

**Trust Board Meeting: Wednesday 11 March 2015**  
**TB2015.32**

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| <b>Title</b> | <b>Update on Foundation Trust Application</b> |
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|----------------|-------------------------------|
| <b>Status</b>  | For information.              |
| <b>History</b> | Regular updates to the Board. |

|                      |   |           |        |             |
|----------------------|---|-----------|--------|-------------|
| <b>Board Lead(s)</b> | <b>Andrew Stevens, Director of Planning and Information</b> |           |        |             |
| <b>Key purpose</b>   | <b>Strategy</b>   | Assurance | Policy | Performance |

## Executive Summary

1. This paper provides an update on the Trust's application for authorisation as an NHS Foundation Trust (FT).
2. Following an Executive Challenge meeting held with Monitor in January, Monitor's Executive Director of Provider Appraisal has confirmed a timetable for completing the assessment of the Trust prior to authorisation as a Foundation Trust.
3. Expectations prior to Monitor's assessment re-starting are described, focused primarily on progress against Board-agreed plans to achieve access standards and to demonstrate progress on quality governance developments.
4. Changes to the draft Constitution are proposed following its review by Monitor's lawyers.
5. Membership of the Trust's shadow Council of Governors is explained.
6. Anticipated elements of the final stage of FT assessment are described.

## Recommendations

7. The Board is asked to:
  - 7.1. **Note** progress.
  - 7.2. **Agree** changes to the Trust's draft Constitution as shown in Appendix 1.
  - 7.3. **Consider** any further available information on the anticipated timetable for authorisation.
  - 7.4. **Agree** that at its May meeting it will consider progress against agreed quality governance actions and their impact; progress against its action plans to return to compliance on Access and Outcomes standards and forward projections for performance against these standards; and the Trust's Integrated Business Plan, taking account of points raised by Monitor at paragraph 2.12.

## Foundation Trust update

### 1. Purpose

- 1.1. This paper provides an update on progress in the Trust's application for authorisation as a NHS Foundation Trust (FT).

### 2. Assessment by Monitor

- 2.1. The anticipated outcome from an Executive Challenge meeting held with Monitor on 12 January was reported to the Board at its January meeting.
- 2.2. Board members have since seen confirmation from Monitor's Executive Director of Provider Appraisal that the regulator will complete its assessment of the Trust once it has evidence that performance against access standards has achieved the level required for authorisation and that progress has been demonstrated on the actions agreed in response to assessment of the Trust's quality governance arrangements.

#### ***Access and Outcomes***

- 2.3. Monitor's Risk Assessment Framework uses 13 national performance standards to create a performance 'score' for Foundation Trusts. The standards used for acute Trusts are for elective surgery 18-week waits, Accident & Emergency waits, cancer waits and Clostridium Difficile cases. Breaches of standards for a quarter generate points and no Trust scoring above three points can be authorised as a Foundation Trust.
- 2.4. OUH scored seven points in April-June 2014. A plan submitted to Monitor in August and updated in November predicted that in October-December 2014, four of these standards would not be met: 18 week waits for patients on an Admitted pathway, 18 week waits for patients on a Non-admitted pathway, A&E four hour waits and 62 day waits for first treatment from urgent GP referral for suspected cancer. It has since been confirmed that this was the case for this period.
- 2.5. The Trust's projection was that the minimum standard required by Monitor for authorisation would be met for January-March 2015, with three standards breached: 18 week waits for patients on an Admitted pathway, A&E four hour waits and 62 day waits for first treatment from urgent GP referral for suspected cancer.
- 2.6. It has been agreed with Monitor that once February Referral to Treatment Time (RTT) data are available in the third week of March, their assessment team will determine whether assessment will re-start in late April. Monitor have been clear that they expect to see the planned Access and Outcomes score of 3 being met or bettered in January-March, requiring Non-admitted and Incomplete RTT standards to be met in each month of the quarter, and that they expect to see Trust action plans to return to compliance (meeting all standards) which are "robust and based on realistic assumptions."
- 2.7. Monitor have recognised that meeting the A&E standard depends on progress in reducing delayed transfers of care and that this depends upon actions to be taken by other parties in the local health and social care economy. With this in mind, Monitor have stated that they expect the Trust's plans "to include clear milestones

analysed by actions that are in the Trust's control and those that require action within the local health economy. We also will need to understand how the Board has assured itself that the Trust's plans to return to compliance will be achieved."

