

TRUST BOARD
29th July 2010

TITLE	Foundation Trust- draft Constitution
SUMMARY	<p>Monitor has updated their original Code of Governance. When the Trust becomes a Foundation Trust it will need to be in a position to assess whether it complies, and explain where it does not, in its Annual Report.</p> <p>A detailed paper has been reviewed by the Foundation Trust Project Board and a number of changes are recommended for inclusion in the draft Constitution.</p> <p>The Board is also asked to note the independence criteria in respect of the Non Executive Directors.</p>
BOARD ASSURANCE (Risk) / IMPLICATIONS	<p>Compliance with best practice as laid out in the Monitor Code of Governance.</p> <p>BAF Risk 3.1</p>
STAKEHOLDER / PATIENT IMPACT AND VIEWS	None taken
EQUALITY AND DIVERSITY ISSUES	None known
LEGAL ISSUES	Discussion has taken place with Beachcrofts regarding the suggested changes to the Constitution and wording on the role of lead governor.
The Trust Board is asked to:	<ol style="list-style-type: none"> 1. Agree the changes to the Constitution 2. Note the Independence assessment.
Submitted by:	Jane Gear Head of Corporate Affairs
Date:	17 July 2010
Decision:	For agreement

1 Background

Monitor has published a Code of Governance which applies to all Foundation Trusts, and is built on the principles and provisions of the Combined Code of Corporate Governance. It is issued as best practice but Monitor will use a 'comply or explain' approach. Where a Foundation Trust (FT) deviates from the Code it will be required to give a considered explanation of the reasons for so doing.

2 Proposed changes

A thorough review of the revised Code has taken place and been scrutinised by the Foundation Trust Project Board. Following this it is proposed that a number of changes are made in the draft Constitution previously agreed by the Trust Board.

These are as follows:

2.1 Annex 7 Standing Orders for the Council

These previously referred to the role of a **Vice Chair** of the Governors whose role was to preside at the Council meetings in certain limited circumstances. It is proposed to remove all references to Vice Chairman and replace with **Lead Governor**, role defined s below

Appointment of the Lead Governor - Any Public Governor appointed as Lead Governor may at any time resign from the office of Lead Governor by giving notice in writing to the Secretary and the Governors of the Trust may thereupon appoint another Vice Chair.

The Lead Governor's details will be provided to Monitor and updated as required

The Lead Governor may preside at meetings of the Council of Governors in the following circumstances:

On those occasions when the Council of Governors is considering matters relating to Non-Executive Directors, and it would be inappropriate for the Chairman or Deputy Chairman to preside;

When the remuneration, allowance and other terms and conditions of the Chairman and Deputy Chairman are being considered; or

On occasions when the Chairman and Deputy Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council of Governors.

The Lead Governor shall facilitate direct communication between the Council of Governors and Monitor where it is deemed necessary, which may include but shall not be limited to the following circumstances:

Where Monitor has concerns as to the Board of Directors' leadership of the Trust;

where Monitor has been made aware that the process for appointment of the Chairman or other members of the Board of Directors, or elections for Governors, or other material decisions, may not have complied with the Constitution, or, whilst complying with the Constitution, may be inappropriate; or

Where any individual Governor wishes to contact Monitor (which he or she must do via the Lead Governor)

For the avoidance of doubt, the Lead Governor will not deputise for, nor take on the duties of, the Deputy Chair of the Board of Directors.

The Lead Governor shall take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action.

The 2006 Act provides that all the powers of the Trust are to be exercised by its Directors. The Council of Governors does not have the right to veto decisions made by the Board of Directors.

The Council of Governors, and individual Governors, are not empowered to speak on behalf of the Trust, and must seek the advice and views of the Chairman concerning any contact from the media or any invitation to speak publicly about the Trust or their role within it. For the avoidance of doubt, in this context the Chairman acts as Chairman of the Trust not as Chairman of the Council of Governors and in his absence Governors should seek the advice and views of the Deputy Chairman of the Trust or another Non-Executive Director of the Trust.

2.2 Annex 6C: removal of a Governor

Add in the following section as recommended in the Code, paragraph D.2.3;

In addition, removal from the council of governors may be appropriate where behaviours or actions by a governor or group of governors may be incompatible with the values and behaviours of the NHS foundation Trust. Where there is any disagreement as to whether the proposal for removal is justified, an independent assessor agreeable to both parties should be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

2.3 Meetings of the Council

Annex 7 Standing Orders for the Council previously gave the minimum number of meetings of the Council as three. As a result of the 2010 Code it is now proposed to change this to 4 (Standing Orders 4.13 and Code reference B.1.1).

3. Independence

As result of the Code requirements the Board will need to declare in its Annual Report that it has formally considered the independence of its NEDs.

The 2010 Code introduced a significant change from the 2006 version in that one of the criteria is

- Has served on the board of the NHS Foundation Trust for more than SIX years from the date of their first appointment.

Under the 2006 Code this was nine years.

Each current NED has been asked to complete their own self assessment against his criteria and appear to each meet the criteria of independence. (Attached).

4 Summary and recommendation

To demonstrate strong governance the Board needs to have considered the implications of the Code of Governance.

It is recommended that

1. a number of changes are made to the Constitution as detailed in section 2 above, and
2. that the Board formally notes the assessment of independence for the NEDs.

Jane Gear
Head of Corporate Affairs

**Code of Governance 2010
Independence Criteria
Board Assessment**

Criteria	Aileen McLeish	Nadeem Aziz	Philip Beesley	Sue Ells	John Kelly (designate)	Terry Price	Peter Taylor
▪ Has been an employee of the NHS Foundation Trust within the last five years;	No	No	No	No	No	No	No
▪ Has, or has had within the last three years, a material business relationship with the NHS foundation trust either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the NHS foundation trust;	No	*	No	No	No	No	No
▪ Has received or receives additional remuneration from the NHS foundation trust apart from a director's fee, participates in the NHS foundation trust's performance - related pay scheme, or is a member of the NHS foundation trust's pension scheme;	No	No	No	No	No	No	No
▪ Has close family ties with any of the NHS foundation trust's advisers, directors or senior employees;	No	No	No	No	No	No	No
▪ Holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;	No	No	No	No	No	No	No
▪ Has served on board of the NHS foundation trust for more than nine years from the date of their first appointment; or	01/11/05	01/06/10	28/07/08	09/02/09	01/06/10	14/09/08	28/07/08
▪ Is an appointed representative of the NHS foundation trust's university medical or dental school	No	NO	No	No	No	No	No

* Is a Finance Director in a Pharmaceutical Business but has no direct involvement or influence in relationships with hospitals