

Council of Governors Meeting: Thursday 20 October 2016
CoG2016.22

Title	Role of the Lead Governor
--------------	----------------------------------

Purpose	For discussion.
History	<p>Paper CoG2015.02 on the Role and Appointment Process for the Lead Governor was presented on 21 July 2015, following which recommendations made in Paper CoG2015.09 were approved by the Council of Governors at its inaugural meeting held on 21 October 2015.</p> <p>Paper CoG2016.15, outlining options for expansion of the role of Lead Governor, was considered at the meeting of the Council of Governors held on 1 July, 2016.</p> <p>A presentation of NHS Providers' research on the Lead Governor role was circulated in advance of the Governors' Seminar on 20 September, 2016, a copy of which is attached hereto at <i>Appendix 1</i> for ease of reference.</p>

Executive Summary

1. This paper sets out the mechanism by which an election to the role of Lead Governor will be held in November 2016, and the options for proposing any expansion to the role, subject to consultation between the Council of Governors and the Trust Board.

2. Recommendation

The Council of Governors is asked:

- i. To **note** that election to the role of Lead Governor will be triggered *either*
 - a. by the expiry of the term of the current post-holder on 4 November 2016;
 - or*
 - b. by any expansion to the role of Lead Governor which is agreed in consultation between the Council of Governors and the Trust Board (and which would require ratification at the meeting of the Trust Board on 9 November, 2016).

The Council of Governors is also asked:

- ii. To **agree** that the term of the current post-holder should continue until the date upon which the result of the election is announced, provided that the current post-holder is willing so to serve;
- iii. To **agree** the eligibility criteria for the role of Lead Governor; **specifying** whether self-nomination is limited to any category(/ies) of Governors, or whether any Governor may self-nominate;
- iv. To **agree** the mechanism for election to the role of Lead Governor by secret postal ballot (employing a 'double envelope' process, to ensure that the identities of those voting for each candidate remain secret from Trust staff);
- v. To **agree** whether or not Council wishes to propose any expansion to the role of Lead Governor in any aspect; and *if so*
 - To **specify** any additional responsibilities proposed, subject to consultation with the Trust Board, and ratification of the agreement reached at the meeting of the Trust Board on 9 November 2016;
- vi. To **agree** the deadline by which self-nominations, accompanied by a brief supporting statement [less than a side of A4], must be received by email to company.secretary@ouh.nhs.uk

Either

 - a. By 28 October, 2016 (if no expansion to the role is proposed); *or*
 - b. By 25 November, 2016 (if any expansion to the role is proposed, subject to agreement with the Board).

Role of the Lead Governor

1. Background

- 1.1. Under the Constitution¹ the Council of Governors is required to nominate a lead governor, to facilitate direct communication between Monitor [now NHS Improvement] and the Council of Governors in the limited circumstances where it may not be appropriate to communicate through the normal channels.
- 1.2. Appendix B of Monitor's NHS Foundation Trust Code of Governance² suggests the following specific elements to the lead governor role:
 - To facilitate communication between Monitor and the Council of Governors, in particular where it would not be appropriate for this to occur through normal channels;
 - To be a point of contact should Monitor have concerns regarding board leadership provided to the Trust;
 - To be a point of contact should Monitor have concerns that appointments, elections or other material decisions have been inappropriate or not complied with the Trust's Constitution; and
 - To initiate communication where the Council or individual governors wish to contact Monitor.
- 1.3. The guidance also notes that "[the] lead governor should take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action."
- 1.4. Under Annex 8 of Appendix 2 of the Constitution, the lead governor may also have a role in the event of a dispute between the Council of Governors and the Board of Directors. Annex 8 of Appendix 2 states that:

"If the Chairman is unable to resolve the dispute he/she shall agree with the Lead Governor the appointment of a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute. The Chairman and Lead Governor shall agree whether the joint special committee shall be chaired by an independent person to facilitate resolution."
- 1.5. The role and appointment process for the lead governor was discussed by governors at their meeting held on 21 July 2015, and subsequently on the Governors Web Forum.
- 1.6. At the inaugural meeting of the Council of Governors held on 21 October 2015, it was agreed to make an appointment of lead governor for one year, on the basis that the role would be limited to that formally defined by Monitor [now NHS Improvement].
- 1.7. At that time, Council agreed to review the role of lead governor after a year, i.e. at the Council of Governors' meeting in autumn 2016.
- 1.8. Anita Higham, Public Governor, Cherwell was appointed to the role of lead governor in November 2015, for a term of one year.

