

From: Norbert Lieckfeldt
Corporate Governance Manager

To: Council of Governors

Date: 14 November 2019

Subject: Council of Governors Deputy Chair and Committee Elections Update

1.0 Purpose of the Report

1.1 To update the Council on the vacancies and systems of election for the position of Deputy Chair of the Council and the Council Committees.

2.0 Background

2.1 **Deputy Chair:** Our Assistant Deputy Chair Keith Williams has been Acting Deputy Chair during the period of the Deputy Chair's maternity leave and subsequent standing down as Deputy Chair, as advised at the Council meeting on 16 September 2019, Keith agreed to continue as Acting Deputy Chair until elections for the Deputy Chair are held following the intake of new Governors on 1 November 2019.

2.2 **Committee Membership:** Membership of the Council's Significant Business Committee and the Nominations and Conduct Committee is limited, although the Communications and Engagement Committee does not have a specific number of members. Membership of all Committees expires with the end of the Governor's current term, irrespective of whether they are re-elected or re-appointed.

3.0 Deputy Chair

3.1 The Trust uses the term 'Deputy Chair' instead of Lead Governor (not to be confused with the Trust's Vice-Chair who is Mary Elford).

3.2 The Council's agreed procedure for the election of the Deputy Chair is attached as Appendix 1.

4.0 Significant Business Committee

4.1 The Terms of Reference of the Significant Business Committee are attached as Appendix 2

4.2 The members of the Significant Business Committee whose Committee membership has ended are:

- John Bennett (end of term, re-elected)
- Robin Bonner (end of term, re-elected)
- Rosemary Eggleton (end of term)
- Adrian Thompson (end of term).

4.3 Accordingly, the Council is looking for **four** candidates for the Significant Business Committee: three Public Governors, one Staff Governor. Previous members of the Committee can stand for re-election.

5.0 Nominations and Conduct Committee

- 5.1 The Terms of Reference of the Nominations and Conduct Committee are attached as Appendix 3.
- 5.2 There is currently **one** vacancy on the Committee. Membership requirements in terms of category of Governor have been fulfilled so any Governor can apply.

6.0 Communications and Engagement Committee

- 6.1 The Terms of Reference of the Communications and Engagement Committee are attached as Appendix 4.
- 6.2 The Communications and Engagement Committee does not have a fixed number of members. It has a core group of members, with all Governors invited to attend as guests.

The core members of the Communications and Engagement Committee whose terms have ended are:

- Joseph Croft (end of term, re-elected)
- Rosemary Eggleton (end of term)
- Hazel Watson (end of term).

7.0 Next Steps

- 7.1 We would encourage Governors to nominate themselves for this Committee as it is a core function of their role in regard to our membership and their public accountability.
- Next Steps
- 7.2 If you are unable to attend but wish to nominate yourself, please contact the Governors and Members Office in advance of the Council meeting to record your nomination.
- 7.3 If the numbers of nominations for Significant Business Committee and Nominations and Conduct Committee is lower or equal to the vacancies, the Council will be asked to approve the Committee membership of those who have expressed an interest at the meeting on 14 November 2019.
- 7.4 If there are more nominations than candidates for any Committee, a formal ballot will be held and details will be circulated after the meeting on 14 November 2019. Details of the procedure will be shared at that time.

8.0 Action Being Requested

- 8.1 The Council is asked to **RECEIVE** the report.
- 8.2 The Council is asked to **RATIFY** those candidates where no ballot is required.

Guideline for the Appointment of the Deputy Chair and Assistant Deputy Chair of the Council of Governors

Version:	001
Ratified by:	Council of Governors
Date ratified:	19/07/2018
Name of originator/author:	Norbert Lieckfeldt/Cathy Lilley
Name of responsible committee/individual:	Council of Governors
Circulated to:	Council of Governors
Date issued:	19/07/2018
Review date:	July 2019
Target audience:	

Version Control Summary

Version	Date	Author	Status	Comment
001	19/07/2018	Norbert Lieckfeldt/Cathy Lilley		

The Council will appoint the Deputy Chair and Assistant Deputy Chair in line with the following election process. The process will be managed by the Membership Office who will ensure a timely, successful and transparent process.

1. When there is a vacancy for either Deputy Chair or Assistant Deputy Chair ('the role'), Governors wishing to nominate themselves are asked to complete a form of no more than 300 words *in total*, answering the following questions:
 - a. Why do you want to be the (Assistant) Deputy Chair of the Council of Governors? [delete brackets as appropriate]
 - b. What relevant skills, qualifications or experience do you bring to this role?