### Quality Governance

- 2.8. Monitor's scoring of the Trust's Quality Governance Framework (QGF) remains at 4.5, with the Trust needing to demonstrate progress to reduce this below the 3.0 required for FT authorisation.
- 2.9. The action plan sent to Monitor in December has received a favourable reaction, with the regulator suggesting that the QGF score will be re-calculated in May/June and that an authorisable score depends upon Monitor being assured that the Trust's plans "have been implemented and are starting to have an impact." The Board should therefore consider evidence of action and impact at its May meeting.
- 2.10. A summary of areas of improvement was provided to the Board in January as part of the FT Update and is reproduced below.

| QGF Question | Area of improvement (examples)   | Action taken (examples)   |
|--------------|--|---|
| 1A           | Clarify quality goals and their monitoring through a 'refresh' of the Quality Strategy       | Revised Quality Strategy recommended to the Board for agreement.  |
| 1B           | Accountability for and assurance on the quality impact of Cost Improvement Programme schemes | Mechanism agreed by Quality Committee (QC) to test and monitor the 'aggregate' impact of CIP schemes.<br><br>Reporting to Board of quality metrics at Divisional level.   |
| 3A           | Roles and accountabilities in relation to quality governance                                 | Revised sub-committees of Clinical Governance Committee (CGC), including a Clinical Effectiveness Committee.<br><br>Improved arrangements for QC to gain assurance from work by CGC.<br><br>Review by end March of effectiveness of reporting to Board by its committees. |
| 3B           | Processes for escalating and resolving quality issues  | Revised policies agreed by TME and endorsed by Quality Committee.<br><br>Training programme from February 2015.<br><br>Rapid alert system to raise awareness of serious incidents.  |
| 4B           | Control measures on the accuracy of quality data   | Regular updates to the Board on data quality.<br><br>Review from February of the effectiveness and impact of the clinical audit programme.  |

***Integrated Business Plan***

- 2.11. Monitor have asked that before late April, the Trust “updates its plans for the impact of latest commissioning intentions and the latest outturn position” and makes progress on “downside planning and/or mitigating actions in relation to other areas [including] consideration of income risk, cost improvement plans, the prioritisation and management of interdependencies of the capital programme and workforce and organisational issues.”
- 2.12. Specific issues for examination are expected to be the anticipated impact of tariff changes once known; the affordability for commissioners of activity growth; the impact of the Better Care Fund; planning for the impact in 2015/16 of Divisional expenditure beyond plan in 2014/15; managing the delivery of transformational change; improving (non-financial) reporting on CIPs; and having “sufficiently detailed analysis” supporting “detailed workforce and operational plans” as increased capacity is needed to deliver planned activity.
- 2.13. Liaison is taking place with Monitor on a process which will enable the regulator’s expectations to be met. Progress on this will be reported to the Board.

***Draft Constitution***

- 2.14. Feedback on the Trust’s draft Constitution from Monitor’s lawyers was received during February.
- 2.15. This requested some drafting changes and proposed amendments as a result are included in Appendix 2.
- 2.16. The Board is asked to agree these proposed changes in order that the draft Constitution can be adopted by the Council of Governors in due course prior to authorisation.

**Next stage of assessment**

- 2.17. If Monitor agree to begin the final stage of assessment in late April, it is expected that this will include:
- 2.17.1. Findings from the assessment to date and any further action needed before authorisation, including (as above):
- Testing of progress made on quality governance, then QGF re-scoring.
  - Assessment of progress against Access and Outcomes standards and of action plans to return to compliance and forward projections for performance against these standards.
  - Assessment of the latest Cost Improvement Programme; of updated plans for finances, activity and workforce; and of the downside plan and mitigations.
- 2.17.2. A review of the Trust’s arrangements for having sufficient working capital. This will include review by independent accountants of a Board statement that the Trust has “sufficient working capital to meet its obligations for the first 12 months of operation” [and] “projections for the second 12-month

period (months 13-24) together with the risks associated with their achievability.”<sup>1</sup>

