AND WEAR NHS FOUNDATION TRUST

BOARD OF DIRECTORS MEETING

Meeting Date: 23 September 2015

Title and Author of Paper: Trust Constitution changes
Eric Jarvis, Board Secretary

Paper for Debate, Decision or Information: Decision

Key Points to Note:

Hugh Morgan Williams has previously reported that he and John Lawlor had reviewed the size and structure of the Council of Governors with a view to it becoming more efficient and fit for purpose.

The briefing paper at appendix 1 was considered by the Council of Governors' Steering Group (made up of the chairs of the Council's committee and working groups) on 18 August 2015. The group was supportive of option 2 but with the proviso that a public Governor would not be required to leave until their tenure was completed.

The Council of Governors approved this change at their meeting on 8 September 2015, namely to change its structure as outlined in option 2 (i.e. removing the 3 CCG Governors and 6 public Governors, thereby reducing total Governors from 42 to 33).

The Trust Constitution must be amended to action this, which requires Council of Governors and Board of Directors approval.

In addition the Trust Constitution needs amending to expand on the entry relating to the CQC's Fit and Proper Person Test for Board directors.

It is also appropriate to consider changes to the Trust Constitution relating to the level of significant transactions; the Nominations Committee, its composition and its Chair; and the role of the Lead Governor.

Proposed amendments to the Trust Constitution are in the attached paper. The Council of Governors approved all of the proposals at its meeting on 8 September 2015.

Outcome required: Decision to make changes to the Trust Constitution

Proposed Trust Constitution changes

The Council of Governors approved the changes to the Trust Constitution on 8 September 2015 as shown below. For the Trust Constitution to be changed, Board of Directors approval is required.

A summary of the proposed changes to the Trust Constitution are as follows:

- 1 To reduce the number of Governors from 42 to 33
Annex 4 – paragraph 1.1 - “Composition of the Council of Governors”

An **amendment** to the Constitution to show the composition totalling 33.

Asterisks are shown against 4 of the public Governors. Crossed referenced to the asterisks is an **additional** paragraph (1.3) as follows:

“The Trust is going through a downsizing of the Council of Governors that could take up to 30 November 2016 to achieve. This affects public Governors only. There will be 4 additional public Governors to those shown within the composition of the Council of Governors at 1.1, indicated by an asterisk. As an additional public Governor reaches the end of his/her tenure or resigns, the number of additional public Governors will reduce, until the total becomes 6.”

Legal advice has been sought over this method of affecting the downsizing. If the method is deemed inappropriate, the alternative would appear to include the additional 4 governors in the composition now and change the Trust Constitution whenever there is a leaver.

Also **delete** any reference to a Clinical Commissioning Group within the Constitution, namely at Annex 4 – 1.2 and 1.4, and Annex 6 – 1.2, 3.1e and 3.4.

- 2 To be more specific about the CQC’s Fit and Proper Person Test
Paragraph 31.9 – Board of Directors disqualification

Extend the existing entry as shown, “A person who does not comply with the “CQC guidance regarding appointments to senior positions in organisations subject to CQC regulations,” **i.e. the CQC’s Fit and Proper Person Test. See Annex 9, section 6 for details of the Test.**

Include details of the Test at Annex 9, section 6.

- 3 Paragraph 46 – “Mergers etc. and significant transactions”
Amend the significant transactions definition to be based on 10% of the Trust’s turnover rather than 10% of assets

Turnover is a less volatile measure than assets. This proposal is supported by James Duncan, Executive Director of Finance. Since setting this level, the accounting treatment of fixed assets involving impairments has reduced the level of significant transactions from the original £30m to the now £16.7m. Had

the original level been set at turnover, it would always have been around £30m. Note the Trust turnover for 2014/15 was £315m and assets were £167m.

- 4 Annex 6 – section 7 – “Committees and Sub-committees” - section 8 “Nominations Committee Chair”
Exclude entries relating to the Nominations Committee’s specific functions, composition and its Chair.