2. Two separate forms will be required if applying for both roles
3. Membership Office staff will carry out a word count and ask the nominee to resubmit if the word count exceeds the limit.
4. Governors will be asked to forward their nominations in writing or by email to the Membership Office by a stated date. All nominations will be acknowledged. Nominations need to be received no less than ten working days before the Council meeting at which candidates are asked to give presentations. Any nominations received after that date will be invalid.
5. If there is insufficient time before the next Council meeting, they will be received in time for the following Council Meeting. Nominations will be open for no less than three weeks.
6. If there is a single nomination received within the correct timescale, that nominee will be submitted for formal ratification at the next Council of Governors Meeting following the nomination deadline. In the event the sole candidate withdraws before the ratification, the election will be re-run.
7. If there is more than one candidate for the role, the following election process will be used:
 - a. A list of Governor nominations will be circulated to all Governor nominees who have the opportunity of withdrawing their nomination with 48 hours of receipt.
 - b. The completed nomination forms will be sent to all Governors with the papers for the Council Meeting following the nominations deadline.
 - c. At that Council meeting, all candidates are required to address the Council meeting for two minutes each unless they are unable to attend that meeting with good reason. The other candidates will be required to withdraw from the room during these presentations.
 - d. The Chair will then open the floor to questions from the Council to the candidates. Timings for questions will be confirmed on the day.
 - e. At the start of the Council meeting, each Governor will be given the required ballot form(s) (Deputy Chair and/or Assistant Deputy Chair) in a Freepost envelope. The ballot papers will be marked individually; however, the Membership Office will not know which Governor has received which ballot paper to maintain the secrecy of the ballot.
 - f. Governors who are not recorded as having received ballot papers at the meeting will be sent the ballot papers and a Freepost envelope the following day by First Class post.
 - g. Each Governor has one vote if there are two candidates for the role; if there is more than one candidate the Single Transferable Vote system will be used.
 - h. The Governors can vote and return their papers
 - i. in the sealed envelope to the Membership Office staff at the Council meeting,
 - ii. send it to the Membership Office using the Freepost envelope by a fixed deadline,
 - iii. manually hand them to the Membership Office at Trust HQ, or
 - iv. email it as a scanned PDF file to the Membership Office.

- v. Any votes received after the deadline will be invalid and will not be counted.
 - i. All Ballot Paper received in envelopes will remain unopened until the count. Ballot paper envelopes received in the post will be marked with the date of their arrival.
- 8. All Governors 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 Membership Office staff; the count will be overseen by the Trust Secretary to provide independent scrutiny;
- 9. 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. Governors are welcome to attend the count by prior arrangement.
- 10. The ballot papers will be retained in the Membership Office until the day following the ratification by the Council and will during this time be available to any Governor who wishes to see them. After that date they will be confidentially disposed of.
- 11. In the event of a tie for the role, the successful candidate will be decided by the drawing of lots. However, the Chair may decide, based on the current needs of the Council, to suggest sharing the role to candidates, if both candidates agree. If sharing the role is not feasible, the successful candidate will be decided by drawing of lots.
- 12. The outcome of the ballot (or of the drawing of lots) will be ratified by the Council at their next meeting. The candidates can withdraw their nomination until that ratification vote; after the vote, it will be classed as a resignation.
- 13. If the Council, for good and valid reasons, does not ratify either the sole candidate or the outcome of the ballot, the election will be re-run.
- 14. Until the formal ratification, the successful candidate shall be known as Deputy Chair-Elect (Assistant Deputy Chair-Elect) but will be able to carry out the functions of duties of their role, subject to final ratification by the Council.
- 15. In the event of a leave of absence of the Deputy Chair, the Assistant Deputy Chair will assume their duties by mutual agreement and with the agreement of the Trust Chair. Should the Assistant Deputy Chair be unable or unwilling to deputise, the Council in discussion with the Chair can consider options to manage the leave of absence
- 16. In the event of a leave of absence of the Assistant Deputy Chair, the Council in discussion with the Chair can consider options to manage the leave of absence.
- 17. The appointment as Deputy Chair and Assistant Deputy Chair ends with their current term of office.

July 2018

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

NOMINATIONS AND CONDUCT COMMITTEE OF THE COUNCIL OF GOVERNORS**Terms of Reference****1. Authority**

- 1.1 The Nominations and Conduct Committee (the Committee) is constituted as a committee of the Council of Governors (the Council). Its constitution and terms of reference are set out below and are subject to regular review and approval by the Council.
- 1.2 The Committee is authorised to by the Council to act within its terms of reference. All members of the Council and/or staff are requested to cooperate with any request made by the Committee.
- 1.3 The Committee is authorised to recommend to the Council the appointment of professional advisers and request the attendance of individuals and authorities from outside the Trust with relevant experience and expertise if it considers this necessary or expedient to its functions. This will be at the Trust's expense and subject to funding approval in line with the Trust's Scheme of Reservation and Delegation, Standing Financial Instructions and Procurement Policy, and ensuring value for money at all times.
- 1.4 All procedural matters in respect of conduct of meetings shall follow the Constitution and Standing Orders of the Council of Governors, as far as possible.
- 1.5 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 The Committee will be appointed by the Council and will be composed as follows:
 - Trust Chair
 - Deputy Chair of the Council of Governors (ex-officio)
 - Six Governors of which there must be a minimum of:
 - Two Public Governors
 - One Staff Governor
 - One Partnership Governor.
- 2.2 In respect of its duties pertaining to the appointment and re-appointment of the Chair, the following will be regarded as members of the Committee:
 - the Senior Independent Director, who will be a voting member of the Committee and will chair any discussion
 - the Chief Executive, who will be a non-voting member of the Committee.