- 2.17.3. A check of Board self-certification (as required in Monitor’s *Guide for Applicants*<sup>2</sup>) of the Trust’s organisational capacity to deliver its business plan. It is envisaged that self-certification on management capacity and experience, the selection process for Non-Executive Directors, management structures (including performance management) and strategic planning will need to be considered by the Board in May.
  - 2.17.4. A check that the Trust has a shadow Council of Governors in place ready to perform its functions at the point of authorisation.
- 2.18. If the outcome of these checks is satisfactory, a Board to Board meeting could be held in late June, enabling Monitor to decide in July on OUH’s FT application.

### 3. Council of Governors

- 3.1. Elections to the Council of Governors were completed as planned. All public and staff governor seats were filled through competitive election.
- 3.2. At the time of writing, nominated governors had been identified by all organisations except for the University of Oxford and the Young People’s Executive. Liaison is taking place with both to identify nominees as soon as possible.
- 3.3. The Council of Governors will operate in ‘shadow’ form prior to authorisation and has initial induction days during March and April as part of their induction programme.
- 3.4. Members of the new Council of Governors are shown in the table at Appendix 2.

### 4. Recommendations

The Board is asked to:

- 4.1. **Note** progress.
- 4.2. **Agree** changes to the Trust’s draft Constitution as shown in Appendix 1.
- 4.3. **Consider** any further available information on the anticipated timetable for authorisation.
- 4.4. **Agree** that at its May meeting it will consider progress against agreed quality governance actions and their impact; progress against its action plans to return to compliance on Access and Outcomes standards and forward projections for performance against these standards; and the Trust’s Integrated Business Plan, taking account of points raised by Monitor at paragraph 2.12 above.

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<sup>1</sup> Guide for Applicants, Monitor, October 2013. Available at <https://www.gov.uk/government/publications/applying-for-nhs-foundation-trust-status-guide-for-applicants>, p27

<sup>2</sup> *Ibid*, p13 and Appendix B16

**Andrew Stevens**  
**Director of Planning and Information**

Report prepared by:

Jonathan Horbury  
Foundation Trust Programme Director

**March 2015**

## Appendix 1: Proposed changes to draft Trust Constitution

| Reference                                     | Monitor Comment   | Trust Response   | Revised Text   |
|---|---|--|--|
| <b>Main Body</b>                              |   |  |  |
| Interpretation and definitions: paragraph 1.8 | <p>Section 31 of the 2006 Act has been repealed by section 150(5) of the Health and Social Care Act 2012.</p> <p>Please replace “Section 31 of the 2006 Act” with the correct reference, “Section 61 of the 2012 Act”.</p>  | <b>Accepted:</b> Text amended  | 1.8. ‘Monitor’ is the corporate body known as Monitor, as provided by Section 61 of the 2012 Act.  |
| 6.2: age restriction on membership            | This should appear in paragraph 9, not 6.   | <b>Accepted:</b> Text moved from ‘Application for membership’ to ‘Restriction on membership’.  | 9.1. To be a member of the trust, an individual must be at least sixteen years old on the date of their application to be a member.  |
| 8.2.2: Staff constituency                     | <p>Is the trust satisfied that any conflict of interest would be addressed by the rules governing conflicts for governors (if any of those members were elected as governors)?</p> <p>Also, please consider whether “Private Finance Initiative provider” is sufficiently clear. Perhaps this should be a defined term?</p> | <b>No change:</b> Existing rules are considered sufficient to address any conflicts for members who are employed by PFI providers. [Text shown to right is unchanged.] | <p>8.2. Individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust who:</p> <p>8.2.1. have a contract of employment with the University of Oxford within its Medical Sciences Division; or</p> <p>8.2.2. are employed by a Private Finance Initiative provider to provide services at any of the trust’s premises</p> <p>may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.</p> |



