

To: Council of Governors

From: Mark Lam, Trust Chair

Author: Norbert Lieckfeldt, Corporate Governance Manager

Date: 10 September 2020

Subject: Council of Governors Nominations and Conduct Committee Report

1.0 Purpose of the Report

- To report to the Council on the work of its Nominations and Conduct Committee (the Committee).

2.0 Role of the Council of Governors

- The Nominations and Conduct Committee supports the Council in the fulfilment of its duties as they relate to
 - holding NEDs (including the Chair) to account through reviewing the appraisals and objectives of the NEDs
 - Recruitment, remuneration and terms and conditions of the non-executive directors,
 - Governor skills and training
 - Promoting Governor standards, and
 - resolving Governor conduct issues
- The Committee does not have delegated powers but will recommend actions to the Council for approval.

3.0 Background

- The Committee met on 27 August 2020 to:
 - consider the appraisal of the Chair 2019/20 (Marie Gabriel) and objectives for the Chair 2020/21 (Mark Lam)
 - receive updates on the recruitment of the CEO and the NED to succeed Jenny Kay
 - review the proposed changes to the guidelines for the election of the Lead/Deputy Lead Governor
 - receive updates on the appointment of a new Senior Independent Director [see Item 18]
 - review the Governors Development Plan
 - review Governors' attendance.

4.0 Committee Membership

- The membership of the Committee is as follows:
 - Mark Lam, Trust Chair (Committee Chair)
 - Roshan Ansari (Public Governor, Tower Hamlets)

- Katherine Corbett (Staff Governor)
- Caroline Diehl (Public Governor, Hackney)
- Zara Hosany, Staff Governor, Deputy Chair)
- Caroline Ogunsola (Staff Governor)
- Keith Williams (Public Governor, Luton)
- Neil Wilson (Appointed Governor, Education).

5.0 Lead Governor Elections

- The Committee reviewed the attached revised guidelines for the election of the Lead Governor (Appendix 1: Flowchart; Appendix 2: Guidelines).
- The Committee:
 - Agreed with the proposal to remove the requirement for candidates to address the Council meeting in order to enable the process to be carried out more speedily and ensure continuity, allowing the Council to have a successor in place for November 2020
 - Agreed to replace the candidates addressing the Council session with an opportunity for candidates to join an informal virtual Q&A session if there is more than one candidate for the role.
- The Committee is recommending the Council approves the proposed changes to the Lead Governor (and Deputy Lead Governor) election guidelines.

6.0 Recruitment

- The Committee received an update about the plans to recruit a Chief Executive. Advice to the Trust is that in the current climate it would be difficult to attract a sufficient range of exceptional candidates and the recruitment may therefore be postponed by a few months. However, the Committee is assured that the Board is strong enough to be able to function with an Acting CEO
- The Committee reviewed the plans for the recruitment of a I NED with a clinical/nursing background to succeed Jenny Kay. If the process is successful, the Committee will recommend a candidate to the Council at its November meeting for appointment.

7.0 Governor Development Plan

- The Committee reviewed the Governor Development Plan.

8.0 Governor attendance

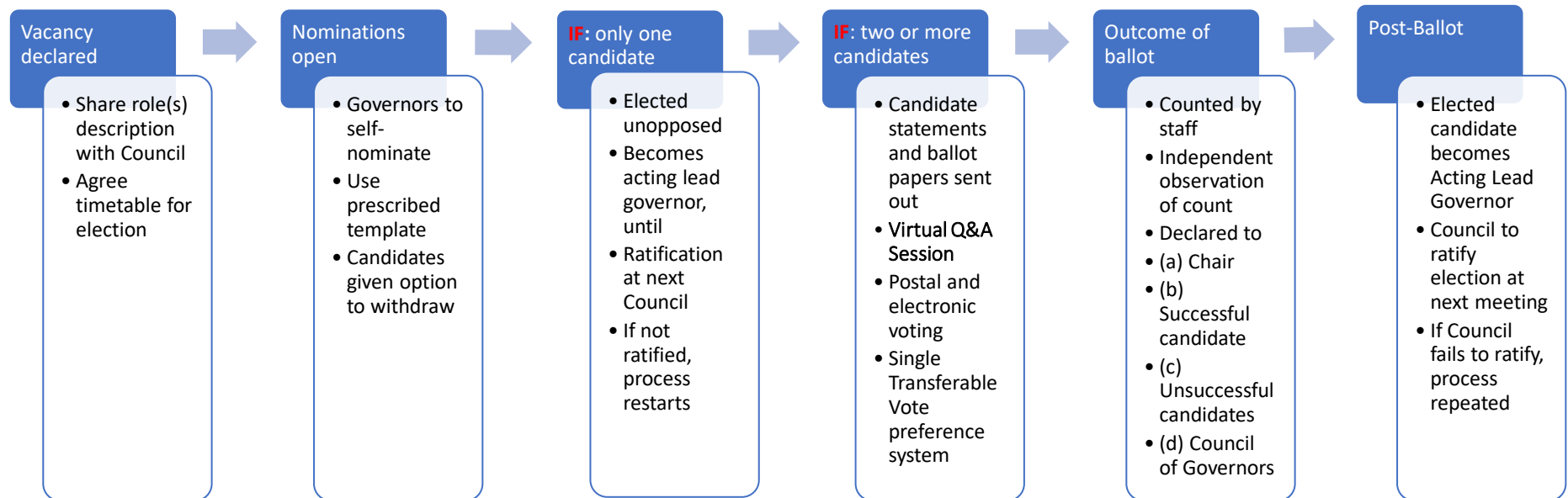
- The Committee reviewed Governor attendance and in line with its terms of reference and Governors Code of Conduct, agreed actions to be taken.

