Ashford and St. Peter's Hospitals NHS
NHS Trust

TRUST BOARD
28th October 2010

TITLE	**Foundation Trust Constitution**
SUMMARY	The Board has previously agreed a Draft Constitution. At the September Board, two changes were made to the Draft Constitution; composition of the Board and designation of the Trust Executive Committee. As part of the Foundation Trust assessment process the draft Constitution is reviewed by Monitor. A number of comments and suggestions have been made by Monitor and further amendments are now proposed.
BOARD ASSURANCE (Risk) / IMPLICATIONS	The Constitution underpins the Foundation Trust governance arrangements and the Trust must be legally compliant. BAF risk 3.1 Foundation Trust status
STAKEHOLDER / PATIENT IMPACT AND VIEWS	Views from Monitor, the Foundation Trust regulator.
EQUALITY AND DIVERSITY ISSUES	None known
LEGAL ISSUES	Conforms with the requirements of the NHS Act 2006 and the Monitor Code of Governance 2010. Advice has been sought from the Trust's legal advisors.
The Trust Board is asked to:	Agree the changes to the Constitution Note the changes needed to Terms of Reference
Submitted by:	Jane Gear Head of Corporate Affairs on behalf of Aileen McLeish, Chairman
Date:	20 October 2010
Decision:	For Approving

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Foundation Trust Constitution

1 Introduction

This document proposes a number of changes to the Constitution in response to the formal review by Monitor.

Once the Constitution is agreed it forms part of the Terms of Authorisation and can only be altered following agreement by the Board (having consulted the Council) and approval by Monitor.

2 Changes

Constitution

i Monitor Comment:
Composition of the Trust Board is not consistent with Monitor's Code of Governance.

Trust comment:
Resolved at September Board.

Trust recommendation
No further action needed.

Annex 4

ii Monitor Comment:
Annex 4. The arrangements for the appointment of a PCT stakeholder governor are complex and place an unnecessary burden on the Trust and Monitor (Current wording given in appendix A).

Trust comment:
Agreed. The NHS Act only requires there to be a governor appointed by a PCT for which the Trust provides goods and services and a qualifying Local Authority (i.e. included in a public constituency).

Review of a number of recently approved Foundation Trusts shows they simply indicate which bodies are stakeholders. However this change should be applied consistently across our arrangements for both PCTs and Local Authorities.

Trust recommendation
In Annex 4; Delete Paras 2.3-2.82 and 2.10-2.11 inclusive.

Annex 8

iii Monitor Comment:
Does the Board want to adopt the NHS Code of Openness as implied in the draft Standing Orders? This is not a mandatory Code for Foundation Trusts.

Trust comment:
The Code has effectively been superseded by the Freedom of Information Act.

Trust recommendation:
The wording in Para 1.2.3 be amended to remove reference to the Code but retain reference to the Freedom of Information Act.

iv Monitor Comment:
The wording in the Board Standing Orders relating to Terms of Reference, Reservation of Powers and Scheme of Delegation means they from part of the Constitution and would need to be approved by Monitor every time they changed.

Trust comment:
In removing the statement 'have effect as if incorporated in the constitution' means that the Board needs to be assured that these governance controls will still exist and operate.

The Board can note that there are other provisions in the Constitution that provide for the Trust to have such documentation, and which are subject to approval of the Board. For example:

> 1.22 The Constitution provides for the Trust to draw up a Schedule of Decisions Reserved to the Board, and a Scheme of Delegation to enable responsibility to be clearly delegated to committees of the Board and individual Directors. The Constitution also provides for the establishment of audit and remuneration committees and sets out arrangements for dealing with possible conflicts of interests of Board Directors.
>
> 4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation that shall be considered and approved by the Board as indicated above.
>
> The Board shall adopt Standing Financial Instructions in accordance with the Regulatory Framework referred to in paragraph 1.2 of these Standing Orders,

and so on.

As a result, the Constitution requires the Trust to have Terms of Reference, Reservation of Powers and a Scheme of Delegation and a simple Board resolution should be sufficient to adopt the actual content of the same.

