

Council of Governors

Date:	6 February 2020	Attachment item:	9																
Title of Report:	Proposed Changes to the Constitution																		
Purpose of the report and the key issues for consideration/decision:	The purpose of the report is to highlight proposed changes to the constitution, ahead of this year's elections.																		
Prepared by:	Stella Jackson, Head of Corporate Governance																		
Presented by:	Victoria Pickles, Associate Director of Corporate Affairs and Group Company Secretary																		
Strategic Objective(s) supported by this paper:	<table border="1" style="width: 100%;"> <tr> <td>Financial Sustainability</td> <td><input type="checkbox"/></td> <td>Empower & Engage Staff</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Quality of Care</td> <td><input type="checkbox"/></td> <td></td> <td></td> </tr> </table>			Financial Sustainability	<input type="checkbox"/>	Empower & Engage Staff	<input checked="" type="checkbox"/>	Quality of Care	<input type="checkbox"/>										
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Is this on the Trust's risk register:	<table border="1" style="width: 100%;"> <tr> <td>No</td> <td><input checked="" type="checkbox"/></td> <td>Yes</td> <td><input type="checkbox"/></td> <td>If Yes, Score</td> <td><input type="checkbox"/></td> </tr> </table>			No	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	If Yes, Score	<input type="checkbox"/>										
No	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	If Yes, Score	<input type="checkbox"/>														
Which CQC Standards apply to this report:	Well-led domain																		
Have all implications related to this report been considered: (please X)	<table border="1" style="width: 100%;"> <tr> <td>Finance Revenue & Capital</td> <td><input type="checkbox"/></td> <td>Equality & Diversity</td> <td><input type="checkbox"/></td> </tr> <tr> <td>National Policy/Legislation</td> <td><input type="checkbox"/></td> <td>Patient Experience</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Human Resources</td> <td><input type="checkbox"/></td> <td>Terms of Authorisation</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Governance & Risk Management (BAF)</td> <td><input type="checkbox"/></td> <td>Other:</td> <td><input type="checkbox"/></td> </tr> </table>			Finance Revenue & Capital	<input type="checkbox"/>	Equality & Diversity	<input type="checkbox"/>	National Policy/Legislation	<input type="checkbox"/>	Patient Experience	<input type="checkbox"/>	Human Resources	<input type="checkbox"/>	Terms of Authorisation	<input type="checkbox"/>	Governance & Risk Management (BAF)	<input type="checkbox"/>	Other:	<input type="checkbox"/>
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Action Required: (please X)	<table border="1" style="width: 100%;"> <tr> <td>Approve</td> <td><input checked="" type="checkbox"/></td> <td>Discuss</td> <td><input type="checkbox"/></td> <td>Receive for information</td> <td><input checked="" type="checkbox"/></td> <td>Decision</td> <td><input type="checkbox"/></td> </tr> </table>			Approve	<input checked="" type="checkbox"/>	Discuss	<input type="checkbox"/>	Receive for information	<input checked="" type="checkbox"/>	Decision	<input type="checkbox"/>								
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Previously Considered By:	<table border="1" style="width: 100%;"> <tr> <td>Board of Directors</td> <td>Date:</td> <td>8 January 2020</td> </tr> </table>			Board of Directors	Date:	8 January 2020													
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Recommendations:	<p>That the Council of Governors:</p> <ul style="list-style-type: none"> Approves the proposed changes to the Constitution. 																		

Council of Governors

6 February 2020

Proposed Changes to the Constitution

1. Introduction

A recent review of the constitution revealed a need for a number of sections to be amended. This paper provides information regarding those areas and the proposed changes.

2. Proposed Changes

2.1 Board of Directors – Appointment of Initial Chair and Initial Other Non-Executive Directors

Paragraph 24 of the constitution provides that the Council of Governors shall appoint the Chair of the applicant Trust as the initial Chair of the Trust. It also provides that the Council of Governors shall appoint any of the initial Non-Executive Directors who wish to be appointed as the initial Non-Executive Directors of the Trust. As this paragraph related to the appointments of these Board members upon the Trust becoming a Foundation Trust, it is no longer applicable. Consequently, it is recommended that this paragraph is deleted.