- 2.3 The Senior Independent Non-Executive Director will also be a non-voting member of the Committee in respect of its duties pertaining to Governors standards.
- 2.4 The chair of the Committee will be the Chair of the Trust, unless the Committee is discussing the appointment, re-appointment or remuneration of the Chair, in which case the Chair will not be present during the discussion and the Committee will be chaired by the Deputy Chair of the Council.
- 2.5 Appointments to the Committee will be for a period of up to three years, which may be extended for a further three year period.

3. Attendance at Meetings

- 3.1 Only members of the Committee have the right to attend meetings.
- 3.2 Other individuals, such as the Chief Executive, Director of People and Culture or external advisers may be invited to attend for all or part of any meeting, when appropriate.

4. Quorum

- 4.1 A quorum is four members, one of whom must be the Trust Chair or Deputy Chair of the Council.

5. Support to the Committee

- 5.1 The Associate Director of Corporate Governance will act as Secretary to the Committee supported by the Corporate Governance Manager, and working with the Trust Chair will:
- Agree the agenda
 - Ensure that meeting papers are distributed in good time
 - Ensure that all the minutes are taken, action points and matters arising are recorded and
 - Advise the Committee on pertinent areas
 - Draft the Committee's annual report of the review of its effectiveness and the terms of reference.

6. Frequency of Meetings

- 6.1 The Committee will normally meet quarterly and as required to fulfil its duties as the Chair will decide. The Committee may decide to meet more frequently to aid the expediency of conduct investigations, recruitment, etc.

7. Duties

7.1 Appointment

- 7.1.1 Seek and take account of the views of the Board of Directors of the skills and experience required of Non-Executive Directors and the Chair of the Trust, including the *Policy for the Composition of Non-Executive Directors on the Board of Directors*.

- 7.1.2 Be responsible for selecting candidates to fill Non-Executive Director vacancies, including the Trust Chair, and recommending a candidate to the Council for the appointment.
- 7.1.3 When a vacancy is identified, review and evaluate the balance of skills, diversity, knowledge and experience on the Board, and, in the light of this evaluation prepare a description of the role and capabilities required for a particular appointment.
- 7.1.4 In identifying suitable candidates the Committee will:
- Use open advertising and may use the services of external advisors to facilitate the search;
 - Consider candidates on merit and against objective criteria, including the *Policy for the Composition of Non-Executive Directors on the Board of Directors*, taking care that appointees have enough time available to devote to the position.
- 7.1.5 Ensure that the recommended candidate meets all eligibility requirements for Non-Executive Directors, as set out in the Constitution and the Fit and Proper Person Test for Board Directors under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- 7.1.6 The recommendation will include a description of the qualifications, skills and experience required for the position, and demonstrate how the candidate meets these requirements. A Non-Executive Director's other significant commitments will also be disclosed to the Council before appointment.
- 7.1.7 The Chair will convey the decision of the Council of Governors to the successful candidate. The letter of appointment should set out the expected time commitment.

7.2 Re-appointment

- 7.2.1 Receive a report from the Chair regarding the performance of any Non-Executive Director subject to re-appointment.
- 7.2.2 Receive a report from the Senior Independent Director regarding the performance of the Chair when subject to re-appointment.
- 7.2.3 Consider any future challenges to be faced by the Board and the skills, diversity and experience required, and other factors such as Board dynamics and effectiveness of team working, and the need for progressive refreshing of the Board.
- 7.2.4 Make recommendations to the Council regarding the re-appointment of the Non-Executive Director and Trust Chair.

7.3 Performance Evaluation

- 7.3.1 Receive an annual report from the Chair regarding the performance of the Non-Executive Directors.

7.3.3 Receive an annual report from the Senior Independent Director regarding the performance of the Chair. The Senior Independent Director will have met with the Non-Executive Directors to consider and evaluate the Chair's performance.

7.3.4 Report the outcomes of the evaluations of the Chair and the Non-Executive Directors to the Council.

7.4 Remuneration

7.4.1 Consider the appropriate level of remuneration to be provided to the Chair and Non-Executive Directors, using benchmarking information and ensuring that it reflects the time commitment and responsibilities of their roles.

7.4.2 Provide recommendations to the Council on the remuneration and allowances, and the other terms and conditions of office, of the Chair and Non-Executive Directors.