Trust recommendation
Remove the references in Paras 1.3.1, 4.4.1, 5.3 and 9 to 'the Reservation of Powers, Terms of Reference and Scheme of Delegation having effect as if incorporated in the constitution'.

v Monitor Comment:
Delegation of Power ; Para 1.3.1, 4.1 & 4.2 are worded that the Board of Directors can delegate executive powers to committees and officers. However the NHS Act and the model constitution restrict delegation to either a committee or an Executive director.

Trust comment:
Agreed. The implication of such a change is a review will be needed of Board sub committee Terms of Reference to ensure membership is only Board Directors and others are 'in attendance'.

Trust recommendation:
Re-word the 3 paragraphs to refer to delegating powers 'to a committee of Directors or to an executive director'.

vi Monitor Comment:
The tendering procedure is annexed to Standing Orders meaning adjustments will need to be authorised as part of the Constitution.

Trust comment:
Agreed this is unnecessary.

Trust recommendation:
Realign the tendering procedure with Standing Financial Instructions which do not form part of the Constitution itself.

6 Conclusion

The Board is asked to
APPROVE the amendments to the Constitution outlined in Paras. 2 i-vi above and
NOTE that the Terms of Reference of Board Sub Committees will be reviewed with regards to membership.

J Gear
21 October 2010

Primary Care Trusts

1.1 Surrey Primary Care Trust and Hounslow Primary Care Trust shall each be entitled to appoint a Governor.

1.2 If a Primary Care Trust named in paragraphs 2.2 above declines or fails to appoint its Governors within three months of being requested to do so by the Trust, the Trust shall in its absolute discretion be entitled to extend an invitation to any of those other Primary Care Trusts to whom it provides goods and services to appoint Governors in substitution for the Primary Care Trust which has failed or declined to do so. The Trust shall give notice of that invitation to Monitor.

1.3 If the invitation referred to in paragraph 2.3 above is accepted by a Primary Care Trust, that Primary Care Trust shall appoint a Governor and the Primary Care Trust which has previously failed to appoint a Governor shall cease to be entitled to do so, subject to the provisions of paragraph 2.8 below.

1.4 Subject to paragraph 2.7 below, if the invitation is not accepted within a reasonable period or such period as may have been specified in the invitation the Trust shall extend an invitation to any other such Primary Care Trust until the invitation is accepted and a Governor is appointed.

1.5 The Trust shall give notice forthwith to Monitor of all invitations the Trust may extend under the preceding paragraph and of any acceptances.

1.6 Any Governor appointed under paragraphs 2.4 and 2.5 above shall serve on the Council of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit that Primary Care Trust which had first failed or declined to appoint a Governor to do so for the next period of office or to invite that Primary Care Trust which had appointed a Governor in substitution to do so.

1.7 Notwithstanding the foregoing provisions of this paragraph, the Trust shall in its absolute discretion be entitled:

1.7.1 to give not less than 6 months notice to the Primary Care Trusts referred to in paragraphs 2.2 above (or any substituted Primary Care Trust appointed under paragraphs 2.4 and 2.5 above) terminating their right to appoint a Governor and upon the expiration of that notice period or such other date as the Trust and the relevant Primary Care Trust may agree that Primary Care Trust's right to appoint a Governor shall be terminated and the period of office of the Governor appointed by that Primary Care Trust shall also come to an end on that date; and

1.7.2 to appoint another Primary Care Trust for which the Trust provides goods and services to replace that Primary Care Trust to which notice has been given under paragraph 1.7.1 above save that these provisions shall at all times be operated so as to ensure that the number of Primary Care Trusts entitled to appoint a Governor remains as provided for in paragraph 2.2 above.

Qualifying Local Authority

1.8 Spelthorne Borough Council, Runneymede Borough Council and Woking Borough Council shall each be entitled to appoint a Governor .

1.9 If a Local Authority named in paragraph 2.9 above declines or fails to appoint a Governor within three months of being requested to do so by the Trust, the Trust shall consult each Local Authority whose area includes the whole or part of the Area of the Trust and the Trust in its absolute discretion may extend an invitation to any of those Local Authorities to appoint a Governor in substitution for the local authority which has failed or declined to do so.

1.10 A Governor appointed under paragraph 2.10 shall then serve on the Council of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit the Local Authority which had failed or declined to appoint a Governor to appoint a Governor for the next period of office (provided it remains eligible to do so) or to invite the Local Authority which had appointed a Governor in substitution to do so.