When the Trust Constitution was first written and approved, it included details of the functions of the Nominations Committee, its membership and the Chair of the meeting. It has later emerged that this is unnecessary as such details are included in the Nominations Committee terms of reference as approved by the Council of Governors.

Inclusion in the Trust Constitution makes the process of change unwieldy as it is much simpler to amend terms of reference, e.g. we have previously changed the composition of the Nominations Committee and now we wish to change its Chair from a Governor to the Trust Chair as per B2.4 of Monitor’s Code of Governance. The Code introduced “The chairperson or an independent non-executive director should chair the nominations committee(s). At the discretion of the committee, a governor can chair the committee in the case of appointments of non-executive directors or the chairman.”

- 5 Annex 6 – section 9 – “Lead Governor”
Exclude entries relating to the role of the lead governor.

The role of the nominated lead governor is described at appendix B of Monitor’s Code of Governance. Details and arrangements are not required to be included in the Trust Constitution. The entry in our Constitution includes “Only a member of the Public or the Service User and Carer Constituency may be appointed as Lead Governor” which is at odds with the Code which states “The lead governor may be any of the governors.”

An approved role description as per the one considered at the Council of Governors meeting on 8 September 2015 is a much more efficient when it comes to making changes to the role.

Other cosmetic changes and general tidying up have been actioned without seeking approval.

Briefing Paper
Options for changes to the Council of Governors
21 July 2015

Introduction

In 2013, the Council of Governors (CoG) was increased from 35 members to 46 members to allow for the 7 newly formed Clinical Commissioning Groups (CCGs) to take one seat each. The number of public Governors also increased by 6 at this time, to meet the requirement that public Governors (including Services User and Carer Governors) remain in the majority. At the same time the CoG had to lose 2 Primary Care Trust (PCT) Governors as PCTs no longer existed.

Over the past 2 years the CCGs have declined to take up their positions on the CoG due to a perceived conflict of interests and a lack of management capacity.

NTW amended our constitution in 2014 to reduce CCG governors from 7 to 3, and bring the total governors to 42.

It has become apparent that a CoG this large is unwieldy and requires a large amount of management support from the Trust. The larger size has also led to significantly increased costs (in terms of general expenses for Governors and the cost of elections). It has also been suggested that the current size of the CoG may be having an adverse impact of being able to mould them into an effective team.

This paper sets out options for reducing the CoG to a more appropriate level.

Options

Option 1 would be to remove the CCGs from the CoG. This would reduce the number of Governors to 39.

Pros This would be the minimum disruption for the CoG.

Cons This would not reduce the costs or management support requirement to the CoG.

Option 2 would be removing both the CCG and 6 public Governors from the CoG. This would reduce the CoG to 33 members.

Pros Option 2 would return the CoG public membership to the original levels (bearing in mind that we had to lose 2 PCT governors), as developed through the FT consultation in 2009. It would maintain both locality and service user and carer constituencies. A process would need to be introduced to establish which of the two governors for each public constituency remained in place.

Cons None identified.

Option 3 would be to reduce as above, plus reducing the service user and carer constituencies to remove one of the current 2 Governors for adult service users and one of the current 2 Governors for adult carers. This would reduce the CoG to 31 members.

Pros Option 3 would reduce the CoG very significantly, but still retain dedicated Governors for each locality and speciality.

Cons This option does not reflect that the size and scale of the adult services in the Trust could warrant a larger presence on the CoG.

Option 4 would be to reduce as in option 2 or 3, plus consider reducing by one or more of the following: 1 staff; 1 University; 1 community and voluntary sector Governor. The maximum impact of this could be to reduce the CoG to 28 members,

Pros These options have the maximum impact reduction on the number of Governors.

Cons There is a risk that this would exclude partners from the CoG.

NB a Quorum for the Council of Governors is one third of the whole number of Governors in post at the time including at least 50% from the Public and Service Users' and Carers' constituencies and one Governor from the Staff Constituency.

Eric Jarvis
Board Secretary
September 2015