9.0 Action being requested

- The Council is asked to **RECEIVE** the report and:
 - **APPROVE** the Guidelines for the election of the Lead/Deputy Lead Governor

Appendix 1

East London NHS Foundation Trust – Lead Governor* Election Process Flowchart (August 2020)



* = substitute *Lead Governor* for *Deputy Lead Governor* as required

Guideline for the Appointment of the Lead Governor¹ and Deputy Lead Governor of the Council of Governors

Version:	002
Ratified by:	Council of Governors
Date ratified:	10/09/2020
Name of originator/author:	Norbert Lieckfeldt/Cathy Lilley
Name of responsible committee/individual:	Council of Governors
Circulated to:	Council of Governors
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Target audience:	

Version Control Summary

Version	Date	Author	Status	Comment
001	19/07/2018	Norbert Lieckfeldt/Cathy Lilley		
002	01/08/2020	Norbert Lieckfeldt/Cathy Lilley		

1 Introduction

- 1.1.** Whilst in the normal course of a well governed Trust, contact between NHSI and the Lead Governor is unlikely to be required, Foundation Trusts (FTs) are required by NHS Improvement (formerly operating as Monitor) to have in place a nominated Lead Governor who can be a point of contact for NHSI and can liaise with NHSI, on behalf of Governors, in circumstances where it

¹ The current version of ELFT's Constitution refers to these posts as Deputy Chair and Assistant Deputy Chair respectively.

would be inappropriate for NHSI to contact the Chair and vice versa. See Appendix 3 for further details.

- 1.2. NHSI requires only that the Lead Governor act as a point of contact between NHSI and the Council when needed. Directors and Governors should always remember that the Council of Governors as a whole has responsibilities and powers in statute and not individual Governors.
- 1.3. It is recognised that the duties of the Lead Governor (and Deputy Lead Governor) role may evolve and the role descriptions will be kept under review by the Council of Governors Nominations and Conduct Committee in line with its terms of reference and work plan as advised by the Director of Corporate Governance and liaising with the Chair of the Trust. Any changes to the role requirements will be with the approval of the Council.

2 Lead Governor Role

The main duties of the Lead Governor at ELFT will be to:

- 2.1. Act as the point of contact between NHSI and the Council in the event that NHSI wishes to contact the Council directly, or the Council decides to exercise its powers to contact NHSI, on an issue for which the normal channels of communication are not appropriate. Before contacting NHSI, the Lead Governor will first discuss the issues with the Trust's Senior Independent Director (SID) as set out in Monitor's Code of Governance for FTs (July 2014) Annex 1 or any amendments
- 2.2. Chair such parts of meetings of the Council which cannot be chaired by the Trust Chair or Vice-Chair or Non-Executive Directors due to a conflict of interest in relation to the business being discussed
- 2.3. Act as a point of contact for the Senior Independent Director
- 2.4. Meet with the Chair, Corporate Governance Manager, and Deputy Lead Governor on a regular basis, e.g. to plan the agenda for Council meetings. Additional meetings with the Senior Independent Director and the Director of Corporate Governance will be scheduled as required.
- 2.5. Work collaboratively with the Chair and Corporate Governance Manager liaising with Governors to seek their views and feedback, and to encourage engagement
- 2.6. Act as a point of contact for any Governor wishing to raise matters with the Trust Chair in the event that a Governor may not wish to do so directly
- 2.7. Organise and chair informal Governor only meetings (such as the Governors Open Forum) and provide feedback (where appropriate) to the Chair, the Director of Corporate Governance and the Corporate Governance Manager.
- 2.8. Act as a coordinator of Governors' responses to formal consultations
- 2.9. Coordinate Council contributions to regulatory reports such as Quality Account, Annual Report, etc as required
- 2.10. Report on the activities and work of the Council at the Annual Members Meeting

- 2.11. Contribute to the Chair's annual appraisal by seeking the views of other Governors in relation to this and feeding back to the SID on behalf of the Council
- 2.12. Serve as ex officio member of the Nominations and Conduct Committee (Lead Governor) and the Significant Business Committee (Deputy Lead Governor)
- 2.13. Undertake a coordination role within the Council and act as a conduit for communication with the Council of Governors from other Trusts and official Governor groups.

