

**From:** Keith Williams (Vice-Chair, Significant Business Committee)  
**To:** Council of Governors  
**Date:** 11 July 2019  
**Subject:** Significant Business Committee Report

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## **1. Purpose of the Report**

- 1.1. To update the Council on the recent meeting of the Committee on 10 June 2019.

## **2. Background**

- 2.1. The Significant Business Committee has been established to review significant transactions and other commercial issues on behalf of the Council, and make recommendations as appropriate to the full Council.
- 2.2. While none of the Trust's recent bids fell under NHS Improvement's definition of a 'significant transaction' as detailed in the Trust's constitution and therefore do not require formal Council approval, the Trust has routinely consulted with Governors on developments and opportunities, through the Significant Business Committee.

## **3. Significant Business Committee**

- 3.1. At its meeting on 10 June 2019, the following members were present:
- 3.1.1. Robin Bonner, Staff Governor
  - 3.1.2. Adrian Thompson (Public Governor, Tower Hamlets)
  - 3.1.3. Daniel Victorio, Public Governor, Hackney
  - 3.1.4. Keith Williams, Public Governor, Luton (Committee Vice-Chair)
- 3.2. Dr Mohit Venkataram, Executive Director Commercial Development, Cathy Lilley (Associate Director of Corporate Governance) and Norbert Lieckfeldt, Corporate Governance Manager, were also in attendance.

## **4. Summary of Committee Meeting**

- 4.1 The focus of the meeting on 10 June 2019 were discussions around an update to the Governors Assurance Framework on Significant Business, and a discussion on decision-making while ensuring a sufficient level of service user involvement and consultation.

## **5. Governors Assurance Framework on Business Development**

- 5.1. MV outlined the Framework has been useful in bidding for services such as the Luton and Bedfordshire bid.
- 5.2. Its purpose is to offer additional assurance to Governors, and to support the BDU in asking questions when considering bids. It's one additional tool in addition to the many layers of due diligence and risk management structures of the Trust Board, involved when considering new opportunities.
- 5.3. The Framework has been reframed in the light of the Trust's new Strategy (See Appendix 1). It has not been changed but rearranged to emphasise the links to the Trust's strategic outcomes.

## **6. Framework for Decision Making and SBC/Governor Involvement**

- 6.1. In discussion, MV outlined that successful bids require much greater evidence of consultation with service users and carers (and other stakeholders). Emphasis is more often on how to work with others to transform, rather than merely deliver, a service.
- 6.2. In law, the Council must approve any 'significant' transaction as defined in the SBC's Terms of Reference, a threshold which has as yet not been met. However, it is Trust policy to consult wherever possible with Governors via the Significant Business Committee in advance on transactions it deems to be 'strategic'.
- 6.3. This would unlikely to be routine opportunities in our current two STP areas (North East London or BLMK) or those of little financial value or low risk. However, new developments out of area, or new departures for the Trust would be discussed; others would merely be reported to the Committee.

## **7. Reports on New Developments**

- 7.1. MV updated the Committee on recent bids for:
  - 7.1.1.1. The E1 Practice (GP services for homeless individuals in Tower Hamlets)
  - 7.1.1.2. The Greenhouse Practice in Hackney (GP service for homeless individuals in City & Hackney); this bid benefited from our learning in running the E1 practice.
  - 7.1.1.3. The Tower Hamlets Recovery College.
- 7.2. IN addition, MV updated the Committee on a number of potential future opportunities.

## **8. Draft Terms of Reference**

- 8.1. Cathy Lilley highlighted some issues in her paper on the proposed Draft ToR (see Appendix 2.. Changes included:
  - 8.1.1.1. The Committee would in future be chaired by a Governor as is normal practice; the Assistant Deputy Chair would remain as ex officio Vice-Chair
  - 8.1.1.2. The membership of a Non-Executive Director has been removed – this is unusual for Council Committees. However, the Committee can ask any NED to attend if they feel it is required; the Committee will continue to benefit from Dr Mohit Venkataram's attendance

- 8.1.1.3. The item on reviewing business strategy has been removed as it is operational and a matter for the Board to review and update
- 8.1.2. However, the ToR specify that the Committee be kept up to date with any strategically relevant developments and business opportunities

## **9. Action Being Requested**

- 9.1. The Council of Governors is asked to **RECEIVE** and **NOTE** the report.
- 9.2. The Council of Governors is asked to **APPROVE** the redrafted Governor Assurance Framework
- 9.3. The Council of Governors is asked to **APPROVE** the Draft Terms of Reference

## Appendix 1: Significant Business Committee – Assurance Framework

### SIGNIFICANT BUSINESS GOVERNOR ASSURANCE FRAMEWORK (July 2019)

The framework agreed by the Council at its January 2018 meeting is used to inform the assessment of new bids and opportunities by the Trust's Business Development Unity (BDU). The framework should be tested regularly whether it is enabling better decision making in the assessment of new bids and opportunities.

