

TRUST BOARD
24 November 2016

AGENDA NUMBER	ITEM	8.3
TITLE OF PAPER	Revision to the Trust Constitution	
Confidential	NO	
Suitable for public access	YES	
PLEASE DETAIL BELOW THE OTHER SUB-COMMITTEE(S), MEETINGS THIS PAPER HAS BEEN VIEWED		
Constitution Group Meeting 19 September 2016.		
<u>STRATEGIC OBJECTIVE(S):</u>		
Best outcomes		
Excellent experience		
Skilled & motivated teams		
Top productivity		
EXECUTIVE SUMMARY		
<p>The Board is asked to approve two changes to the Constitution. The Constitution Group met on 19 September and considered the following:</p> <p>“Rest of Surrey” constituency</p> <p>A new area of the Public Constituency covering the “Rest of Surrey” was proposed to the Constitution Group for consideration; membership of which would be for members of the public who do not live in our other designated areas of the Public Constituency.</p> <p>A “Rest of Surrey” constituency was considered and agreed in principle for recommendation to the Council of Governors and the Board of Directors for approval. It is proposed that once the constituency had at least a 2% outpatient attendance we would hold elections for a Governor. In addition it is also recommended to increase the minimum number of members to 50 in line with Surrey Heath. See <i>Appendix A</i> for background information.</p> <p>Associate Non-Executive Director Position</p> <p>Following discussion at the Governors’ Nominations Committee convened on 7 September 2016 on the role of Associate Non-Executive Director and with reference to the legal advice provided by Capsticks, it was proposed to set</p>		

	<p>down the position in relation to the role of Associate Non-Executive Director.</p> <p>At the subsequent Constitution Group it was agreed to include an additional paragraph in the Trust Constitution outlining the Associate Non-Executive Director role at meetings of the Board of Directors in the capacity of a non-voting director. See <i>Appendix B</i> for reference.</p> <p>However, the Lead Governor considered it important that Associate Non-Executive Directors had personal indemnity insurance, and an action was taken to explore the regulations on Directors' indemnity of non-voting members on the Board.</p> <p>Following investigation it is recommended to add the following paragraph to the Constitution in respect of Associate Non-Executive Director positions, and to include in the Terms of Office for Chairman and Non-Executive Directors, and in all employee contracts going forward.</p> <p>Professional Indemnity</p> <p>The Trust provides <i>professional indemnity</i> for all staff groups, providing staff are carrying out their duties as directed by the Trust, and in accordance with Trust policy, procedure, clinical guidelines, and professional standards. This is provided through the Trust's membership of the NHS Litigation Authority's Liabilities to Third Parties Scheme (LTPS). Please refer to the following link for more information on the scheme rules and cover.</p> <p>http://www.nhsla.com/claims/Documents/LTPS%20Scheme%20Rules.pdf</p>
RECOMMENDATION:	Board is asked to APPROVE these changes to the Constitution.
SPECIFIC ISSUES CHECKLIST:	
Quality and safety	
Patient impact	
Employee	
Other stakeholder	
Equality & diversity	
Finance	
Legal	
Link to Board Assurance Framework Principle Risk	
AUTHOR NAME/ROLE	Liz Davies, Acting Company Secretary
PRESENTED BY	Aileen McLeish, Chairman

DATE	17 November 2016
BOARD ACTION	Approve

PROPOSED REVISION TO THE TRUST CONSITUTION

Note:

This paper was presented at the Constitution Group meeting held on 19 September and is included here for background and reference.

The recommendations made at this meeting for consideration and approval at Board and subsequently Council of Governors are detailed in Paper 8.3 as submitted to November Board.

Introduction

The matter of adding a new constituency was given due consideration at the Constitution Group convened in June. The recommendation was deferred pending the following actions:

- Revisit the full data picture in respect of outpatient attendance
- Review the criteria for an extra constituency later in the year in consideration of STP progress
- Review the definition in the Constitution of the “Public Constituency” in due course

The Committee did reach agreement on extending the existing areas of the Public Constituency to be conterminous with electoral Borough boundaries and to align the minimum number of members required for each area of the Public Constituency. Both actions have been completed.

Impact of the STP

The development of the Strategic Transformation Plan (STP) (Surrey Heartlands) is pointing to the Trust taking on more responsibility for some acute services in the area. Stroke is an early example of this. The Trust already has a number of services which are accessed by patients from a wider geography than that covered by our current Public Constituency: for example, cardiology, neo-natal intensive care, bariatric surgery, vascular surgery and specialist orthopaedic surgery.

Our STP catchment area is estimated at 0.7m and as such our patient population is expected to increase from outside our existing Public Constituency and it would be good practice to consider governor representation for patients attending our hospitals from these areas.