| Reference   | Monitor Comment   | Trust Response  | Revised Text  |
|---|---|---|---|
| 8.4/Annex 2: sub-division within Staff constituency | <p>The 2 classes must together cover all the staff constituency.</p> <p>Paragraph 1.1.2 refers to the PFI provider staff, but not the staff employed by the University of Oxford in its Medical Sciences Division – what if any of those staff are non-clinical, but are not on the trust's Electronic Staff Record as admin, clerical, estates or ancillary staff? At present they would not fall into either of the 2 class descriptions.</p> | <p><b>Accepted:</b> Additional category added to description of 'non-clinical' staff class. (MRC and PFI applicants for staff membership have already been asked to clarify whether they are clinical or non-clinical staff.)</p> | <p>1.1. groups of staff:</p> <p>1.1.1. categorised in the trust's Electronic Staff Record as administrative and clerical, estates and ancillary staff;</p> <p>1.1.2. employed by, or seconded to (under a retention of employment model) a Private Finance Initiative provider to provide services at any of the trust's premises; and</p> <p>1.1.3. employed by the University of Oxford in its Medical Sciences Division in a non-clinical role</p> <p>will be assigned to the 'non-clinical' staff class</p> |

| Reference                             | Monitor Comment  | Trust Response  | Revised Text   |
|---------------------------------------|--|---|--|
| 8.6.1: automatic membership for staff | Perhaps this should be limited so that it applies only to persons eligible to be in the Staff Constituency under paragraph 8.1, as paragraph 8.6.2 covers the staff eligible under paragraph 8.2.  | <p><b>Accepted:</b> Paragraph 8.6.1.1. revised to refer back to para 8.1, which states that:</p> <p>“An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided that:</p> <ol style="list-style-type: none"> <li>1. he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or</li> <li>2. he has been continuously employed by the trust under a contract of employment for at least 12 months.”</li> </ol> | <p>8.6.1. Subject to paragraph 8.6.2, an individual who is:</p> <p>8.6.1.1. eligible to become a member of the Staff Constituency pursuant to paragraph 8.1 above, and</p> <p>8.6.1.2. invited by the trust to become a member of the Staff Constituency and appropriate class within the Staff Constituency,</p> <p>shall become a member of the trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the trust that he does not wish to do so.</p> |
| 12.2/Annex 4: Model election rules    | <p>The model election rules need to be appended in full as they form part of the constitution.</p> <p>These can be downloaded from:<br/> <a href="http://www.foundationtrustnetwork.org/resource-library/model-election-rules-word-version/">http://www.foundationtrustnetwork.org/resource-library/model-election-rules-word-version/</a></p> | <p><b>Accepted:</b> Model election rules incorporated into constitution at Annex 4.</p>   |  |

| Reference  | Monitor Comment  | Trust Response  | Revised Text  |
|--|--|---|---|
| 14.1: Council of Governors: disqualification and removal | <p>An additional ground for disqualification should be added to reflect para 8(1)(aa) of Schedule 7 to the 2006 Act (as inserted by the 2012 Act):</p> <p>“A person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).”</p>   | <p><b>Accepted:</b> Required text incorporated.</p>   | <p>14.1 The following may not become or continue as a member of the Council of Governors:</p> <p>[...]</p> <p>14.1.4 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).</p>   |
| 22.3: Board of Directors: composition                    | <p>This is not sufficiently clear. It should state more clearly that the University of Oxford may nominate an individual as a candidate for appointment as a non-executive director, provided that individual qualifies for appointment in accordance with paragraph 24, and that the individual may be appointed only in accordance with the 2006 Act and paragraphs 24 and 25 of the constitution.</p> | <p><b>Accepted:</b> Paragraph 22.3 revised. Para 24 states that:</p> <p>“A person may be appointed as a non-executive director only if:</p> <p>he is a member of a Public Constituency, or</p> <p>where any of the trust’s hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and</p> <p>he is not disqualified by virtue of paragraph 30 below. [which sets out legal exclusions]</p> | <p>22.3. The University of Oxford may nominate an individual as a candidate for appointment as a non-executive director, provided that individual qualifies for appointment in accordance with paragraph 24 below. The individual may be appointed only in accordance with the 2006 Act and paragraphs 24 and 25 of the constitution below.</p> |

