

To: Council of Governors
From: John Bennett, Committee Chair
Author: Norbert Lieckfeldt, Corporate Governance Manager
Date: 21 January 2021
Subject: Significant Business Committee Report

1.0 Purpose of the Report

1.1 To update the Council on the work of the Significant Business Committee.

2.0 Background

2.1 The Significant Business Committee has been established to carry out specific duties on behalf of the Council, including reviewing the Trust's business development and associated strategy.

2.2 The membership of the Committee is as follows:

- Dawn Allen, Public Governor, Bedford Borough (to 31 October 2020)
- Rehana Ameer, Appointed Governor, City of London
- John Bennett, Public Governor Tower Hamlets (Committee Chair)
- Robin Bonner, Staff Governor
- Adam Forman, Public Governor Hackney (from 7 December 2020)
- Arif Hoque, Public Governor Tower Hamlets
- Suzana Stefanic, Public Governor Central Beds (from 7 December 2020)
- Daniel Victorio, Public Governor, Hackney (to 31 October 2020)
- Ernell Watson, Public Governor, Newham
- Keith Williams, Public Governor, Luton (Deputy Lead Governor)

2.2 The Committee met on 7 December 2020. In addition to the core members, also attending were:

Dr Mohit Venkataram, Executive Director of Business Development
 Norbert Lieckfeldt, Corporate Governance Manager
 Cathy Lilley, Director of Corporate Governance

2.3 The Significant Business Committee meetings are open to Committee members only.

3.0 Key Discussions and Decisions

3.1 The Committee reviewed its terms of reference to ensure they reflect the role of the Committee and the discussions being undertaken. It agreed the following amendments for recommendation to the Council. The proposed terms of reference are attached as Appendix 1.

Current Terms of Reference	Proposed Terms of Reference	Rationale
COUNCIL OF GOVERNORS SIGNIFICANT BUSINESS COMMITTEE	COUNCIL OF GOVERNORS SIGNIFICANT BUSINESS AND STRATEGY COMMITTEE	Change of name to reflect more accurately the Committee's

		responsibilities as set out in its ToR
1. Authority	Add 1.7: The Committee offers assurance to the Council by considering issues relating to Trust strategy and business development in a level of detail not possible at a Council meeting	Better definition of the Committee's purpose
2.1 Members of the Committee will be appointed by the Council and composed as follows: <ul style="list-style-type: none"> Assistant Deputy Chair of the Council of Governors (ex officio) five Public Governors one Staff Governor up to two Appointed Governors 	2.1 Members of the Committee will be appointed by the Council and composed as follows: <ul style="list-style-type: none"> Deputy Lead Governor of the Council of Governors (ex officio) 8 Governors with a minimum of one Governor each per constituency (i.e. Public, Staff and Appointed) 	Simplifying the rules of membership, whilst ensuring adequate representation; in line with rules for Nominations and Conduct Committee
4.3 Other individuals (Trust Directors, staff or external advisers) may be invited to attend for all or part of any meeting to assist in deliberations when appropriate.	4.3 Other individuals (Trust Directors, staff, governors or external advisers) may be invited to attend for all or part of any meeting to assist in deliberations when appropriate	Added 'governors' to list of others who may be invited to attend Committee meetings.
8. Duties	8.1 Trust Strategy Mindful that it is the role of the Board to set the Trust strategy, and the role of the Council to seek assurance about the NEDs' role in developing and implementing the strategy, the Committee's duties include 8.1.1 To gain an understanding of the key issues that support, underpin and influence the Trust's strategies 8.1.2 To gain and share intelligence in respect of the Trust's strategic direction, developments, plans and actions 8.1.3 To act as a sounding board for, and comment on, new and refreshed plans as they develop	New section 8.1 to outline the duties in terms of Trust strategy.