¹ OUH Constitution Annex 6 Section 13 <http://www.ouh.nhs.uk/about/governors/documents/constitution.pdf>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327068/CodeofGovernanceJuly2014.pdf

- 1.9. It is open to a Trust to choose to broaden the role of lead governor, provided that it does not undermine the position that the Council of Governors as a whole has responsibilities and powers under statute and not individual governors.
- 1.10. Any expansion of the role of lead governor should be agreed in consultation between the Council of Governors and the Trust Board.
- 1.11. At its meeting on 28 April 2016, Council indicated that it wanted to start considering whether it would favour any broadening of the role of lead governor, and asked that a paper be submitted to its meeting on 1 July 2016.
- 1.12. A paper outlining the options for expansion of the role of lead governor was considered by Council at its meeting on 1 July 2016, when differing views were expressed on the value of extending the role to include any further responsibilities in addition to those specified in Appendix B of Monitor's NHS Foundation Trust Code of Governance. The Trust Secretary was asked to propose specific options for decision of the Council at its meeting on 20 October, 2016.
- 1.13. The current lead governor has participated in a network of lead governors, together with the lead governors of Salisbury, South London and Maudsley, and Southampton. This network has produced *Observations for the Better Governance of Trusts*, a copy of which is attached at **Appendix 1**.
- 1.14. The purpose of this paper is to aid the Council of Governors to come to a decision as to whether or not it wishes to propose any expansion to the role of lead governor, and to agree the mechanism for election to the role.

2. Role of the Lead Governor

- 2.1. As Council has previously discussed, Monitor [now NHS Improvement] had not initially intended or envisaged any role for the lead governor beyond the important one of providing a quick and clear conduit for communication between governors and the regulator, when necessary.
- 2.2. Monitor [now NHS Improvement] do however endorse a Foundation Trust's right to choose to expand the role.
- 2.3. There is known to be variation in Trusts' definition of the role of lead governor.
- 2.4. Opportunities have been taken to learn from how other Trusts have delineated the role of lead governor.
- 2.5. In particular, members of the Council heard from governors from Frimley Park, Bristol and Southampton at a Seminar held in March 2016.
- 2.6. The Trust Secretary took further informal soundings from other Trusts, and these echoed the findings of research commissioned by NHS Providers in 2015³, about the role of lead governor in practice. A presentation of NHS Providers' research was circulated at the Governors' Seminar held on 20 September, a copy of which is attached at **Appendix 2**.
- 2.7. The research commissioned by NHS Providers showed that just over half (54%) of the 63 Trusts surveyed (representing 41% of all FTs at the time) had expanded the role of lead governor to include some additional responsibilities.
- 2.8. 46% of the Trusts surveyed had not given the lead governor any additional responsibilities.

³ <https://www.nhsproviders.org/programmes/governwell/information-and-guidance/surveys-and-analysis>

- 2.9. Of those Trusts whose lead governor did have one or more additional responsibilities, the most common (in 26 out of 34 Trusts) was:
- contribution to agenda-setting for meetings of the Council of Governors.
- 2.10. Other additional responsibilities were less common, with the next most common being cited by 12 out of the 34 Trusts, and some responsibilities being cited by only one Trust.
- 2.11. Additional responsibilities cited by between at least 8 and 12 of the 34 Trusts included:
- Reviewing/promoting the effectiveness of the Council of Governors
 - Regular 1:1 with the Trust Secretary (and/or Chairman)
 - Liaison between the Board and the Council of Governors
 - Involvement in/contribution to NED appraisals
 - Ex officio role on Appointments Committees

3. Process for appointment to the role of Lead Governor

- 3.1. An election to the role of Lead Governor needs to be held in anticipation of expiry of the term of the current post-holder on 4 November, 2016.
- 3.2. If Council wish to propose any expansion to the role of Lead Governor, subject to consultation with the Trust Board (which would need to be ratified by the Board at its meeting on 9 November, 2016), then the election may need to be delayed, pending clarification of the role for which governors would then be invited to self-nominate.
- 3.3. Once the role of the lead governor is agreed, (in consultation between the Council of Governors and the Trust Board, if it is proposed that the role be expanded) it is recommended to follow the appointment process endorsed by the Council of Governors at its meeting on 21 October 2015, namely that selection of the lead governor be by secret ballot following self-nomination. Individuals wishing to nominate themselves would be asked to do so by submitting a brief statement to the office of the OUH NHS Foundation Trust Secretary for circulation to all governors.
- 3.4. The vote would then take place via a secret postal ballot coordinated through the foundation trust office. A 'double envelope' process will be employed such that the identities of those voting for each candidate remain secret from Trust staff.

4. Recommendation

The Council of Governors is asked:

- i. To **agree** that the term of the current post-holder should continue until the date upon which the result of the election is announced, provided that the current post-holder is willing so to serve;
- ii. To **agree** the eligibility criteria for the role of Lead Governor; specifying whether self-nomination is limited to any category(/ies) of Governors, or whether any Governor may self-nominate;
- iii. To **agree** the mechanism for election to the role of Lead Governor by secret postal ballot (employing a 'double envelope' process, to ensure that the identities of those voting for each candidate remain secret from Trust staff);
- iv. To **agree** whether or not Council wishes to propose any expansion to the role of Lead Governor in any aspect; and *if so*
 - To **specify** any additional responsibilities proposed, subject to consultation with the Trust Board, and ratification of the agreement reached at the meeting of the Trust Board to be held on 9 November 2016.

- v. To **agree** the deadline by which self-nominations must be received by email to company.secretary@ouh.nhs.uk

Either

- By 28 October, 2016 (if no expansion to the role is proposed); *or*
- By 25 November, 2016 (if any expansion to the role is proposed, subject to agreement with the Board);

Paper prepared by Susan Polywka
Head of Corporate Governance and Trust Secretary

October 2016