| Reference   | Monitor Comment  | Trust Response  | Revised Text   |
|---|--|---|--|
| 30: Board of Directors: disqualification                      | This also needs to add the grounds for disqualification that is listed for governors in paragraph 8(1)(aa) of Schedule 7 to the 2006 Act.    | <b>Accepted:</b> Required text incorporated.  | 30.1 The following may not become or continue as a member of the Board of Directors:<br><br>[...]<br><br>30.1.4 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986). |
| 45.3: Mergers etc. and significant transactions               | Please note that the compliance framework has now been replaced by the risk assessment framework.  | <b>Accepted:</b> Note amended to replace 'Compliance Framework' with 'Risk Assessment Framework'. | 45.3 "significant transaction" means a transaction which meets the definition of significant transactions as given in Monitor's <i>Risk Assessment Framework</i> as amended.   |
| <b>Annexes</b>  |  |   |  |
| Annex 3, 3: Composition of Council of Governors               | You need to say that these [non-mandatory] organisations are specified for the purposes of paragraph 9(7) of Schedule 7 to the NHS Act 2006. | <b>Accepted:</b> Text amended.  | 3. Other Governors are to be appointed by the following organisations, specified for the purposes of paragraph 9(7) of Schedule 7 to the NHS Act 2006:   |
| Annex 5, 2.2.12: Additional Provisions – Council of Governors | Surely this should be “and” rather than “and/or” as paragraph 2.2.13 is not an alternative to the previous provisions?                       | <b>Accepted:</b> Text amended.  | 2.2 The roles and responsibilities of Council of Governors are:<br><br>[...] 2.12 to appoint the deputy Chairman; and<br>[...]   |

| Reference  | Monitor Comment  | Trust Response  | Revised Text   |
|--|--|---|--|
| Annex 5, 6.1, 6.2  | These refer to governors “elected <b>to</b> [a Public/the Staff] Constituency”. They should refer to governors elected <b>by</b> [a/the] constituency.   | <b>Accepted:</b> Text amended.  | Notwithstanding the provisions of paragraph 13 of the constitution, for the initial governors elected by a Public Constituency of the trust, the following will apply: |
| Annex 6, 3.1: Standing Orders for the Council of Governors | Please clarify this. What powers and decisions is the trust suggesting that the Council could exercise otherwise than at a properly constituted meeting carried out in accordance with the Standing Orders (which we presume you mean for “formal session”)? | <b>Accepted:</b> Paragraph reworded to clarify that powers may only be exercised at a properly constituted meeting. | 3.1. The Council of Governors may only exercise its powers and take decisions at a properly constituted meeting carried out in accordance with the Standing Orders.    |

| Reference              | Monitor Comment  | Trust Response   | Revised Text   |
|------------------------|--|--|--|
| Annex 6, 4.7.5.4 and 5 | <p>This states that a committee could “deal with a specific item of business”.</p> <p>Please refer to chapter 3, page 25 of the guide for governors - “Participation by governors in working groups and sub-committees”. This states that governors have no power of delegation, so (sub)-committees can make recommendations/advise but cannot make decisions on behalf of the council of governors. There is no provision under the NHS Act 2006 for the Council to delegate to committees. So any governor sub-committee can only be advisory.</p> <p>This also applies to paras 5.4 and 5.5. The distinction being made between powers to be exercised at a formal meeting and those which are not is not a valid one.</p> | <p><b>Accepted:</b> Paragraphs amended to clarify that the Council of Governors may not delegate powers to committees or sub-committees. Paragraph 5.5 stating that committees may not delegate powers to sub-committees has therefore been removed.</p> | <p>4.7.5. When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move: [...]</p> <p>4.7.5.4. The appointment of an ad hoc committee to make recommendations regarding a specific item of business; [...]</p> <p>5.4. Each such committee shall have such terms of reference and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by Monitor but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors.</p> |
| Annex 6, 6.1.4         | Should this cross-refer to Standing Order 6.2.3 not 6.2.4?   | <b>Accepted:</b> Reference amended.  |  |