	<p>8.1.4 To receive periodic reports from the Trust on the progress in implementing the Trust's Strategy</p> <p>8.1.5 To receive periodic reports from the Trust on potential and actual business developments, and to bring forward any significant issues or areas of concern to the Council</p> <p>8.1.6 To develop and maintain a framework, aligned to the Trust's key strategies, which allows Governors to assess potential business developments in a strategic and consistent manner</p> <p>8.1.7 To provide a forum for Governors to represent the views and interests of stakeholders, fulfilling the responsibility of feeding back information about the Trust's strategic vision and performance to its constituencies, stakeholder organisations and the Trust itself</p>	
	<p>8.2.1 To be kept updated of any proposals for the Trust to enter into transactions which are regarded as strategically significant</p>	<p>Inserted to highlight difference between significant and strategic transactions</p>
<p>8.1.3 In conducting their review, the Committee will consider the impact of the proposal on the Trust's long term performance (as indicated by the analysis of future financial and governance risk ratings), taking into account the views of members and the impact on staff and service users</p>	<p>8.2.4 In carrying out its duty, the Committee will consider the Trust's general work, its work on due diligence and the impact of the proposal on the Trust's long term performance (as indicated by the analysis of future financial and governance risk ratings), taking into account the views of members, the impact on staff and service users and</p>	<p>Added consideration of the Trust's general work, and 'due diligence' as this is major part of the work undertaken when considering new business</p>

	the Council's Business Development Framework	
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- 3.2 In addition, the Committee received an update by Dr Venkataram about recent commercial activities and reviewed its Forward Plan.
- 3.3 An information presentation on 'Opportunities and Challenges of the new Health Care Systems' was given by Dr Venkataram by in preparation for the planned briefing by the Director of Integrated Care on the NHSE/I Consultation on the future of Integrated Care, as well as the January Council meeting where Integrated Care is planned to be the main strategic item. This session was open to all Trust Governors, and a robust and useful discussion took place.
4. The Council of Governors is asked to
- **RECEIVE** and **NOTE** the report, and to
 - **AGREE** the proposed Terms of Reference for the Committee.

APPENDIX 1

COUNCIL OF GOVERNORS SIGNIFICANT BUSINESS AND STRATEGY COMMITTEE

TERMS OF REFERENCE

1. Authority

- 1.1 The Significant Business and Strategy Committee (the Committee) is constituted as a committee of the Council of Governors (the Council). Its constitution and terms of reference is set out below, and are subject to regular review and approval by the Council
- 1.2 The Committee is authorised to act within these terms of reference
- 1.3 The Committee is authorised to obtain such information as is necessary and expedient to the fulfilment of its duties. All Governors and staff are expected to co-operate with any request made by the Committee
- 1.4 The Committee is authorised to obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary. The costs of such advice must be agreed with the Trust in line with the Trust procurement policy and procedures
- 1.5 The Committee will act in accordance with the Council's Standing Orders, NHS Improvement's *Code of Governance for NHS Foundation Trusts* and current good practice
- 1.6 The Committee does not have any delegated authority. All responsibilities are undertaken in support of the Council; it is the Council that holds the responsibility for decisions relating to all issues covered by the Committee.
- 1.7 Mindful that it is the role of the Board to set the Trust strategy, the Committee offers assurance to the Council by considering issues relating to Trust strategy and business development in a level of detail not possible at a Council meeting

2. Membership

- 2.1 Members of the Committee will be appointed by the Council and composed as follows:
 - Deputy Lead Governor of the Council of Governors (ex officio)
 - 8 Governors with a minimum of one Governor each per constituency (i.e. Public, Staff and Appointed)
- 2.2 Appointments to the Committee will be aligned to the individual member's current terms of office.

3. Chair of the Committee

3.1 The Committee will elect a chair from its membership

3.2 In the absence of the elected Committee chair, the Deputy Lead Governor will chair the Committee. In the absence of Deputy Lead Governor, the remaining members present will elect one of their number to chair the meeting.

4. Attendance at Meetings

4.1 Only members of the Committee have the right to attend meetings.

4.2 The Executive Director responsible for Commercial Development will normally attend each meeting.

4.3 Other individuals (Trust Directors, staff, governors or external advisers) may be invited to attend for all or part of any meeting to assist in deliberations when appropriate.

5. Support to the Committee

5.1 The Director of Corporate Governance will act as the Secretary to the Committee providing advice on pertinent matters

5.2 The Committee shall be supported administratively by the Corporate Governance Manager whose duties will include:

- Agreement of agenda with the chair of the Committee and the Executive Director responsible for Commercial Development
- Collation and circulation of meeting papers in a timely fashion
- Taking the minutes and keeping a record of matters arising and issues to be carried forward.

