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| <b>Meeting Title</b> | Council of Governors |                    |            |
| <b>Date</b>          | 21 January 2021      | <b>Agenda item</b> | CGo.1.21.7 |

## Council of Governors Terms of Reference Review 2021

|  |   |             |  |
|--|---|-------------|--|
| <b>Presented by</b>                        | Laura Parsons, Associate Director of Corporate Governance / Board Secretary |             |  |
| <b>Author</b>                              | Jacqui Maurice, Head of Corporate Governance                                |             |  |
| <b>Governance responsibility</b>           | Council of Governors  |             |  |
| <b>Purpose of the paper</b>                | For the Council of Governors to review and approve its Terms of Reference.  |             |  |
| <b>Action required</b>                     | For approval  |             |  |
| <b>Previously discussed at/informed by</b> |   |             |  |
| <b>Previously approved at:</b>             | <b>Committee/Group</b>  | <b>Date</b> |  |
|  | NA  |             |  |
|  |   |             |  |

### Background

The Terms of Reference for the Council of Governors were previously approved by the Council in January 2020. They are required to be reviewed annually.

The Terms of Reference are attached at appendix 1 and contain tracked changes.

The following amendments are proposed:

**1. Section 5. Quorum.**

- Hyperlink added to the Council of Governors Standing Orders

**2. Section 6. Council of Governors Committees**

- The Nominations and Remuneration Committee has been revised to be referred to the 'Governors Nominations and Remuneration Committee' in this section and throughout the document. This is to ensure a distinction with regard to the Board Nominations and Remuneration Committee.

**3. Section 7. The Role of the Council of Governors**

- References to 'Auditor' have been revised to 'External Auditor' in this section and throughout the document to ensure a distinction with regard to Internal Audit.
- With specific reference to 7.1.6; clarity has been provided with regard to the recommendation to be received by the Council of Governors from the 'Appointments Panel' agreed with the Board Nominations and Remuneration Committee in relation to the appointment of the Chief Executive.
- In relation to 7.2.2; clarity has been provided with regard to notification to NHS Improvement, via the lead governor, if the Council of Governors is concerned that the Foundation Trust is at risk of breaching its licence if these concerns cannot be resolved at the local level. An addition has been included to state that the Council will have regard to the process as set out within the 'Council of Governor's Engagement Policy'.
- In relation to 7.3.4, reference has also been made to the Council of Governors Code of Conduct, as well as the Constitution, for the removal of a Governor from office.

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- In relation to 7.3.5, explicit reference is made to the 'Council of Governors Engagement Policy'.
- In relation to 7.4.4, clarity has been provided in that the Council should notify the Board of any determination it makes with regard to the provision of non-NHS services should the matter arise.
- In relation to 7.6.5, additional clarity has been added with regard to the ways in which the Council of Governors may receive the Annual Report and Accounts and either the Quality Report or the Quality Account.

#### 4. Section 9. Frequency of Meetings

- Clarification has been provided with regard the meetings that Governors are expected to formally attend in year.

### Recommendation/s

#### Recommendation

The Council of Governors is asked to approve the amendments to the Council of Governors Terms of Reference.

### Regulation, Legislation and Compliance relevance

#### NHS Improvement: (please tick those that are relevant)

- |  |   |
|--|---|
| <input type="checkbox"/> Risk Assessment Framework     | <input type="checkbox"/> Quality Governance Framework |
| <input checked="" type="checkbox"/> Code of Governance | <input type="checkbox"/> Annual Reporting Manual      |

#### Care Quality Commission Domain: Well Led

#### Care Quality Commission Fundamental Standard: Good Governance

#### NHS Improvement Effective Use of Resources: Corporate Services, Procurement, Estates & Facilities

#### Other (please state):

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## Appendix 1

### Terms of Reference for the Council of Governors

#### 1. Purpose

The role of the Council of Governors is derived from Schedule 7 and other sections of the National Health Service Act 2006 as amended by the Health and Social Care Act 2012. This document should be read in conjunction with the Act.

Schedule 7 is available at [www.legislation.gov.uk/ukpga/2006/41/schedule/7/data.pdf](http://www.legislation.gov.uk/ukpga/2006/41/schedule/7/data.pdf)

#### 2. General duties

The general duties of the Council of Governors are:

- 2.1 To hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
- 2.2 To represent the interests of the members of the Foundation Trust as a whole and the interests of the public.

#### 3. Standing

The full meeting of the Council of Governors is the body in which Governors have official standing. All other forums are advisory.

#### 4. Membership

The composition of the membership of the Council of Governors is set out in the Constitution. The Chair of the Board of Directors is the Chair of the Council of Governors and presides over the meetings of the Council of Governors. In the absence of the Chair, the Vice-Chair of the Council of Governors will take the Chair.

#### 5. Quorum

The quorum for meetings of the Council of Governors is set out in the [Council of Governors standing orders](#). A quorum shall be at least ten Governors in attendance including at least five Public / Patient Governors.

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## 6. Council of Governors committees

The Council of Governors will establish the following committees:

- 6.1 Governors Nominations and Remuneration Committee.
- 6.2 Such other committees as required from time to time.
- 6.3 Task and finish working groups as necessary.