7.4.3 Consult external professional advisers to market-test the remuneration levels of the Chair and Non-Executive Directors at least once every three years.

7.5 Fitness

7.5.1 Be responsible for assessing Non-Executive Directors' compliance with the Fit and Proper Person Test under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

7.6 Governors Standards

7.6.1 Promote high standards of conduct by Governors and assist Governors to observe the Council of Governors Code of Conduct (the Code).

7.6.2 Review the Code annually and make relevant recommendations to the Council.

7.6.2 Receive reports from the Trust Chair on issues of Governor conduct, eligibility and removal.

7.6.4 Provide recommendations to the Council on issues of Governor conduct, eligibility and removal in accordance with the Trust Constitution and following the process as set out in Appendix A.

7.6.5 Provide recommendations to the Council about the process for dealing with any reports of breaches of the Code or Trust Constitution following the process as set out in Appendix A.

7.6.6 Receive reports on Governor attendance and provide relevant recommendations to the Council.

8. Reporting and Minutes

8.1 The minutes of the Committee meetings will be formally recorded and a draft copy circulated to Committee members together with the action log.

- 8.2 The Committee will report to the Council after each meeting. The report will set out the matters discussed together with any recommendations to the Council.
- 8.3 The Committee will report to the Council annually on its work.
- 8.4 The Committee will make a statement in the annual report about its activities and the process used to make appointments.
- 8.5 The Committee will review its own performance and terms of reference on an annual basis and recommend any changes to the Council.

9. Review Dates

- 9.1 Terms of reference were last reviewed and approved in:
Approved May 2019 (Council of Governors)
- 9.2 Next review date:
May 2020

NOMINATIONS AND CONDUCT COMMITTEE OF THE COUNCIL OF GOVERNORS

(A) PROCEDURES FOR CONDUCT HEARINGS (IN LINE WITH SECTION 3.20 OF THE COUNCIL OF GOVERNORS STANDING ORDERS)

This procedure will normally commence following an informal attempt by the Chair at early resolution. The intent of this procedure is swift, effective and early resolution of concerns and it will be applied objectively.

1. Process on Initial Receipt of Complaint/Allegation

- 1.1 This procedure shall apply where the Chair identifies or becomes aware of a complaint or concern about a governor from any source.
- 1.2 The Chair, in consultation with the Lead Governor, will determine whether a complaint or concern:
 - 1.2.1 is not relevant to the governor's compliance with the Code of Conduct or Trust Constitution;
 - 1.2.2 is relevant to the governor's compliance with the Code of Conduct or Trust Constitution but, on the basis of the information available at that time, the Chair considers that if the complaint or concern was substantiated it would not warrant imposing a sanction on the governor under this procedure; or
 - 1.2.3 is relevant to the governor's compliance with the Code of Conduct or Trust Constitution and either (i) may warrant a sanction under this procedure if it was substantiated or (ii) requires further investigation to determine if it can be substantiated.
- 1.3 If a complaint or concern falls within paragraph 1.2.1, the Chair may at his discretion discuss the complaint or concern with the governor. The complaint or concern shall not be taken further under this procedure.
- 1.4 If a complaint or concern falls within paragraph 1.2.2, the Chair will discuss it with the governor and offer advice or support to the governor in an effort to avoid any further breaches of the Code of Conduct or the Trust Constitution. The complaint or concern shall not be taken further under this procedure, unless the Chair subsequently determines that the complaint or concern is more serious than first thought and the provisions of paragraph 2 below should apply.
- 1.5 If a complaint or concern falls within paragraph 1.2.3, the provisions of paragraph 2 below will apply.
- 1.6 The Chair shall document:
 - 1.6.1 his reasons for his decision under paragraph 1.2;
 - 1.6.2 any advice or support offered to a governor under paragraph 1.4; and provide a copy to the Trust Secretary.

