

**COUNCIL OF GOVERNORS – 14 JANUARY 2014****AMENDMENTS TO FOUNDATION TRUST CONSTITUTION****PURPOSE AND OVERVIEW****1. REASONS FOR COUNCIL OF GOVERNORS' CONSIDERATION**

- Under the Health & Social Care Act 2012, changes to a Foundation Trust's Constitution must be approved by the Board of Directors and the Council of Governors.
- This paper sets out a limited number of required changes to the Constitution in respect of Disqualification criteria for Governors and Directors as well as the number of Non Executive Directors.

**2. PREVIOUS CONSIDERATION OF THIS ITEM BY ANOTHER FORUM**

- The Membership & Governance Sub Group of the Council of Governors was advised of the required changes to the Constitution at its 11 November 2013 meeting. The Sub Group supported these changes being presented to the Board of Directors and Council of Governors' meetings for consideration and ratification.
- The Board of Directors considered and endorsed the proposed amendments to the Constitution at its 27 November 2013 meeting.

**3. KEY HEADLINES/ISSUES**

- The required changes to the Constitution relate to two issues.
- The first issue relates to required changes with regard to the definition of "Fit and Proper Persons as Governors and Directors" in the recently published NHS Provider Licence with which all Foundation Trusts are required to comply as well as a NHS Act 2006 statutory amendment. These require the current Disqualification criteria for Directors and Governors in the Constitution to be amended so that they are consistent with those detailed in General Condition 4 in the NHS Provider Licence and the NHS Act 2006.
- There are three required changes to the Disqualification criteria. These relate to a Debt Relief Order moratorium, the Company Directors' Disqualification Act and the inclusion of a body corporate criterion:
  1. A debt relief order (DRO) is a way for a debtor, with assets of limited value and virtually no income over and above his/her domestic needs, to obtain release from his/her debts. Once a DRO is registered, the debtor gains the benefit of a moratorium which prevents creditors taking action against him/ her in relation to his specified qualifying debts. Under the moratorium, which the court may lift on the application of a creditor, no creditor of the debtor that is owed a "specified qualifying debt" may take any action against the debtor in respect of that debt without the leave of the court; or has any remedy in relation to the relevant debt. The moratorium lasts for one year (unless extended by, for example, the Court). At the end of the moratorium, the debtor has no further obligation to pay the

specified qualifying debts. A person to whom a moratorium period applies may not become or continue as a Director or a Governor of the Trust, under the NHS Act 2006, and this is now reflected in the Trust's Constitution.

2. The Company Directors' Disqualification Act 1986 sets out the circumstances in which a Court must or may disqualify an individual from acting as a director of a company. The circumstances include conviction for an indictable offence, persistent breaches of company legislation, fraudulent trading or other fraud during the winding up of a company, wrongful trading under the Insolvency Act 1986 and specified circumstances relating to the infringement of competition law. A disqualification order is a Court order that for a specified period the individual in question shall not without the leave of the High Court, be a director of a company, act as a receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company, or act as an insolvency practitioner.
3. In respect of the body corporate Disqualification criterion, the Trust has given the right to those partner organisations listed in the Constitution to appoint an individual as a Governor of the Trust. The individuals themselves will, therefore, be prevented from continuing as Governors of the Trust if they fall within paragraph 5(a) of the Provider Licence (as reflected in paragraph 14.1 of the Constitution) but their tenure of office will not be affected if their respective appointing organisation meets any of the criteria in paragraph 5(b) of the Provider Licence (as reflected in paragraph 14.1.6 of the Constitution).
  - The second issue relates to a required change resulting from the Council of Governors' agreement at its 6 November 2013 meeting for a reduction in the number of Non Executive Directors from six to five (excluding the Chairman). The amendment has been worded in the revised Constitution to give the Trust more flexibility than in the current version such that if the Trust had a Non Executive Director vacancy, it would still comply with the revised paragraph in the Constitution.
  - Attached to this paper are the tracked changes to the relevant pages of the Constitution.
  - The amendments to the Constitution have been discussed with and drafted by the Trust's legal advisors.
  - Subject to the Council of Governors' approval of the changes, Monitor will be informed of the update to the Constitution.
  - All current Directors and Governors will be required to positively confirm that they do not meet any of the updated Disqualification criteria and recruitment documentation will be reviewed accordingly.

#### 4. **RECOMMENDATION**

The Council of Governors is asked to approve the amendments to the Constitution.

#### 5. **AUTHOR**

Paul Martin  
Company Secretary

#### 6. **PRESENTED BY**

Paul Martin  
Company Secretary