## 7. The Role of the Council of Governors

### 7.1 Non-Executive Directors, Chief Executive and the External Auditor

- 7.1.1 Approve the policies and procedures for the appointment and where necessary for the removal of the Chair of the Board of Directors and Non-Executive Directors on the recommendation of the Governors Nominations and Remuneration Committee.
- 7.1.2 Approve the appointment or removal of a Chair of the Board of Directors on the recommendation of the Governors Nominations and Remuneration Committee.
- 7.1.3 Approve the appointment or removal of a Non-Executive Director on the recommendation of the Governors Nominations and Remuneration Committee.
- 7.1.4 Approve the policies and procedures for the appraisal of the Chair of the Board of Directors and Non-Executive Directors on the recommendation of the Governors Nominations and Remuneration Committee.
- 7.1.5 Approve changes to the remuneration, allowances and other terms of office for the Chair and other Non-Executive Directors on the recommendation of the Governors Nominations and Remuneration Committee.
- 7.1.6 Approve or where appropriate decline to approve the appointment of a proposed candidate as Chief Executive recommended by the Appointments Panel approved by the Board Nominations and Remuneration Committee. (The Appointments Panel, in line with the terms of reference of the Board Nominations and Remuneration Committee, has delegated authority to identify and recommend a suitable candidate for approval by the Council of Governors to fill the position of Chief Executive).~~Non-Executive Directors.~~
- 7.1.7 Approve the process for appointing, re-appointing or removing the External Auditor.
- 7.1.8 Approve the appointment or re-appointment and the terms of engagement of the External Auditor on the recommendation of the appropriate working group.

### 7.2 Constitution and Compliance

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7.2.1 Jointly approve with the Board of Directors amendments to the Constitution, subject to any changes in respect of the powers, duties or role of the Council of Governors being ratified at the next general meeting of members (at which a member of the Council of Governors needs to present the change).

7.2.2 Notify NHS Improvement, via the lead governor, if the Council of Governors is concerned that the Foundation Trust is at risk of breaching its licence if these concerns cannot be resolved at the local level having regard to the process as set out within the Council of Governor's Engagement Policy.

### 7.3 Governors

7.3.1 Approve the allocation of Governors to committees of the Council of Governors, working groups and any joint working groups set up by the Board of Directors.

7.3.2 Approve the appointment and role of the Vice-Chair of the Council of Governors and the Lead Governor.

7.3.3 Receive regular reports from the Chairs of the Council of Governors' committees on the discharge of the committees' duties.

7.3.4 Approve the removal from office of a Governor in accordance with the procedure set out in the Constitution or within the Council of Governors Code of Conduct.

7.3.5 Approve jointly with the Board of Directors the procedure for the resolution of disputes and concerns between the Board of Directors and the Council of Governors (known as the Council of Governors' Engagement Policy).

### 7.4 Strategy, Planning, Reorganisations

7.4.1 Provide feedback on the development of the strategic direction of the Foundation Trust to the Board of Directors as appropriate.

7.4.2 Contribute to the development of stakeholder strategies, including Member Engagement Strategies.

7.4.3 Act as a critical partner to the Board of Directors in the development of the forward plan.

7.4.4 Where the forward plan<sup>1</sup> contains a proposal that the Foundation Trust will carry on an activity other than the provision of goods and services for the purposes of the NHS in England, determine whether they are satisfied that it will not interfere in the fulfilment by the Foundation Trust of its principal purpose (the provision of goods and services for the purposes of the health service in England). The Council of Governors should notify the Board of its determination.

7.4.5 Approve or not approve increases to the proposed amount of income derived from the provision of goods and services other than for the purpose of the NHS in

<sup>1</sup> under Schedule 7, 27

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England where such an increase is greater than 5% of the total income of the Foundation Trust.

7.4.6 Approve or not approve proposals from the Board of Directors for mergers, acquisitions, separations and dissolutions. More than half of the total number of Governors needs to approve such a proposal.

7.4.7 Approve or not approve proposals for significant transactions where defined in the Constitution or such other transactions as the Board may submit for the approval of Governors from time to time. Such transactions require the approval of more than half of Governors voting at a quorate meeting of the Council of Governors.

## **7.5. Representing Members and the Public**

7.5.1 Contribute to consultations on the Membership Engagement Strategy.

7.5.2 Contribute to members' and other stakeholders' understanding of the work of the Foundation Trust in line with engagement and communication strategies.

7.5.3 Seek the views of stakeholders, including members and the public and feedback relevant information to the Board of Directors.

7.5.4 Report to members each year on the performance of the Council of Governors.

## **7.6 Holding the Non-Executive Directors to account**

7.6.1 Receive the agenda of the meetings of the Board of Directors before the meeting takes place.

7.6.2 Receive the minutes of the meeting of the Board of Directors as soon as is practicable after the meeting.

7.6.3 Be equipped by the Foundation Trust with the skills and knowledge they require in their capacity as Governors.

7.6.4 Receive the report of the Audit Committee on the work, fees and performance of the auditor.

7.6.5 Receive the Annual Report and Accounts (including the Quality Report) or, the Annual Report and Accounts and the Quality Account.

7.6.6 If considered necessary (as a last resort), in the fulfilment of this duty, obtain information about the Foundation Trust's performance or the Directors' performance by requiring one or more Directors to attend a Council of Governor meeting.<sup>2</sup>

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<sup>2</sup> Schedule 7, 10C

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## 8. Collective evaluation of performance

The Council of Governors will undertake an annual review of its effectiveness and efficiency in the discharge of its responsibilities and achievement of objectives.

## 9. Frequency of meetings

The Council of Governors will meet at least ~~four times a year and attend the Annual Members Meeting and Annual General Meeting five times a year.~~ four times a year and attend the Annual Members Meeting and Annual General Meeting five times a year.

## 10. Minutes

Minutes of the meetings will be circulated to all members of the Council of Governors as soon as reasonably practical.

## 11. Review

The Council of Governors will review its Terms of Reference at least annually.