- 1.7 Before discussing a complaint or concern with a governor, the Chair shall ask any Complainant to put their concern in writing for the purposes of providing this to the governor. Where a Complainant does not provide details of their concern in writing within 7 days of being asked to do so, the Chair shall at his discretion outline the concern to the governor.
- 1.8 The Chair shall not be required to report any complaint or concern dealt with under paragraphs 1.3 or 1.4 to the Nominations and Conduct Committee or the Council.
- 2. Initial Consideration by the Nominations and Conduct Committee**
- 2.1 The Chair shall provide details of the complaint or concern to the governor and advise them that the matter will be referred to the Nominations and Conduct Committee. The Chair will invite the governor to provide a response to the complaint or concern within 7 days so that this can be considered by the Committee.
- 2.2 The complaint or concern and any response received from the governor shall be tabled by the Chair for discussion at the next meeting of the Nomination and Conduct Committee.
- 2.3 The Nominations and Conduct Committee shall be asked to determine by a majority of those present and voting whether the complaint or concern, if substantiated, is relevant to the governor's compliance with the Code of Conduct or Trust Constitution.
- 2.4 If the majority required for the decision under paragraph 2.3 is not achieved, no further action shall be taken against the governor under this procedure in relation to that complaint or concern. The Committee may, at its discretion, instruct the Chair to offer advice or support to the governor.
- 2.5 If the majority required for the decision under paragraph 2.3 is achieved, the Committee shall be asked to determine by a majority of those present and voting whether the complaint or concern, if substantiated, may warrant imposing a sanction under this procedure.
- 2.6 If the majority required for the decision under paragraph 2.5 is not achieved, no further action shall be taken against the governor under this procedure in relation to that complaint or concern unless the Chair subsequently determines that the complaint or concern is more serious than first thought and asks the Committee to reconsider the matter. The Committee may, at its discretion, instruct the Chair to offer advice or support to the governor.
- 2.7 For the purposes of this procedure, advice and support may include:
 - 2.7.1 Helping a governor to understand their obligations under the Code of Conduct and the Trust's Constitution;
 - 2.7.2 Offering an opportunity for a governor to discuss their behaviour with the Chair or a third party to help them to comply with their obligations under the Code of Conduct and the Trust's Constitution;
 - 2.7.3 Offering mediation between a governor and a Complainant;
 - 2.7.4 [Any other examples].

3. Investigation

- 3.1 If the majority required for the decision under paragraph 2.5 is achieved, the Committee shall agree Terms of Reference for an investigation into the complaint or concern and instruct the Trust Secretary to act as investigator. The Trust Secretary may delegate responsibility for undertaking the investigation to a third party.
- 3.2 The governor shall be asked to cooperate with an investigation, including:-
 - 3.2.1 answering questions from the investigator, including in writing and at a meeting; and
 - 3.2.2 providing any information to the investigator that the governor considers is relevant to the complaint or concern.
- 3.3 The governor shall not be obliged to cooperate with an investigation, but if they do not cooperate this may be considered relevant to whether they are complying with the Code of Conduct and the Trust's Constitution.
- 3.4 A Complainant may be asked to cooperate with an investigation and explain their complaint or concern, either in accordance with the Terms of Reference set by the Nominations and Conduct Committee or at the discretion of the investigator. A Complainant cannot be compelled to cooperate with an investigation.
- 3.5 An investigation shall be completed within 30 days.
- 3.6 Where further complaints or concerns about the governor are identified in the course of an investigation, the investigator shall refer these to the Chair. The Chair shall decide, in consultation with the Deputy Chair, whether those further complaints or concerns should be brought within the remit of the investigation that is already underway by means of an amendment to the Terms of Reference, or if they should be referred to the Nominations and Conduct Committee for separate consideration.
- 3.7 The investigator shall produce a report setting out:
 - 3.7.1 The evidence they have obtained;
 - 3.7.2 Any information or representations obtained from the governor;
 - 3.7.3 Their conclusions as to whether any concerns or complaints are substantiated.
- 3.8 The completed investigation report shall be sent to the Chair by the investigator. The investigation report shall then be sent to the governor for them to provide their comments on the conclusions in the report within 14 days. At the Chair's discretion, the investigation report may additionally be sent to a Complainant for comment.
- 3.9 The investigation report, along with any comments from the governor and any Complainant, shall be sent to the members of the Nominations and Conduct Committee by the Trust Secretary. The report shall be read by Committee members before the meeting at which it is to be discussed.

4. Consideration of Investigation Report

- 4.1 The Nominations and Conduct Committee shall meet to consider the investigation report.
- 4.2 The governor shall be entitled to attend a Nominations and Conduct Committee meeting convened for the purposes of paragraph 4.1. He shall be entitled to make representations relevant to the contents of the investigation report. He may attend the Committee meeting with a supporter, but that supporter shall not be entitled to address the Committee. Where the governor seeks to rely on information that he has not previously provided to the investigator, he will only be allowed to do so where this is agreed by the Chair. The governor shall be required to withdraw from the Committee meeting after making their representations, and shall not be allowed to be present when the Committee discusses the investigation report and votes on any matter.
- 4.3 A Complainant shall not be entitled to attend a Nominations and Conduct Committee meeting convened for the purposes of paragraph 4.1 without the permission of the Chair. Where a Complainant is asked to attend a Committee meeting, they may attend with a supporter, but that supporter shall not be entitled to address the Committee.
- 4.4 Having considered the investigation report and any submissions, the Nominations and Conduct Committee shall be asked to determine by a majority of those present and voting whether the complaint or concern warrants further action under this procedure.
- 4.5 If the majority required for the decision under paragraph 4.4 is not achieved, no further action shall be taken against the governor under this procedure in relation to that complaint or concern. The Committee may, at its discretion, instruct the Chair to offer advice or support to the governor.
- 4.6 If the majority required for the decision under paragraph 4.4 is achieved, the Nominations and Conduct Committee shall be asked to determine by a majority of those present and voting whether the complaint or concern should be taken forward by means of the formal route set out at paragraph 6.
- 4.7 If the majority required for the decision under paragraph 4.6 is not achieved, the Nominations and Conduct Committee shall adopt the informal route set out at paragraph 5 below.

