



Council of Governors Meeting: Monday 30 April 2018

CoG2018.17

Title	Process for Review of the Constitution of Oxford University Hospitals NHS Foundation Trust
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Purpose	For decision.
History	<p>A paper recommending changes to the Constitution and the Standing Financial Instructions was approved by the Trust Board on Wednesday 17 January (TB2018.19).</p> <p>These changes were also approved by the Council of Governors at its meeting on 30 January when possible further changes were outlined (CoG 2018.07).</p> <p>The process for further developing proposals was considered by the Patient Experience, Membership and Quality Committee at its meeting on 22 March (CoGPEMQ2018.06).</p>

Executive Summary

1. At the meeting of the Council of Governors held on 30 January 2018, a number of areas were noted where consideration might be given to amendments and clarifications to the Constitution and initial discussion of these was delegated to the Governors' Patient Experience, Membership and Quality [PEMQ] Committee.
2. At its meeting on 22 March 2018, the Governors' PEMQ Committee considered the next steps to be taken in relation to a review of the OUH Constitution. In particular, a number of areas were considered where the framing or interpretation of the Constitution might impact on the forthcoming elections, upon which initial legal advice was sought.
3. This paper outlines the legal advice that has been received in relation to:
 - Changes to constituency boundaries
 - Clarification of whether someone who is a governor at another foundation trust may stand as an OUH governor
 - Clarification of whether serving two part terms of office would prevent a governor from standing for re-election.
4. Any constitutional change proposed to take effect prior to this year's elections will need to be approved by the Council of Governors in time to be submitted for approval by the Board at its next meeting on 9 May 2018. It is likely to be difficult to effect any change that might require detailed consideration and/or further development within this timescale.
5. It is recommended that a task and finish group be formed from members of the PEMQ Committee along with any other governors who wish to volunteer to join this group, to undertake a comprehensive review of the OUH Constitution. It is proposed that this group be formed from governors likely to be in a position to support the entire process i.e. those whose current terms of office do not expire during 2018.

Recommendations

6. The Council of Governors is asked to **consider** whether it wishes to recommend to the Trust Board that any changes to the Constitution be made in advance of the 2018 elections, recognising that any such recommendation would require the approval of the Board to come into effect.
7. The Council of Governors is asked to **approve** the recommendation that a task and finish group be formed from members of the PEMQ Committee along with any other governors who wish to volunteer to join this group, to undertake a comprehensive review of the OUH Constitution.

Process for Review of the Constitution of Oxford University Hospitals NHS Foundation Trust

1. Background

- 1.1. It is good practice to keep the Constitution under review and to update this as and when required.
- 1.2. Any changes made to the Constitution require approval of both the Board and the Council of Governors.
- 1.3. At its meeting on 30 January 2018 the Council of Governors noted a number of areas where consideration might be given to amendments and clarifications to the Constitution and initial discussion of these was delegated to the Patient Experience, Membership and Quality [PEMQ] Committee.
- 1.4. At its meeting on 22 March 2018 the PEMQ Committee considered the next steps to be taken in relation to a review of the Constitution. In particular a number of areas were considered where the framing or interpretation of the Constitution might impact on the forthcoming elections and where initial legal advice was required.
- 1.5. This paper summarises the outcome of this advice and outlines the next steps that are proposed in updating the Constitution.

2. Legal advice regarding changes to the Constitution affecting elections

- 2.1. The PEMQ Committee agreed to seek initial legal advice regarding interpretation of the Constitution as it currently stands. This focussed on those areas where changes were contemplated which might be relevant to the conduct of the 2018 governor elections.
- 2.2. There were three areas identified where changes proposed could potentially have an impact on the conduct of the elections. These were:
 - Changes to constituency boundaries;
 - Clarification of whether someone who is a governor at another foundation trust may stand as an OUH governor; and
 - Clarification of whether serving two part terms of office prevent a governor from standing for re-election
- 2.3. Legal advice has now been obtained on these points and this is summarised below.
- 2.4. Constituency boundaries
 - 2.4.1. The Council of Governors has previously agreed to recommend a change to the Constitution to match the constituencies to those authorities that are contained within the relevant historical county boundaries. (CoG2017.24)
 - 2.4.2. It is recognised that moving members between constituencies is a significant administrative process which probably couldn't be completed in advance of the elections.
 - 2.4.3. Legal advice highlights that a governor could find themselves ineligible to hold office if boundary changes later placed them outside the constituency that elected them and this would seem unfair. However, it is suggested that this could be mitigated to some extent by notifying any governor who might be so affected of the planned changes in advance.
 - 2.4.4. It is recommended that amendment to this part of the Constitution should not be attempted in advance of the next round of elections.