3 Deputy Lead Governor Role

The main duties of the Deputy Lead Governor will be to:

- 3.1. Support to the Lead Governor in fulfilling their role (as detailed in 2 above)
- 3.2. Carry out the role of the Lead Governor in their absence
- 3.3. Provide continuity.

The division of responsibilities will be decided by the Lead Governor and Deputy Lead Governor once elected and in post.

4 The Person

To be able to fulfil either role effectively, the person will:

- 4.1. Have the confidence of fellow Governors and the Board of Directors
- 4.2. Have the ability to influence and negotiate, and present well-reasoned argument but ensuring that individual issues are not taken forward as the Council view
- 4.3. Have a willingness to set aside their own view in favour of finding a settled Council decision
- 4.4. Have a willingness to challenge constructively
- 4.5. Be able to demonstrate experience of chairing large and small meetings effectively
- 4.6. Understand the role of NHSI, the basis on which NHSI may take regulatory action and the Trust's relationship with NHSI
- 4.7. Be committed to the success of the Trust
- 4.8. Be able to commit the time necessary to fulfil role.

The Lead Governor and Deputy Lead Governor will be responsible for ensuring that the Trust values are adhered to when fulfilling their role:

- **We Care:**
 - ✓ To be honest, accessible *and* responsive

- ✓ To be friendly and courteous and show a caring and empathetic approach in transactions with others
- ✓ To work collaboratively with colleagues and all stakeholders and be open to new perspectives and ways of working
- ✓ To be mindful of their own behaviour on fellow governors and the work of the Council
- **We respect:**
 - ✓ To go the extra mile and help others achieve their goals
 - ✓ To challenge professionally and take ownership to improve safety and change things for the better.
 - ✓ To actively listen and have confidence to speak up to improve services
 - ✓ To celebrate successes and have the courage to learn from mistakes.
- **We are diverse:**
 - ✓ To understand different perspectives and take responsibility to respond to patients, carers and colleagues
 - ✓ To encourage and embrace change and be proud to share their ideas
 - ✓ To embrace continuous learning and self-development

5 Terms of Office

- 5.1. The Lead Governor and Deputy Lead Governor will be elected by the Council of Governors
- 5.2. The appointment as Lead Governor and Deputy Lead Governor ends with the holder's current term of office.
- 5.3. If the Lead or Deputy Lead Governor terminates their tenure or is removed from office, a new nominations process will take place to appoint to the vacant position.
- 5.4. The Lead and Deputy Lead Governor will undertake development and training that is deemed relevant to the posts

6 Process for the Appointment of the Lead Governor and Deputy Lead Governor

The Council will elect the Lead Governor and Deputy Lead Governor in line with the following process which will be managed by the Governors and Members Office who will ensure timely and successful management of the process:

Stage 1

- Details of the Lead Governor and/or Deputy Lead Governor roles will be circulated to all Governors together with the elections timetable.

Stage 2

- All Governors may self-nominate for the Lead Governor and/or Deputy Lead Governor role(s) by submitting the relevant Nomination Form (appendix 2) to the Governors and Members Office by the stated date. Two separate forms will be required if applying for both roles.
- Governors will be asked to forward their nominations in writing or by email to the Governors and Members Office by a stated date.

Stage 3

- A list of Lead/Deputy Lead Governor nominations will be circulated to all Governor nominees to provide the opportunity of withdrawing their nomination with 24 hours of receipt.
- A list of final Governor nominations together with their nomination statement and ballot paper will be circulated by the Governors and Members Office to all Governors for consideration and voting. Where there is a single nomination received within the correct timescale, that nominee will be elected unopposed. The nomination statement of the unopposed candidate will be shared in the usual way.
- If there is more than one candidate for the role, the following election process will be used:
- The Governors and Members Office will organise a virtual Q&A sessions with candidates.
- The ballot papers will be marked individually but will not be personally identifiable
- The Single Transferable Vote system will be used.
- Any Governor can cast a vote by marking the ballot paper in accordance with the instructions included on the ballot paper
 - Governors must return the ballot paper by hand, by email or by post; any ballot paper received after the date and time stipulated will be rejected
 - A ballot paper does not need to be signed by the Governor if it is returned by email (provided that it is returned from an email address that the Governor has previously notified to the Trust Secretary and/or used)
 - A ballot paper returned by hand or by post must be signed by the Governor
 - Any votes received after the deadline will be invalid and will not be counted.
- All Governors (including the candidates) will be entitled to vote for both the Lead Governor and Deputy Lead Governor. The valid votes received will be counted on the next working day following the deadline by the Governors and Members Office. The count will be observed by an independent member of staff.