5. The informal route

- 5.1 The Nominations and Conduct Committee determines the desired outcome in order to successfully resolve the issue informally. This may include explaining to the governor the Committee's expectations as to their future conduct, the timescale within which changes to their conduct should take place and the process for assessing whether the necessary changes to their conduct have been achieved and are being sustained. The Committee may also advise the governor of support available to assist them in making changes to their conduct.

- 5.2 The Nominations and Conduct Committee will select two Committee members in addition to the Vice Chair to take forward the steps required for informal resolution with the governor. They will report back to a meeting of the Committee within an agreed timescale as to whether informal resolution has been achieved. Where a majority of those Committee members present and voting at such a meeting decide that informal resolution has not been achieved and is unlikely to be achieved within a reasonable timescale, the complaint or concern shall be progressed under the formal route set out at paragraph 6.
- 5.3 In the event that a concern or complaint involving a governor is referred to the formal route after use of the informal route has been unsuccessful, the Committee members selected to engage with the governor under the informal route shall not be permitted to vote in the Council on a charge relating to that same concern or complaint.

6. The formal route

- 6.1 The Committee shall instruct the Trust Secretary (or their nominee) to prepare a draft charge setting out the alleged breaches of the Conduct of Conduct or the Trust's Constitution.
- 6.2 The Committee shall consider the draft charge and make any amendments. A majority of those present and voting at a meeting of the Committee shall be required to approve the terms of the charge.
- 6.3 A copy of the charge and the evidence relied upon by the Committee in support of the charge, along with any information or representations that have been received from the governor in the course of this procedure, shall be sent to:
- 6.3.1 The governor;
 - 6.3.2 All members of the Council.
- 6.4 After both the Council members and governor have received the documentation referred to in paragraph 6.3, the Council will meet to review the available evidence, determine whether the allegations set out in the charge are proven and decide whether to propose a sanction.
- 6.5 Sanctions may include:
- 6.5.1 Suspension from office;
 - 6.5.2 Exclusion from any duties or rights of governors, including attendance at meetings;
 - 6.5.3 Non-payment of expenses, where the complaint or concerns relates to the governor wrongfully claiming expenses; and/or
 - 6.5.4 Removal from office.
- 6.6 A sanction shall only be proposed with the support of three-quarters of those governors present and entitled to vote at the Council meeting where the charge is considered. If the majority required to propose a sanction is not achieved, no further action shall be taken against the governor under this procedure in relation to that complaint or concern. The Council may alternatively, on the basis of a decision of a

majority of those governors present and entitled to vote, instruct the Chair to offer advice or support to the governor.

- 6.7 Any suspension imposed as a sanction shall be for an initial period of no longer than 6 months. Where a period of suspension is close to an end, and the Chair in consultation with the Deputy Chair considers that it would be inappropriate for a governor to resume their duties, the Chair shall provide a report to the Council proposing a further period of suspension. Any such proposal shall require a majority of those present and voting at a meeting of the Council.
- 6.8 The governor shall be entitled to attend a Council meeting convened for the purposes of paragraph 6.4. He shall be entitled to make representations relevant to the contents of the charge. He may attend the Council meeting with a supporter, but that supporter shall not be entitled to address the Council. Where the governor seeks to rely on information that he has not previously provided to the investigator or the Committee, he will only be allowed to do so where this is agreed by the Chair. The governor shall be required to withdraw from the Council meeting after making their representations, and shall not be allowed to be present or to vote when the Council discusses the charge and votes.
- 6.9 A Complainant shall not be entitled to attend a Council meeting convened for the purposes of paragraph 6.4 without the permission of the Council. Where a Complainant is asked to attend a Council meeting, they may attend with a supporter, but that supporter shall not be entitled to address the Council.
- 6.10 The governor shall be notified of the Council's decision by the Chair in writing within 7 days. Where a sanction is proposed, the governor shall be invited to agree to the sanction within 7 days.

7. Assessment

- 7.1 Where the governor does not agree with any sanction proposed by the Council, the governor and the Chair shall agree the identity of an independent assessor.
- 7.2 The assessor shall be asked to consider all the information regarding the charge that that was available to the Council and to determine whether:
- 7.2.1 the proposed sanction is reasonable and should be imposed;
 - 7.2.2 an alternative sanction should be imposed; or
 - 7.2.3 no sanction should be imposed on the governor.
- 7.3 The governor and the Trust shall be bound by the assessor's determination which shall take effect when communicated to the governor in writing.
- 7.4 In the event that the governor does not agree to the appointment of an independent assessor, he shall be deemed to be suspended from all duties as a governor until he agrees to the appointment of an assessor or his term of office expires.