Strategic Outcomes	
<b>Improved population health outcomes</b>	<ul style="list-style-type: none"> <li>• What will be better for the people we serve?</li> <li>• What can we do better than previous providers?</li> <li>• If successful, is the total better than the sum of its part e.g. where is the organisational learning or benefit that flows through the Trust to its original services</li> <li>• Caution when bidding for services in new geographical areas.</li> </ul>
<b>Improved experience of care</b>	<ul style="list-style-type: none"> <li>• Will the quality of the service provided be improved considering that the staff are likely to be the same (assuming they are TUPE'd<sup>1</sup>)</li> <li>• How will we work to change the culture in light of the above i.e. will we have the capacity to invest in doing this and the ability of the senior management to get the culture embedded</li> <li>• Need to ensure that there is the capacity, capability and skill to deliver on new services</li> <li>• Existing centres of excellence such as mental and community health should not be weakened in the process</li> </ul>
<b>Improved staff experience</b>	<ul style="list-style-type: none"> <li>• Caution when bidding for services in new geographical areas.</li> <li>• A sustainable staffing model which could be used to inform projections in the long term</li> <li>• Consideration should be given to staff who may feel that diversification may lead to a dilution of the importance of their roles.</li> <li>• Consider the impact of geographical expansion and review the governance structures for the Council in light of this (e.g. struggling to cover a large county with limited number of governors)</li> <li>• Do we have the systems in place to make the new service accountable to service users?</li> </ul>
<b>Improved value</b>	<ul style="list-style-type: none"> <li>• Will the income from the project be greater than the cost of delivering it</li> <li>• Financial risks/losses may be acceptable if there is a demonstrable added benefit such as benefits to existing service users, and appropriate mitigation is in place.</li> <li>• There should be a balance between achieving economies of scale and not overstressing existing staff</li> <li>• New tenders should be assessed against learnings from previous bids. This will require transparency, e.g. what is the learning from the Luton and Beds bid?</li> <li>• Consider learnings from partnership working</li> <li>• Consider systems of accountability</li> <li>• Consider granular details behind the assumptions made in corporate services.</li> </ul>

<sup>1</sup> **TUPE** stands for the **T**ransfer of Undertakings (Protection of Employment) Regulations. This is relevant to any redundancy decisions where a business or part of it is **transferred** from one owner to another.

## **COUNCIL OF GOVERNORS SIGNIFICANT BUSINESS COMMITTEE**

### **TERMS OF REFERENCE**

#### **1. Authority**

- 1.1 The Significant Business 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.

#### **2. Membership**

- 2.1 Members of the Committee will be appointed by the Council and composed as follows:
  - Assistant Deputy Chair of the Council of Governors (ex officio)
  - Five Public Governors
  - One Staff Governor
  - Up to two Appointed Governors
- 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 Assistant Deputy Chair will chair the Committee. In the absence of Assistant Deputy Chair, 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 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 Associate 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 50% of 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 75% of all 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.

## **8. Duties**

The main duties of the Committee are as follows:

### **8.1 Significant transactions, mergers, acquisitions, separations and dissolution**

- 8.1.1 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
- 8.1.2 To review any applications by the Trust to enter into a merger, acquisition, separation or dissolution, and to make a recommendations to the Council regarding their statutory responsibility to approve the transaction

- 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
- 8.1.4 To kept updated of any proposals for the Trust to enter into transactions which are regarded as strategically significant
- 8.1.5 The Committee may request to discuss transactions below the formal definition of a significant transaction

## **8.2 Private income**

- 8.2.1 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
- 8.2.2 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

## **8.3 Business Strategy**

- 8.3.1 To receive periodic reports from the Trust on the progress in implementing the Trust's Business Development Strategy, and to bring forward any significant issues or areas of concern to the Council
- 8.3.2 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.

## **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 in writing to the Council after each meeting. The report will set out the matters discussed and any recommendations to the Council
- 9.3 If appropriate, the Committee will receive and agree a description of its work (in the form of an annual forward plan) and will regularly monitor progress against 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

## 12. Next Review Date

- 12.1 June 2020

## Appendix 1

### 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