

**REPORT FROM GOVERNORS' CONSTITUTION COMMITTEE 17  
NOVEMBER 2008**

Report of the Chairman of the Committee

**1. Purpose**

The purpose of this report is to advise the Board of Governors of the status of discussions at the Governors' Constitution Committee and to obtain formal approval for recommended policy amendments. The minutes of the meeting are attached for information.

**2. Summary**

The business of the meeting can be summarised into three categories:

- For information
- For consultation
- For formal approval

**3. For Information**

These are reported to the Board of Governors for information only.

Board Effectiveness Review

Following a tendering process, the Trust has engaged Independent Audit Ltd to conduct a review of the Board of Directors, Board of Governors and their sub-committees and working groups over a three year period, starting in November 2008. The first year will focus mainly on the Board of Directors as this was last evaluated in 2006, whereas the Board of Governors underwent an internal evaluation process in 2007/08. The Governors Constitution Committee will oversee the Governors' effectiveness review process.

Appointment of External Auditors

The current auditors' contract runs until 2010, having been appointed for five years in 2005 subject to annual reappointment by the Board of Governors. The Constitution Committee will be reviewing the appointment process for the external auditors in the coming year, in consultation with the Governance and Assurance working group and the Chairman of the Trust Audit Committee.

**4. For Consultation**

Procedure for selecting Governors to ad-hoc committees and special interest groups

The Committee considered a draft procedure for officers of the Trust to follow when selecting Governors to ad-hoc committees and special interest groups. Although a fair and transparent process was being followed in the

majority of cases, there were examples of officers approaching governors directly, with the result that the Governors' profiles were not completely up-to-date as the Membership Office was not advised, but also the evidence of having followed a fair process was not in place. An outline procedure, amended to reflect the discussions of the Constitution Committee is attached in Appendix 1.

**Action**

**The Board of Governors is asked to consider the attached procedure and feed back any questions, comments and suggestions to the Trust Secretary**

Future of Governor/Director working groups

Having previously been discussed at the Governance and Assurance Governor/Director working groups and at the meeting of chairs of Board of Governors and Board of Directors sub-committees and working groups, the committee reflected on whether the future of these groups lay as sub-committees of the Board of Governors, or in their current format as working groups with Director, NED and Governor representation.

The committee agreed that there was scope to improve the scheduling of these groups to coincide with key dates in the business calendar, but remained unconvinced of the benefits of sub-committee status. This was discussed again at the Governors' Development Day on the 24<sup>th</sup> of November and the Governance and Assurance working group on the 25<sup>th</sup> of November.

**Action**

**Governors are advised that no firm decisions have been made regarding the future of Governor/Director working groups, but first steps have been taken to improve the scheduling around the Trust's business calendar. The effectiveness of current arrangements is continually under review and any ideas or suggestions for improvement should be advised to the Trust Secretary.**

**5. For Approval**

**Chairman's Reappointment – Review of Process**

Following the extraordinary closed meeting of the Board of Governors to discuss the Chairman's reappointment for a third term, the committee considered whether there was a need for clarification in the policy and in particular the term "exceptional circumstances" which could be interpreted in different ways. There was also a need to be clear about the situation at the end of the third term when the need for annual re-appointment would arise.

The committee recommended the following changes in the wording for approval by the Board of Governors (shown in bold and underlined):

*A Chairman is appointed for a single term initially. A single term is defined as three years from the date of appointment. Whilst there can be no right to reappointment, there will be a presumption that all candidates who have served a single term will be eligible for*

consideration for uncontested reappointment if their appraised performance is good. Under normal circumstances a Chairman who has served two or more terms, which together amount to less than nine years, will be eligible to reapply in open competition when the post is advertised. The FT Code of Governance states that any term beyond six years should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the Board of Directors. A process of open competition will ensure compliance with this code although **on an exceptional basis taking full account of whether a contested process would be in the best interests of the Trust** and subject to approval by the Board of Governors, this requirement may be waived. A Chairman who has already served for nine years or more may be eligible for reappointment in **truly** exceptional circumstances **and only if a change of Chairman at that time would be of major disadvantage for the Trust and** only for a twelve month term.

#### Action

**The Board of Governors is asked to consider and approve the above changes to the policy**

#### Deputy Chairman

The Constitution Committee discussed the term of office and role of the Deputy Chairman.

There was a technical anomaly in the term of office for the Deputy Chairman, which stated both that an individual should occupy the position for two years, or for a term which is the same as the remainder of their term of office (up to three years). For avoidance of doubt, the committee agreed the following terms:

- An individual may occupy the position of Deputy Chairman of the Board of Governors for a two-year period, with the option to stand for re-election at the end of that period, up to a maximum of six years.
- If that individual's term of office as a Governor ends in the middle of the two year term as Deputy Chairman, they have the option to continue in the role without re-election to the end of the original term if they are re-elected to the Board of Governors. If they are not re-elected as Governor, they cease to be eligible to be Deputy Governor and must step down.