8. Miscellaneous

- 8.1 In this procedure:
- 8.1.1 words referring to any gender include all genders; and
 - 8.1.2 a person who has raised a complaint of concern about a governor is referred to as a "Complainant".
- 8.2 It is expected that all timescales within this procedure will be met. However, the Chair at his discretion may extend any timescale.
- 8.3 At any time, the Chair is authorised to take such interim measures as may be immediately required, including the exclusion of the governor concerned from a meeting or suspension from duties, on the basis that such measures are necessary to:
- 8.3.1 enable an effective investigation to be undertaken into any concern or complaint about a governor;;
 - 8.3.2 address or prevent any significant disruption to the effective operation of any part of the Trust;
 - 8.3.3 manage risk to the health or well-being or any governor, employee, volunteer or patient of the Trust;
 - 8.3.4 protect the reputation of the Trust;
 - 8.3.5 give effect to a proposal by the Council to impose a sanction on a governor, until such times as the sanction is agreed by the governor or the determination of an assessor has been received and notified to the governor.
- 8.4 Any decision by the Chair under paragraph 8.3 shall be effective when the governor is notified either verbally or in writing. Any verbal notification shall be confirmed in writing.
- 8.5 The Chair shall notify the Council that an interim measure has been imposed as soon as reasonably practicable. The Chair shall not be required to explain the basis for imposing an interim measure.
- 8.6 In order to protect the legitimate interests of a governor and any Complainant, the Council shall not be not be entitled to receive any information regarding the use of this procedure in relation to any governor until it is notified of any charge on which it is being asked to make a decision.
- 8.7 Notwithstanding the use of this procedure, a governor is entitled to resign at any time. Where a governor who is subject to this procedure resigns, the Chair will provide an overview of the complaint or concern to the Council where this would not unduly prejudice the interests of the governor.
- 8.8 The Committee or Council are 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.

(B) TERMINATION OF TENURE (ANNEX 6 OF TRUST CONSTITUTION) – to be used by the Committee as guidance on what constitutes a breach.

- 1 Termination of tenure
 - 1.1 An appointed governor shall cease to hold office if the organisation which appointed him withdraws its appointment of him, or he leaves the employ of the organisation which appointed him.
 - 1.2 A governor may resign from office at any time during the term of that office by giving notice in writing to the Secretary. A governor shall give reasons for the resignation and detail any outstanding issues of which the Council of Governors should be aware.
 - 1.3 If a governor fails to attend any meeting of the Council Of Governors for a consecutive period of twelve months or alternatively for three successive meetings of the Council Of Governors, the Council Of Governors may by a resolution approved by three quarters of the remaining governors present and voting terminate a governor's tenure of office unless the Council Of Governors is satisfied that:
 - 1.3.1 the absence was due to reasonable cause; and
 - 1.3.2 that the governor will be able to start attending meetings of the Council Of Governors within such period as it considers reasonable.
 - 1.4 The Council Of Governors may by a resolution approved by three quarters of the remaining governors present and voting terminate a governor's tenure of office if for reasonable cause it considers that:
 - 1.4.1 in the case of an elected governor he ceases to be a governor of the constituency, or of the class within a constituency, by which he was elected;
 - 1.4.2 he is disqualified from becoming or continuing as a governor under this constitution;
 - 1.4.3 he has knowingly or recklessly made a false declaration for any purpose provided for under this constitution or in the 2006 Act;
 - 1.4.4 he has knowingly or recklessly failed to declare a conflict of interest as required by paragraph 15 of this constitution;
 - 1.4.4 his continuing to be a governor would or would be likely to:
 - 1.4.4.1 prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under this constitution or otherwise to discharge its duties or functions;

APPENDIX A TO THE TERMS OF REFERENCE

- 1.4.4.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods or services;
 - 1.4.4.3 adversely affect public confidence in the goods and services provided by the Trust; or
 - 1.4.4.4 otherwise bring the Trust into disrepute.
 - 1.4.5 he has failed or refused to comply with the regulatory framework, the Standing Orders, or any Code of Conduct which the Trust shall have published from time to time;
 - 1.4.6 he has refused without reasonable cause to undertake any training which the Trust requires all governors to undertake;
 - 1.4.7 he purports to represent the views of any professional body, political party or trade union of which he is a governor;
 - 1.4.8 he has failed to act in the best interests of the Trust, or it is not in the interests of the Trust for the governor to continue to hold office.
 - 1.5 The following list provides examples of matters which may indicate to the Council of Governors that it is no longer in the interests of the Trust that a governor continues in office. The list is not intended to be exhaustive or definitive; the Council of Governors will consider each case on its merits, taking account of all relevant factors.
 - a) If the governor loses the confidence of the Council Of Governors;
 - b) If the governor loses the confidence of the public or local community in a substantial way;
 - c) If there is a terminal breakdown in essential relationships, e.g. between the governor and the rest of the Council Of Governors.
 - 1.6 A governor shall cease to hold office on death.
- 2 A person may not become or continue as a governor if:
- 2.1 he is an executive or non-executive director of the Trust;
 - 2.2 he is the spouse, partner, parent or child of a governor of the Board of Directors of the Trust;
 - 2.3 he is a member of a local authority's Scrutiny Committee covering health matters;
 - 2.4 in the case of an elected governor, he is a governor or director of another NHS Foundation Trust or NHS Trust;