| Reference                                  | Monitor Comment  | Trust Response  | Revised Text   |
|--|--|---|--|
| Annex 6, paragraphs 6.1.3, 6.1.4 and 6.3.1 | These need to be reviewed, as there is an inconsistency. Paragraphs 6.1.3 and 6.1.4 indicate that a non-pecuniary interest (if relevant and material) means that a governor cannot vote, but may take part in consideration and discussion, whereas a pecuniary interest means the governor cannot take part in consideration and discussion. But paragraph 6.3.1 then says that if a governor declares <i>any</i> interest then they can neither vote nor participate in consideration or discussion. | <b>Accepted:</b> The paragraphs have been amended such that for a pecuniary interest governors will not vote or take part in the discussion. For a non-pecuniary interest the governor may not vote but a decision will be taken by the Chair, taking advice (e.g. from the Head of Corporate Governance) where required, as to whether the governor may take part in the discussion. | <p>6.1.3. In addition, if a governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter. Where a non-pecuniary interest is declared the Chairman shall determine whether the governor should take part in the consideration or discussion of the matter, seeking advice where required.</p> <p>6.3.1. Subject to Standing Order 6.2.3 above [on pecuniary interests], if a governor discloses a pecuniary interest pursuant to Standing Order 6 to the other governors, he shall not take part in the consideration or discussion of the matter or vote on any question with respect to it. Where a non-pecuniary interest is declared the Chairman shall determine whether the governor should take part in the consideration or discussion of the matter, seeking advice where required. At the time any interest is declared, it should be recorded in the meeting minutes.</p> |

| Reference               | Monitor Comment   | Trust Response  | Revised Text  |
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| Annex 6, paragraph 9.2  | This should be limited to matters discussed by the committee in non-public session. If the public are present, the matter is in the public domain and there is no restriction on disclosures.   | <b>Accepted:</b> Paragraph amended to clarify that this refers only to matters discussed in non-public session. | 9.2. A governor or an attendee on a committee of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors and discussed by the committee in non-public session without the permission of the Council of Governors or until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter. |
| Annex 6, paragraph 12.2 | An additional ground for disqualification should be added to reflect para 8(1)(aa) of Schedule 7 to the 2006 Act (as inserted by the 2012 Act):<br><br>"A person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986)." | <b>Accepted:</b> Required text incorporated.  |   |



| Reference   | Monitor Comment  | Trust Response  | Revised Text  |
|---|--|---|---|
| Annex 7, 18.2: Standing Orders for the Board of Directors | <p>This needs to be amended so that it is consistent with paragraph 15(3), Schedule 7 to the NHS Act 2006, which permits delegation only to executive directors (not officers generally).</p> <p>The provisions for committees are fine, as although paragraphs 18.2 and 18.3 refer only to committees, whereas the 2006 Act refers to committees of directors, paragraph 19.1 only allows appointment of committees consisting of directors – please clarify that this interpretation is correct.</p> | <b>Accepted:</b> The paragraph has been amended to specify executive directors.   | <p>18.2 Delegation of Functions to Committees, Officers or other bodies.</p> <p>Subject to the Regulatory Framework and such guidance, if any, as may be given by Monitor, the Board of Directors may make arrangements on behalf of the trust for the exercise of any of its functions by an executive director of the trust or by a committee or sub-committee which it has formally constituted in accordance with the constitution subject to paragraph 19.1 below; in each case subject to such restrictions and conditions as the Board of Directors think fit.</p> |
| Annex 7, 18.5   | This appears to preclude the Board delegating directly to other executive directors (this is permitted by the 2006 Act, although the trust is not obliged to).   | <b>Accepted:</b> The paragraph has been amended to allow for direct delegation by the Board to other executive directors. | <p>18.5 Delegation to Officers</p> <p>Those functions of the trust which have not been retained as reserved by the Board of Directors or delegated to an executive director or to another committee or sub-committee shall be exercised on behalf of the trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the trust.</p>  |