2.2 Appointment of Deputy Chair

Paragraph 25 of the Constitution and the Standing Orders provide that the Council of Governors is responsible for the appointment of the Deputy Chair. As this appointment is not a statutory requirement of the Council of Governors, it is proposed that the appointment is approved by the Board of Directors. This would result in paragraph 25 of the constitution being deleted and references to the appointment in the standing orders being amended to reflect the Board's role in approving the appointment.

2.3 Board of Directors – Appointment of Initial Chief Executive

Paragraph 27 of the constitution provides that the Council of Governors shall appoint the Chief Executive of the applicant Trust as the initial Chief Executive of the Trust. As this requirement is no longer applicable, it is recommended that this paragraph is deleted.

2.4 Appendix 1: The Public Constituency

The constituency table on page 21 of the constitution contains a small number of inaccuracies as detailed below:

- Gargrave and Malhamdale is currently listed as an area within the Skipton constituency and should be an area within the Settle and Mid Craven constituency;
- West Craven is currently listed as an area within the South Craven constituency but is a constituency in its own right; and
- Similarly, Craven is currently listed as an area within the West Craven constituency but is a constituency in its own right.

It is recommended that the inaccuracies detailed above are corrected in the constituency table.

2.5 Appendix 6: Standing Orders for the Practice and Procedure of the Council of Governors

A recent review of the Standing Orders for the Council of Governors, appended to the constitution, and those which form part of the Standing Orders/Standing Financial Instructions/Scheme of Delegation document revealed a number of inconsistencies (with some areas being more explicit in one of the documents than the other). Consequently, it is recommended that the two documents are merged into one final version. This will be presented to the Board in March 2020 and Council of Governors in May 2020.

2.6 Appendix 7: Standing Orders for the Practice and Procedure of the Board of Directors

Similarly, the Standing Orders for the Board of Directors, appended to the constitution, differ in places to those contained in the Trust's Standing Orders/Standing Financial Instructions/Scheme of Delegation (with some areas being more explicit in one of the documents than the other). Consequently, it is recommended that the two documents are merged into one final version. This will be presented to the Board in March 2020 and Council of Governors in May 2020.

2.7 Senior Independent Director

Paragraph 2.6 of the Trust's Standing Orders provides that the Board of Directors will appoint one of the Non-Executive Directors to be their Senior Independent Director (following consultation with the Council of Governors) using the procedure set out in the constitution. However, the constitution is silent regarding the Senior Independent Director.

Consequently, it is proposed that the following paragraphs are added to the constitution:

Board of Directors – Senior Independent Director

The Board of Directors will, at a general meeting of the Board of Directors, appoint one non-executive director to be the Senior Independent Director, following consultation with the Council of Governors. The main duties of the Senior Independent Director should be clearly articulated and agreed with the Board and Council of Governors, ensuring they are in line with national guidance.

Role Description – Senior Independent Director

The Senior Independent Director is a key role in supporting the Chair in leading the Board of Directors and acting as a sounding board and source of advice for the Chair. The Senior Independent Director also has a role in supporting the Chair as Chair of the Council of Governors. In addition to the duties described here the Senior Independent Director has the same duties as the other Non-Executive Directors. Their duties include:

- Being available to members of the Foundation Trust and to the Council of Governors if they have concerns that contact through the usual channels of Chair, Chief Executive, Finance Director and Company Secretary has failed to resolve or where it would be inappropriate to use such channels.
- While the Council of Governors determines the process for the annual appraisal of the chair, the senior independent director is responsible for carrying out the appraisal of the chair on its behalf.
- The Senior Independent Director should maintain regular contact with the Governors and attend meetings of the Council of Governors to obtain a clear understanding of Council of Governors views on the key strategic performance issues facing the Foundation Trust.
- The Senior Independent Director should also be available to Governors as a source of advice and guidance in circumstances where it would not be appropriate to involve the chair.
- In rare cases where the board is undergoing a period of stress the Senior Independent Director has a vital role in intervening to resolve issues of concern. These might include unresolved concerns on the part of the Council of Governors regarding the chair's performance; where the relationship between the chair and the chief executive is either too close or not sufficiently harmonious; where the Trust's strategy is not supported by the whole Board; where key decisions are being made without reference to the Board; or where succession planning is being ignored.

In the circumstances outlined above, the Senior Independent Director will work with the Chair, other directors and/or Governors, to resolve significant issues.