Stage 4

- The results will be advised to the Trust Chair, the successful candidates and the unsuccessful candidates and then the wider Council in line with the election timetable. The Council of Governors will formally confirm the appointment of the Lead Governor and/or Deputy Lead Governor at the next general meeting of the Council.
- If the Council does not ratify the appointments, the election will be re-run.
- Until the formal ratification, the successful candidate shall be known as Lead Governor-Elect (Deputy Lead Governor-Elect) but will be able to carry out the requirements of their role.
- In the event of a leave of absence of the Lead Governor and/or the Deputy Lead Governor, the Chair in discussion with the Council can consider options to manage the leave of absence.

Election Timetable

Stage	Action	Lead	Deadline
1	Roles and timetable: Details of the Lead Governor and Deputy Lead Governor roles and timetable circulated	GMO	
2	Nominations: Governors to self-nominate for the Lead Governor and/or Deputy Lead Governor role(s) by submitting the relevant Nomination Form in writing or by email to the Trust Secretary; two separate forms will be required if applying for both roles	All Governors	
3	Withdrawal: Opportunity for Governor nominees to withdraw their nominations	Governor nominees	
	Ballot papers: List of Governor nominees together with their nomination statement and ballot paper will be circulated to all Governors	GMO	
	Voting closes: Governors can vote by hand, by email or by post	All Governors	
4	Results outcome: Chair and all nominated Governors will be advised of the outcome of the ballot	GMO	
5	Results declared: Results will be advised to all Governors by email	GMO	
	Appointment effective	[Deputy] Lead Governor	
6	Confirmation of appointment: Appointments to the Lead Governor and Deputy Lead Governor roles will be formally confirmed at a general meeting of the Council	All Governors	

July 2020

Appendix 3

NHSI and the Lead Governor

1.1. NHSI is clear in its expectation that direct contact between itself and a Council will be rare. The main circumstances in which NHSI will contact a Lead Governor are when NHSI has concerns about the Board of Directors’ leadership which could potentially lead to NHSI using its formal powers to remove the Chair and/or Non-Executive Directors (NEDs). Given that the Council is responsible for appointing the Chair and NEDs, then NHSI is likely to want to discuss such action with the Governors

1.2. NHSI does not expect direct communication with Governors until such time as there is a real risk that the FT may be in significant breach of its provider licence. Should individual Governors wish to contact NHSI with such concerns, then NHSI expects this to be through the Lead Governor

1.3. The other circumstances where NHSI may wish to contact a Lead Governor is where NHSI is aware that the process for the appointment of the Chair or other members of the Board, elections for Governors or other material decisions may have not complied with the FT’s constitution or, alternatively, while complying with the constitution, may be inappropriate. In such circumstances, the Lead Governor may be a point of contact for NHSI if the Chair, other Board members or the Associate Director of Corporate Governance have been involved in the process by which these appointments or other decisions were made

1.4. In summary, the role of the Lead Governor is to therefore act as a clearly identified point of contact between NHSI and the wider Council should particular issues in respect of the Trust’s governance arise. In the normal course of a well governed Trust, contact between NHSI and the Lead Governor is unlikely to be required

Appendix 4

Lead Governor and Deputy Lead Governor Elections Nomination Form

Full name		Date	
Signed		<i>Please tick which role you are applying for; you can apply for both roles; ideally please provide separate statements</i>	
		<input type="checkbox"/>	Lead Governor
		<input type="checkbox"/>	Deputy Lead Governor

NOMINATION STATEMENT
In no more than 250 words, explain why you wish to be considered for the role of Lead Governor and/or Deputy Lead Governor for the Council of Governors. Please include the skills and experience you can bring to the role. Please refer to the Lead Governor and Deputy Lead Governor role description.

If you run out of space, please continue on the reverse of this sheet.

Please return your completed form to Norbert Lieckfeldt, Corporate Governance Manager by xx/xx/xxxx by email on: norbert.lieckfeldt@nhs.net or post to

Governors and Members Office
ELFT
9 Alie Street
London E1 8DE.