

BOARD OF GOVERNORS

REPORT FROM GOVERNORS' CONSTITUTION COMMITTEE 12 JUNE 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 four categories:

- For information
- For consultation
- For formal approval
- Referrals for future consideration

3. For Information

These are reported to the Board of Governors for information:

Board Effectiveness Review

Independent Audit Ltd concluded their review of the Board of Directors at an away-day with the Board on 22 June, where the recommendations were considered by the Directors and an action plan drafted. The draft report which would be considered by the Directors at the 22 June meeting was shared with the committee in confidence in advance to enable the committee to provide assurance to the Board of Governors that it had been a robust process. On the basis of the report on the Board of Directors, the committee concluded that the forthcoming review by Independent Audit Ltd of the Board of Governors would also add value to the Trust.

Timings of Board of Governors' meetings

Following an email poll of Governors, a majority of those responded indicated a preference for morning meetings with lunch to follow. Due to a low response rate from appointed governors, the group most likely to find a morning meeting difficult, and the difficulties that a change of time would present for the current year as many Governors had planned their calendars on the basis of an evening meeting, it was decided that there should be no changes for 2009/10, but to review the situation again for 2010/11.

"Meet the Members" meetings

Non-Executive Directors had been attending these meetings, but in view of their increasing commitments and low attendance by members at many of these meetings, the committee agreed that NEDs need not attend future meetings. The committee requested that the Membership and PPI Governor Director working group considered the future format and content of these meetings.

4. For Consultation

External Consultations

There are two documents out to consultation to which the Trust will be responding. Governors have been invited to comment to both documents via email from the Foundation Trust Office. These are as follows:

Guide for Foundation Trust Governors: Meeting your Statutory Responsibilities (Monitor – consultation deadline 13 July 2009)

CQC Consultation on new Registration Standards (CQC – consultation deadline 24 August 2009)

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 (changes shown from the previous wording):

*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, this requirement may be waived, subject to approval by the Board of Governors, ***if considered to be in the best interests of the Trust***. 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

Changes to the Constitution

The review of the Constitution focused on Section 8 relating to the Board of Governors. In checking this section against the NHS Act 2006, the Trust Secretary identified areas where our Constitution was more restrictive than it needed to be under the Act, and highlighted a number of areas for consideration. Following discussion, the committee is proposing five significant changes, as follows:

(1) 8.10.1 (c): 8.10.1A (c) 8.10.2 (c)

Public/Patient/Staff governors "may not compete for re-election if they have held office for nine or more consecutive years" replaces "may not hold office for longer than nine successive years".

The reason for this change was that a number of elected Governors who had been with the Trust from the start would be stepping down at the same time after nine years if this change wasn't introduced. This was not felt to be in the best interests of the Trust. There is no time-limit set in the NHS Act and although Governors who have had a break in service may serve for longer than nine years in total, the committee thought it was useful to set a suggested time limit in order to encourage new blood.

It was proposed to consult with organisations responsible for selecting appointed governors before making any changes to the terms of office for that class of governor.

(2) 8.12.1.(h)

"A person may not become or continue as a governor of the Trust or an Adviser if ...he is a Director of the Trust or a governor, non-executive director, chairman, chief executive officer or other executive director of an organisation the nature of whose business is to give rise to potential conflicts of interest to such a degree as to prevent the person from the proper exercise of their duties as a Governor of this Trust. This may include other Foundation Trusts" replaces "A person may not become or continue as a governor of the Trust or an Adviser ifhe is a Director of the Trust, or (except in relation to an Adviser) a governor, non-executive director, chairman, chief executive officer or other executive director of another NHS Foundation Trust.

The NHS Act does not prevent governors from being governors of more than one Foundation Trust. The committee felt that it may be advantageous in an era of increased cooperation between different health partners for our Constitution to allow this in certain circumstances, but to maintain a safeguard which would disqualify governors if there was an unacceptable conflict of interest. This would extend the restriction to other types of organisation.

(3) Section 8.17.1 now places the Deputy Chairman in the chair of the Board of Governors as second priority after the Chairman of the Trust, ahead of the Vice-Chairman and NEDs.

(4) Section 8.17.2 has been changed to allow an alternative to the Deputy Chairman if he/she is conflicted as well as all the others.

(5) Section 8.19.1 and 8.19.2 – the section on conflict of interests has been strengthened to include committees of the board of governors and a broader interpretation on shareholdings. The committee also suggested the addition of the words “would include, but are not limited to” prior to the listing of relevant and material interests.

Action

The Board of Governors is asked to consider and approve the above changes to the Constitution (Section 8 is attached in full as Appendix 1 to this paper)

Annual General Meeting

Although attendance from Governors and staff at the AGM was good, only twenty members of the public had attended the last AGM, which had cost £7000. An alternative proposal was presented which was that on alternate years, the AGM business should form part of the September Board of Governors’ meeting which was in any case open to the public, and would be well publicised. The following year, the AGM would be held on the Trust Open Day which would be moved to September. This would mean that this year’s AGM would be incorporated in the proposed meeting of the Board of Governors on 8 September.

Action

The Board of Governors is asked to consider and approve the proposed changes to the arrangements for the AGM

6. Referrals for future consideration

Non-Executive Director Remuneration – Review of Policy

A proposed change to the Non-Executive Director Remuneration Policy was considered and would be referred to the Governors’ Nomination and Remuneration Committee for further consultation and discussion.

Governor/Director Working Groups – Review of Terms of Reference

A number of changes to the Terms of Reference for the Governor/Director Working Groups were considered. These changes would be referred back to those groups for further consultation and discussion.