The role of the Deputy Governor on committees and working groups was also discussed. The committee agreed that the Deputy Governor should not be a member but had the right of attendance at Board of Governors' sub-committees and Governor/Director working groups. The only exception would be the Governors' Nomination and Remuneration Committee, where she would attend only for the appointment of a new Chairman, in accordance with the current procedure. There are two reasons for the last decision. Firstly, the Deputy Chairman has a casting vote when presiding on the Board of Governors and is almost certain to be presiding when the recommendations of the Governors' Nomination and Remuneration Committee are put to the Governors – it is better therefore that she is not present for the original debate. Secondly, if the Deputy Chair were at some time to have a role in the Chairman's appraisal, they should be independent of the committee who will receive the results of that appraisal (this is not the current arrangement).

The full role description for the Deputy Chairman is attached in Appendix 2 for information.

**Action**

**The Board of Governors is asked to consider and approve the above changes to role and terms of the Deputy Chairman**

## **SELECTION OF GOVERNORS FOR SPECIAL INTEREST GROUPS, COMMITTEES AND GOVERNOR CHAMPION ROLES**

### **Purpose**

To outline a proposed selection process for appointing Governors to special interest groups.

### **Background**

In addition to their specific role in the constitution, Governors are often invited to participate as members of Board of Governors' sub-committees and as representatives of the Board of Governors on ad-hoc special interest groups, project groups and Trust steering groups.

Whilst there are specific procedures for Board of Governors sub-committees and Governor/Director working groups, the procedure for appointing Governors to ad-hoc special interest groups has been more arbitrary. Occasionally specific Governors are requested by the Chairman of the special interest group, due to their particular expertise on a relevant topic. More often than not, a general request is made to the Governors and names of interested parties are then put forward to the Chairman of the special interest group, who selects a name based on their knowledge of the individual or synergies with other roles held (eg. membership of a particular GD Working Group or related special interest group). Occasionally, advice is sought from the Trust Secretary or Membership Manager regarding individuals' backgrounds etc.

Although this approach has not raised any concerns in the past, Governors have queried this arbitrary approach more recently, prompting a review of procedures.

### **Suggested Procedure**

Whenever a request for a Governor representative is made to the Trust Secretary or Membership Office, the Chairman of the committee or person making the request should be asked to write a short specification to explain the contribution they would like the Governor to make, supply the terms of reference for the committee and advise on the time commitment required and likely times and dates of meetings. This specification should not specify that a Governor be a member of another named committee unless there are strong grounds for doing so, as this creates the risk of an "inner circle" effect and excludes new governors.

Volunteers should then be invited from the Board of Governors. In the event of more than one volunteer coming forward, the Trust Secretary or Membership Manager will invite the candidates to prepare a short note explaining why they feel they are particularly suitable as representatives, outlining areas of relevant expertise and related experience. The originator of the request will select the Governor on the basis of this note and have reasons to hand for feedback if required. The Trust Secretary and Membership Manager will be on hand to advise and follow-up any additional questions.

If there are no volunteers, the Trust Secretary, Membership Manager and Deputy Chairman will consider whether a personal approach to a Governor is appropriate based on their knowledge of Governors' special interests, expertise and commitments.

If there is a need to find a Governor representative at short notice, the Trust Secretary and Deputy Chairman will take Chairman's actions based on availability of Governors.

### **The Role of the Deputy Chairman**

- To preside over meetings of the Board of Governors where the Chairman has a conflict of interest
- To work closely with the Senior Independent Director in order to ensure a continuing good relationship between directors and governors
- To act as a point of contact to channel governor concerns and to play a role in the appraisal of the Chairman in liaison with the Senior Independent Director (subject to approval by the Governors Nomination and Remuneration Committee)
- To lead the Board of Governors in communications with Monitor if the Trust were to be at risk of breaching the terms of its authorisation (following expression of concerns to the Board of Directors).
- To ensure the recommendations following reviews of the effectiveness of the Board of Governors are implemented
- To ensure that the Board of Governors' sub-committees and Governor Director working groups periodically review their own effectiveness and work with the Chairs of those committees to ensure that issues of concern are cascaded effectively
- To hold meetings with Governors without Directors present in order to identify areas of potential concern
- To take action with the Chairman of the Trust in connection with the removal of a governor due to non-compliance with the Code of Conduct for the Board of Governors or any other action which may be detrimental to the Trust.

### **Conditions of appointment**

- The Deputy Chairman of the Board of Governors should be a patient or public governor
- On election to the position of Deputy Chairman of the Board of Governors, the governor must step down from the Chairmanship, Vice-Chairmanship and membership of any of the Board of Governors working groups or sub-committees but will have the right of attendance at these committees as an observer, with the exception of the Governors' Nomination and Remuneration Committee.

### **Term of Office**

- An individual may occupy the position of Deputy Chairman of the Board of Governors for a two-year period, with the option to stand for re-election at the end of that period, up to a maximum of six years.
- If that individual's term of office as a Governor ends in the middle of the two year term as Deputy Chairman, they have the option to continue in the role without re-election, to the end of the original term, if they are re-elected to the Board of Governors. If they are not re-elected as Governor, they cease to be eligible to be Deputy Governor and must step down.
- The Deputy Governor's term of office may be ended before two years with a vote of no confidence from the Board of Governors