| Reference   | Monitor Comment  | Trust Response  | Revised Text   |
|---|--|---|--|
| Annex 7, 20:<br>Declaration of Interest and Register of Interests | This refers to “the principles” in paragraph 33, but the paragraph actually imposes duties. So perhaps paragraph 20 should refer to the <i>requirements</i> in paragraph 33? | <b>Accepted:</b> Text amended as suggested.                                     | The requirements set out in paragraph 33 of the constitution and for Members of the Council of Governors at paragraph 6 in Annex 6: Standing Orders for the Practice and Procedure of the Council of Governors apply equally to members of the Board of Directors.   |
| Annex 8, 4:<br>Termination of membership                          | As membership can also cease on being disqualified or expelled pursuant to paragraphs 2 and 3 of Annex 8 respectively, please consider adding this here.                     | <b>Accepted:</b> This reason for membership ending has been added as suggested. | 4.1. A member shall cease to be a member on:<br>4.1.1. death;<br>4.1.2. resignation by notice in writing to the Head of Corporate Governance;<br>4.1.3. ceasing to fulfil the requirements of paragraphs 6, 7 or 8 of the constitution, as the case may be; or<br>4.1.4. being disqualified or expelled pursuant to paragraphs 2 and 3 of Annex 8 respectively.  |
| Annex 8, 5.1:<br>Voting at Council of Governors elections         | Section 60(5) of the NHS Act 2006 makes it a requirement for this to be specified in the constitution – please include this.   | <b>Accepted:</b> This has been incorporated into the wording.                   | 5.1. As required by section 60(5) of the NHS Act 2006, a member may not for the purpose of Section 60(1) of the 2006 Act, vote at an election for a public Council of Governors constituency unless within the period specified he has made a declaration in the specified form stating the particulars of his qualification to vote as a member of a constituency, or class, or area within a constituency for which an election is being held. |

| Reference  | Monitor Comment  | Trust Response  | Revised Text  |
|--|--|---|---|
| Annex 8, Appendix 2: Dispute resolution procedures, 2.1.2 & 2.1.3 cf Annex 7, 19.7.5 | How will this work if the dispute is between the board and the council of governors? (how will independence be ensured?) | <b>Accepted:</b> It is considered reasonable that independence is ensured through the appointment of a joint special committee to make recommendations to the Council of Governors and Board of Directors, but changed wording is proposed to enable independent chairing of the joint special committee. | <p>2.1. In the event of dispute between the Council of Governors and the Board of Directors:</p> <p>2.1.1. In the first instance the Chairman on the advice of the Head of Corporate Governance, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;</p> <p>2.1.2. 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;</p> <p>2.1.3. If the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute to the Board of Directors who shall make the final decision.</p> |

## Appendix 2: Council of Governors: membership as at 1 March 2015

Elected

|  |  |
|--|--|
| <b>Buckinghamshire, Berkshire, Wiltshire<br/>and Gloucestershire</b> | Sally-Jane Davidge<br>Brian Souter                                       |
| <b>Cherwell</b>  | Teresa Allen<br>Anita Higham OBE   |
| <b>Oxford City</b>   | Cecilia Gould<br>Margaret Booth  |
| <b>Northamptonshire and Warwickshire</b>                             | Steve Candler<br>Rosemary Herring  |
| <b>South Oxfordshire</b>   | Ian Roberts<br>Sue Woollacott  |
| <b>Vale of White Horse</b>   | Martin Havelock<br>Jill Haynes   |
| <b>West Oxfordshire</b>  | Sue Chapman<br>Jane Doughty  |
| <b>Rest of England</b>   | Roger Morgan   |
| <b>Staff – clinical</b>  | Chris Cunningham<br>Jeremy Dwight<br>Jules Stockbridge<br>Chris Winearls |
| <b>Staff – non-clinical</b>  | Raymond James<br>Tom Mansfield   |

Nominated

|                                       |                        |   |
|---------------------------------------|------------------------|---|
| <b>Oxfordshire County<br/>Council</b> | Cllr Judith Heathcoat  | Cabinet Member for Adult Social<br>Care                                       |
| <b>University of Oxford</b>           | <i>To be nominated</i> |   |
| <b>Oxford Brookes University</b>      | June Girvin            | Pro Vice-Chancellor and Dean of<br>the Faculty of Health and Life<br>Sciences |
| <b>NHS England</b>                    | Rachel Pearce          | Interim Director Commissioning<br>Operations – South Central                  |
| <b>Oxfordshire CCG</b>                | Dr Paul Park           | Deputy Clinical Chair   |
| <b>Oxfordshire LMC</b>                | Dr Paul Roblin         | Chief Executive   |
| <b>Oxford Health NHS FT</b>           | Martin Howell          | Chair   |
| <b>Young People’s Executive</b>       | <i>To be nominated</i> |   |