2.5. Governors at other trusts becoming an OUH governor

- 2.5.1. There is currently an ambiguity as to whether this is allowed under our Constitution. The legal advice suggests that the current provision can be construed as permitting a governor at another trust to become a governor at OUH. This has been the Trust's interpretation, and would remain the position if the Constitution is not amended before the next round of elections.
- 2.5.2. The legal advice is supportive of removing the ambiguity, expressly to allow for a governor at another trust being a governor at OUH.
- 2.5.3. However, again, it is advised that amendment to this provision of the Constitution is left until after the next round of elections, to allow sufficient time for full consideration of the options, and the potential ramifications.
- 2.5.4. A redraft of the relevant section could **either** clearly allow a governor at another trust to be a governor at OUH (as long as the Chairman determines that there is no conflict of interest) – and this is what the lawyers have advised - **or** could place an absolute bar on it, if this is what governors feel is appropriate. If an absolute bar were to be placed on being a governor at more than one trust, it is suggested that this should not take effect until the end of a governor's term of office where they currently hold two posts, as it would be unfair to make them choose to resign one of their posts, when this was not the basis on which they were elected.

2.6. Correct interpretation of a 'term of office'

- 2.6.1. The Constitution states that a governor may not stand for election again if they have served "two terms of office of up to three years each". Legal advice was sought to clarify whether there was any flexibility, if a governor had to stand down part way through a term, or was elected through a by-election part way through a term.
- 2.6.2. The legal advice is that in either instance this would still count as having served a 'term of office'. The fact that the duration of the term served was less than a complete term does not mean that it can be considered that a governor did not serve a term at all. It is suggested that it would be possible to amend the Constitution to allow a governor to serve aggregate terms (more than two in number), provided that the total number of years served did not exceed six years in total.
- 2.6.3. Unless this Constitutional provision can be amended before the upcoming elections, a governor who has served all or part of two separate terms of office would not be eligible to stand for election again.
- 2.6.4. If Council supports amending this provision of the Constitution before the upcoming elections, to provide more flexibility *for example* to allow a governor to serve more than two terms **provided that** they do not in aggregate exceed six years, then this proposal will need to be agreed by Council and submitted for approval of the Board at its meeting on 9 May 2018.

3. Process for developing changes to the Constitution

- 3.1. Any constitutional change proposed to take effect prior to this year's elections will need to be approved by the Council of Governors in time to be submitted for approval by the Board at its next meeting on 9 May 2018. It is likely to be difficult to effect any change that might require detailed consideration and/or further development within this timescale.
- 3.2. Council is invited to consider and advise on any specific provision of the Constitution which it would wish to propose be amended before the upcoming elections.

- 3.3. In addition to the issues outlined above, there are a number of potential revisions and clarifications, as highlighted at the Council's meeting on 30 January 2018, and at the meeting of PEMQ Committee on 22 March 2018, which indicate that a comprehensive review of the Constitution is merited.
- 3.4. In undertaking such a comprehensive review of the Constitution over the longer term, the Trust's legal advisors would be very willing to support the process (and have indicated that they are coincidentally advising another large FT on a constitution review), including working with a task and finish group of governors.
- 3.5. It is recommended that a task and finish group be formed from members of the PEMQ Committee along with any other governors who wish to volunteer to join this group, to undertake a comprehensive review of the OUH Constitution. It is proposed that this group be formed from governors likely to be in a position to support the entire process i.e. those whose current terms of office do not expire during 2018.

4. Recommendations

- 4.1. The Council of Governors is asked to **consider** whether it wishes to recommend to the Trust Board that any changes to the Constitution be made in advance of the 2018 elections, recognising that any such recommendation would require the approval of the Board to come into effect.
- 4.2. The Council of Governors is asked to **approve** the recommendation that a task and finish group be formed from members of the PEMQ Committee along with any other governors who wish to volunteer to join this group, to undertake a comprehensive review of the OUH Constitution.

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April 2018