

Trust Board meeting: Wednesday, 9 January 2013
TB2013.14

Title	Amendments to the draft Constitution
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Status	Paper for decision.
History	<p>Paper TB2012.99 (November 2012) included a draft Constitution for the Trust to operate by following its authorisation as an NHS Foundation Trust.</p> <p>This paper proposes some amendments.</p>

Board Lead(s)	Sir Jonathan Michael, Chief Executive			
Key purpose	Strategy	Assurance	Policy	Performance

Summary

1	<p>Amendments to the draft Constitution agreed in November are proposed prior to its being assessed by Monitor.</p>
2	<p>Discussion has taken place with Monitor about the approach to Board composition adopted by large, teaching hospital Foundation Trusts which may be regarded as 'comparators.'</p> <p>With a balance to be struck on the size of the Board which allows it to contain a sufficient and relevant range of skills whilst operating effectively and sustaining the right level of independent challenge through its Non-executive Directors, flexibility in the constitution is regarded as important, allowing changes to be made to Board composition to reflect the changing requirements of the organisation.</p> <p>It is therefore proposed that OUH's draft Constitution be amended to allow between five and nine Non-executive Directors and between five and nine Executive Directors, plus a Non-executive Chairman.</p> <p>This proposed amendment is not expected to affect the legal compliance of the draft Constitution.</p>
3	<p>An Annex to the draft Constitution agreed in November specified that Members of the Council of Governors and Non-executive Directors would be subject to a checking process at the time of election or appointment involving Criminal Records Bureau (CRB) checks, now known as Disclosure and Barring Service (DBS) checks, and a medical undertaken by the Trust's Occupational Health Department.</p> <p>Although these checks will be undertaken, in line with Trust policy, it is not felt necessary to include the requirement within the draft Constitution. It is therefore proposed to remove the reference.</p>
4	<p>The Board is asked to agree that:</p> <ul style="list-style-type: none"> • paragraphs 22.2.2 and 22.2.3 of the draft Constitution be amended to read that the Board of Directors shall comprise, in addition to a Non-executive Chairman: <ul style="list-style-type: none"> 22.2.2 no fewer than five and no more than nine Non-executive Directors; and 22.2.3 no fewer than five and no more than nine Executive Directors; and • paragraph 1 of Annex 8, Appendix 3 be removed from the draft Constitution.

Amendments to the draft Constitution

Introduction

1. The Board agreed a draft Constitution at its November meeting.
2. The draft will be subject to review during the assessment of the Trust's application for Foundation Trust status.
3. Subject to changes made during this review period, the Council of Governors will be asked to adopt the Constitution for use from the date of authorisation as a Foundation Trust.

Board size

4. Paragraph 22.2 of the draft Constitution states that for the Foundation Trust:

22.2 The Board of Directors shall comprise:

22.2.1 a Non-executive Chairman;

22.2.2 up to 7 Non-executive Directors; and

22.2.3 up to 7 Executive Directors.

5. In preparation for the Trust's assessment process, discussion has taken place with Monitor about the approach to Board composition adopted by large, teaching hospital Foundation Trusts which may be regarded as 'comparators.'
6. In all such organisations, there is a balance to be struck on the size of the Board which allows it to contain a sufficient and relevant range of skills whilst operating effectively and sustaining the right level of independent challenge through its Non-executive Directors.
7. Flexibility in the constitution is regarded as important, allowing changes to be made to Board composition to reflect the changing requirements of the organisation.
8. It is therefore proposed that Oxford University Hospitals' draft Constitution be amended to match that agreed for Central Manchester University Hospitals NHS Foundation Trust, with between five and nine Non-executive Directors and between five and nine Executive Directors, plus the Chairman.
9. This proposed amendment is not expected to affect the legal compliance of the draft Constitution, as the requirement remains to have a voting majority of Non-executive Directors.

Checks on Council Members (Governors) and Non-executive Directors

10. Annex 8, Appendix 3 of the draft Constitution agreed in November contained this paragraph 1:

Checking Process: Council Members and Non-executive Directors

Members of the Council of Governors and Non-executive Directors will be subject to a checking process at the time of election or appointment. This will involve Criminal Records Bureau (CRB) checks (*now known as Disclosure and Barring Service (DBS) checks*) and a medical undertaken by the Trust's Occupational Health Department.

NB: Executive Directors undergo these checks as part of the Trust's Recruitment Procedure.

11. The draft Constitution, and Annex to it, list factors which would exclude an individual from eligibility to be a Governor. These include "a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him."
12. A checking process will need to take place to provide assurance that Governors are not excluded on the grounds specified in the Constitution and its Annexes.
13. However, CRB (DBS) checks and a health assessment undertaken by the Trust's Occupational Health Department are not regarded as mandatory in this context although they are a standard part of the Trust Recruitment and Selection Policy.
14. Although compliance with Trust Policy is essential, on reflection it does not seem necessary to make such an explicit reference in the draft Constitution. It is therefore proposed that paragraph 1 of Annex 8, Appendix 3 is removed.

Recommendations

15. The Board is asked to agree that:

15.1. paragraphs 22.2.2 and 22.2.3 of the draft Constitution be amended to read that the Board of Directors shall comprise, in addition to a Non-executive Chairman:

22.2.2 no fewer than five and no more than nine Non-executive Directors;

and

22.2.3 no fewer than five and no more than nine executive Directors; and

15.2. paragraph 1 of Annex 8, Appendix 3 be removed from the draft Constitution.

Sir Jonathan Michael FRCP

Chief Executive

14 December 2012