6. Quorum

6.1 The quorum necessary for the transaction of business will be at least four members attending either in person, via teleconference or via video conference

6.2 However, should a significant transaction be considered for recommendation to the Council of Governors, the quorum will be at least six members.

7. Frequency of Meetings

7.1 The Committee will normally meet quarterly or as required to fulfil its duties as the Chair shall decide in consultation with the Executive Director of Commercial Development and the Corporate Governance Manager.

8. Duties

8.1 Trust Strategy

Mindful that it is the role of the Board to set the Trust strategy, and the role of the Council to seek assurance about the NEDs' role in developing and implementing the strategy, the Committee's duties include

- 8.1.1 To gain an understanding of the key issues that support, underpin and influence the Trust's strategies
- 8.1.2 To gain and share intelligence in respect of the Trust's strategic direction, developments, plans and actions
- 8.1.3 To act as a sounding board for, and comment on, new and refreshed plans as they develop
- 8.1.4 To receive periodic reports from the Trust on the progress in implementing the Trust's Strategy
- 8.1.5 To receive periodic reports from the Trust on potential and actual business developments, and to bring forward any significant issues or areas of concern to the Council
- 8.1.6 To develop and maintain a framework, aligned to the Trust's key strategies, which allows Governors to assess potential business developments in a strategic and consistent manner
- 8.1.7 To provide a forum for Governors to represent the views and interests of stakeholders, fulfilling their responsibility of feeding back information about the Trust's strategic vision and performance to its constituencies, stakeholder organisations and the Trust itself

8.2 Significant transactions, mergers, acquisitions, separations and dissolution

- 8.2.1 To kept updated of any proposals for the Trust to enter into transactions which are regarded as strategically significant
- 8.2.2 To review any proposals for the Trust to enter into a significant transaction as defined in the Constitution, and to make recommendations to the Council regarding their power to approve the transaction. The definition of a significant transaction is at Appendix 1
- 8.2.3 To review any applications by the Trust to enter into a merger, acquisition, separation or dissolution, and to make recommendations to the Council in line with their statutory responsibility to approve any transaction
- 8.2.4 In carrying out its duty, the Committee will consider the Trust's general work, its work on due diligence and the impact of the proposal on the

Trust's long term performance (as indicated by the analysis of future financial and governance risk ratings), taking into account the views of members, the impact on staff and service users and the Council's Business Development Framework

8.2.5 The Committee may request to discuss transactions below the formal definition of a significant transaction

8.3 Private income

8.3.1 To consider whether the Trust's private patient work would significantly interfere with the Trust's principal purpose, which is to provide goods and services for the National Health Service (NHS) in England, or performing the Trust's other functions, and to make recommendations to the Council

8.3.2 To review any proposed increase(s) in non-NHS income; and where it is 5% or more in any financial year, to make recommendations to the Council regarding their power to approve the proposed increase

9. Reporting and Minutes

9.1 Minutes of the meeting will be recorded and a draft copy circulated to Committee members together with the action log as soon after the meeting as possible and ideally within ten working days. Approved minutes will be made available to the Council on request.

9.2 The Committee will report in writing to the Council after each meeting. The report will set out the matters discussed and any recommendations to the Council.

9.3 The Committee will receive and agree a description of its work (in the form of a forward plan) and will regularly monitor progress against and update this plan.

10. Review

10.1 The Committee will undertake an annual review of its effectiveness and provide a report to the Council of its findings including highlighting areas for improvement.

10.2 Terms of reference will be reviewed annually and reported to the Council for ratification.

11. Review Dates

11.1 October 2021

Appendix

Constitution: Definition of significant transaction

The Trust has adopted the definition of “significant transaction” that is used by Monitor (now NHS Improvement), the sector regulator for health services in England.

A “significant transaction” is a transaction which meets any of the following thresholds:

- **Assets:** the gross assets or capital* subject to the transaction, divided by the gross assets of the Trust is greater than 25%

- **Income:** the income attributable to:
 - i. The assets; or
 - ii. The contractassociated with the transaction, divided by the income of the Trust is greater than 25%

- **Consideration to total Trust capital:** the gross capital** of the company or business being acquired/ divested, divided by the total capital*** of the Trust following completion, or the effects on the total capital of the Trust resulting from a transaction, is greater than 25%.

* gross assets is the total of fixed assets and current assets

** gross capital equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets

*** total capital of the Trust equals taxpayers’ equity