Current Patient Local Area Mapping 2015/16

Source: Information Services

Area	Patients	%
Elmbridge	14345	14.5%
Hounslow + Richmond-upon-Thames (combined)	9238	9.3%
Runnymede + Windsor and Maidenhead (combined)	20967	21.1%
Spelthorne	27396	27.6%

Appendix A

Surrey Heath	2464	2.5%
Woking and Guildford (combined)	21946	22.1%
Rest of Surrey	787	0.8%
Other	2101	2.1%
Total	99244	100.0%



The Trust Constitution states that eligibility to become a member of the Public Constituency is open to people living within the defined catchment area of the Trust, and includes residents from Local Authority electoral areas (as defined for the purpose of Local authority elections). The Public Constituency may also include volunteers providing support to the Trust who will be a member of the constituency in which they ordinarily reside. An individual is only eligible for membership of the public constituency if he/she lives in an area specified in the constitution for a public constituency, as specified in Annex 1.

Those individuals who live in an area specified as an area for any Public Constituency are referred to collectively as a Public Constituency, and the minimum number of Members in each area for the Public Constituency is specified in Annex 1.

Proposed additional constituency:

Appendix A

A new area of the Public Constituency is proposed covering the *Rest of Surrey*; membership of which would be for members of the public who do not live in our other designated areas of the Public Constituency.

Name of constituency	Area	Minimum number of members	Number of governors
Rest of Surrey	Electoral areas not falling within one of the areas referred to in Annex 1 below	50	1

Elections

The Trust has already given official notice of election for twelve public governor positions in five of our constituencies, and the process begins in September.

A proposal to elect to the position of governor in the proposed *Rest of Surrey* area of the Public Constituency will require consideration by the Constitution Group with subsequent approval by the Council of Governors and Board of Directors.

The Constitution sets down that an amendment of this nature is also required to be presented at the next Annual Members' Meeting for approval. The next meeting takes place on 18 July 2017.

Recommendation

We wish to add a new area to the Public Constituency to include a broader geographic area (*Rest of Surrey*) and seek your approval to take this proposal as set out above to the next meeting of the Council of Governors and to Trust Board for ratification.

This will result in an extra Governor joining the Council. We currently have approximately 151 members of the public living outside the existing constituencies who have applied to be members and we have designated them affiliate members:

- 109 affiliate members live in the "*Rest of England*" and
- 42 fall into the "*Rest of Surrey*" area.

The minimum number of members required for a "*Rest of Surrey*" area of the Public Constituency is 50. If approved, elections for this new constituency will be held in due course.

Proposed Revision to the Trust Constitution

Note:

This paper was presented at the Constitution Group meeting held on 19 September and is included here for background and reference.

The recommendations made at this meeting for consideration and approval at Board and subsequently Council of Governors are detailed in Paper 8.3 as submitted to November Board.

Introduction

Following discussion at the Governors' Nominations Committee convened on 7 September 2016 on the role of Associate Non-Executive Director and with reference to the legal advice provided by Capsticks, it is proposed to revise the Constitution and set down the position in relation to the role of Associate Non-Executive Director.

The legal advice sets out that associate NEDs will *not* have voting rights at Board meetings and will *not* be members of the Board in its capacity as a decision making body. They will attend Board meetings, and can contribute to discussion where their expertise is appropriate.

Capsticks' view is that it is not strictly necessary for the Trust to change its constitution in regard to associate NEDs attending Board meetings; however governors present at the Nominations Committee made the recommendation.

Our Constitution currently makes provision for operational directors to attend Board of Directors meetings as stated below.

Paragraph 23.9 of the Constitution states:

"The Board may determine that the operational directors may attend meetings of the Board of Directors as and when required to provide operational advice and support to assist the Board in the discharge of their responsibilities. For the avoidance of doubt, such operational directors will not be statutory Directors under the 2006 Act, nor will they be able to vote and will bear no responsibility or liability for any action or decisions of the Board of Directors."

To provide assurance to the Trust it is proposed to add a further item to the Constitution, under paragraph 23 clarifying the status of associate non-executive directors.

23. Board of Directors – composition

Paragraph 23.10

Associate Non-Executive Directors may attend meetings of the Board of Directors in the capacity of a non-voting director and will not be a statutory director under the 2006 Act and will bear no responsibility or liability for any action or decisions of the Board of Directors.

In addition, it is stated in the voting provisions in the standing orders that every question shall be determined by a majority of the votes of Directors present. For clarification Associate NEDs will not be included within this definition of 'Director'.

Recommendation

Appendix B

Ashford and St. Peter's Hospitals 
NHS Foundation Trust

The Constitution Group is asked to discuss and agree whether to make this change to the Constitution for final approval by the Council of Governors and Board of Directors.