APPENDIX A TO THE TERMS OF REFERENCE

- 2.5 in the case of an elected governor he ceases to be a member of the constituency by which he was elected;
- 2.6 in the case of an appointed governor the organisation which appointed him withdraws its appointment of him, or he leaves the employ of the organisation which appointed him;
- 2.7 Monitor has exercised its powers to remove that person as a governor of the Council Of Governors of the Trust or has suspended him from office or has disqualified him from holding office as a governor of the Trust for a specified period or Monitor has exercised any of those powers in relation to the person concerned at any time whether in relation to the Trust or some other NHS foundation trust;
- 2.8 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 2.9 he is a person whose tenure of office as the chair or as a governor or director of a health service body has been terminated on the grounds that his appointment was not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 2.10 he has had his name removed from any list prepared under sections 91, 106, 123, 146 of the 2006 Act, and has not subsequently had his name included in such a list;
- 2.11 he has previously been or is currently subject to a sex offender order and/or required to register under the Sex Offenders Act 1997 or committed a sexual offence prior to the requirement to register under the current legislation;
- 2.12 he has failed or refused to confirm in writing that he will abide by any Code of Conduct which the Trust shall have published from time to time;
- 2.13 he does not meet the fit and proper person requirements for governors set out in the Trust's Provider Licence; or
- 2.14 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs.

**Council of Governors
COMMUNICATIONS AND ENGAGEMENT COMMITTEE
TERMS OF REFERENCE**

1. CONSTITUTION

- 1.1 The Council of Governors hereby resolves to establish a Committee of the Council to be known as the Communications and Engagement Committee (The Committee), which is directly accountable to the Council.
- 1.2 The Committee is authorised to act within these terms of reference.
- 1.3 All procedural matters in respect of conduct of meetings shall follow the Council Standing Orders.

2. MEMBERSHIP

- 2.1 The Committee shall be open to all council members with a core group elected by the Council, comprising minimum of 6 Governors.
- 2.2 A quorum shall be three elected Council members.
- 2.3 The Chair and Deputy Chair of the Committee shall be appointed by the Council of Governors.

3. ATTENDANCE AT MEETINGS

- 3.1 The following Trust staff would normally attend each meeting:
- Membership Manager
 - Associate Director of Communications and Engagement.
- 3.2 Other staff may be invited to attend by the Chair for relevant agenda items as agreed by the Committee.

4. FREQUENCY OF MEETINGS

- 4.1 Meetings shall be held up to six times a year.

5. AUTHORITY

- 5.1 The Committee is authorised to consider items within its terms of reference and as delegated by the Council of Governors.
- 5.2 The Committee is authorised to obtain independent professional advice and to secure the attendance of outsiders with relevant experience and

expertise if it considers this necessary. The nature and costs of such advice must be agreed with the Trust to ensure efficient use of resources.

6. DUTIES

The duties of the Committee can be categorised as follows:

- Review the Trust's Membership Strategy on an annual basis, providing recommendations for improvements to the Council of Governors and the Trust Board, via the Peoples' Participation Committee.
- Receive and discuss the Annual Membership survey and other Member and Governor feedback to inform the Committee's work.
- Inform the development of strategies and initiatives to improve communication with and between Governors including the Governors Bulletin
- Inform the development of strategies and initiatives to improve communication with Members and between Governors and Members including the Members Working Lunch and the Annual Members Meeting
- Contribute to any review of the Trust's Communications Strategy and provide input into relevant materials that impact on Governors or Members including Governor election material
- Agree a forward plan of agenda items which focuses on improving communication with and engagement of Governors and Members

7. REPORTING

- 7.1 The Committee shall provide a report on its work to each Council of Governors meeting, highlighting areas requiring Council decision..
- 7.2 The Committee shall review its own performance and terms of reference on an annual basis and recommend any changes to the Council of Governors.

8. COMMITTEE SECRETARY

- 8.1 The Committee Secretary will be the Membership Manager, whose duties in this respect will include:
- Agreement of agenda with Chair and attendees and collation of papers
 - Taking notes of key decisions and actions
 - Keeping a record of attendance at meetings.