

# Liverpool Women's NHS Foundation Trust

Changes to the Trust Constitution

Notification of formal approvals

## Council of Governors

The following is a true extract of the minutes of the Council of Governors of Liverpool Women's NHS Foundation Trust held on 24 January 2018.

### **2018/011 - Changes to the Trust Constitution**

The Trust Secretary talked the Council through the 7 recommended changes to the Trust Constitution which were detailed in the meeting papers. The Council approved the proposed amendments recognising that the amendments will require the formal approval of the Board. The Trust Secretary informed the Council that they would be required to sign the new Code of Conduct and that he would make arrangements for this to be sent out in due course.

The Chair thanked the Trust Secretary on behalf of the Council for undertaking this review.

## Board of Directors

The following is a true extract of the minutes of the Board of Directors of Liverpool Women's NHS Foundation Trust held on 2 February 2018

### **2018/048 - Changes to Trust Constitution**

The Board received the report that outlined amendments to the Trust constitution that had previously been approved by the Council of Governors at its meeting on 24 January 2018.

The Board approved the amendments.



.....  
Colin Reid  
Trust Secretary

### Attachments:

Council of Governors paper: 2018/011 - Changes to the Trust Constitution

Board of Directors paper: 2018/048 - Changes to the Trust Constitution

<b>MEETING</b>	Council of Governors	
<b>PAPER/REPORT TITLE:</b>	Changes to the Trust Constitution	
<b>DATE OF MEETING:</b>	Wednesday, 24 January 2018	
<b>ACTION REQUIRED</b>	For Approval	
<b>EXECUTIVE DIRECTOR:</b>	Choose an item.	
<b>AUTHOR(S):</b>	Trust Secretary	
<b>STRATEGIC OBJECTIVES:</b>	<p><b>Which Objective(s)?</b></p> <p>1. To develop a well led, capable, motivated and entrepreneurial <i>workforce</i> <input checked="" type="checkbox"/></p> <p>2. To be ambitious and <i>efficient</i> and make the best use of available resource <input type="checkbox"/></p> <p>3. To deliver <i>safe</i> services <input checked="" type="checkbox"/></p> <p>4. To participate in high quality research and to deliver the most <i>effective</i> Outcomes <input type="checkbox"/></p> <p>5. To deliver the best possible <i>experience</i> for patients and staff <input type="checkbox"/></p>	
<b>LINK TO BOARD ASSURANCE FRAMEWORK (BAF):</b>	<p><b>Which condition(s)?</b></p> <p>1. Staff are not engaged, motivated or effective in delivering the vision, values and aims of the Trust <input type="checkbox"/></p> <p>2. The Trust is not financially sustainable beyond the current financial year <input type="checkbox"/></p> <p>3. Failure to deliver the annual financial plan <input type="checkbox"/></p> <p>4. Location, size, layout and accessibility of current services do not provide for sustainable integrated care or quality service provision <input type="checkbox"/></p> <p>5. Ineffective understanding and learning following significant events <input type="checkbox"/></p> <p>6. Inability to achieve and maintain regulatory compliance, performance and assurance <input checked="" type="checkbox"/></p> <p>7. Inability to deliver the best clinical outcomes for patients <input type="checkbox"/></p> <p>8. Poorly delivered positive experience for those engaging with our services <input type="checkbox"/></p>	
<b>CQC DOMAIN</b>	<p><b>Which Domain?</b></p> <p><b>SAFE</b>- People are protected from abuse and harm <input type="checkbox"/></p> <p><b>EFFECTIVE</b> - people's care, treatment and support achieves good outcomes, promotes a good quality of life and is based on the best available evidence. <input type="checkbox"/></p> <p><b>CARING</b> - the service(s) involves and treats people with compassion, kindness, dignity and respect. <input type="checkbox"/></p> <p><b>RESPONSIVE</b> – the services meet people's needs. <input type="checkbox"/></p> <p><b>WELL-LED</b> - the leadership, management and governance of the organisation assures the delivery of high-quality and person-centred care, supports learning and innovation, and promotes an open and fair culture. <input checked="" type="checkbox"/></p> <p><b>ALL DOMAINS</b> <input type="checkbox"/></p>	

<b>LINK TO TRUST STRATEGY, PLAN AND EXTERNAL REQUIREMENT</b>	<b>1.</b> Trust Constitution <input checked="" type="checkbox"/> <b>2.</b> Operational Plan <input type="checkbox"/> <b>3.</b> NHS Compliance <input type="checkbox"/>	<b>4.</b> NHS Constitution <input type="checkbox"/> <b>5.</b> Equality and Diversity <input type="checkbox"/> <b>6.</b> Other: <a href="#">Click here to enter text.</a>
<b>FREEDOM OF INFORMATION (FOIA):</b>	<b>3.</b> This report will not be published under the Trust's Publication Scheme due to exemptions under S22 of the Freedom of Information Act 2000, because the information contained is intended for future publication	
<b>RECOMMENDATION:</b> <i>(eg: The Board/Committee is asked to:-....)</i>	<b><i>The Council is asked to approve the recommended changes to the trust Constitution and the Code of Conduct of Governors.</i></b>	
<b>PREVIOUSLY CONSIDERED BY:</b>	<b>Committee name</b>	<i>Choose an item.</i> Or type here if not on list: <a href="#">Click here to enter text.</a>
	<b>Date of meeting</b>	<a href="#">Click here to enter a date.</a>

## Executive Summary

An action was placed on the trust Secretary to review the Trust Constitution and propose amendment to take account of changes to the Council of Governors membership regarding Student Appointed Governor Representative, dispute resolution and any ancillary areas that would be deemed appropriate such as consistency check, change of organisation names etc.. The Council also asked that a review of the code of conduct ne undertaken to address any inconsistencies that may arise in the code against the constitution.

Copies of both the constitution and code of conduct can be obtained from the Trust Secretary.

## Report

The following table set out the changes proposed and the reasons for the amendment to the Constitution.

	Constitution Reference	From	To	Reason
1.	Throughout	Monitor	NHS Improvement or NHSI	Change of regulator name
2.	Annex 3; 3.4	One governor appointed jointly by: <ul style="list-style-type: none"> <li>• Liverpool Hope University</li> <li>• Liverpool John Moores University</li> <li>• Edge Hill University</li> <li>• <b>Merseyside Learning &amp; Skills Council</b></li> </ul>	One governor appointed jointly by: <ul style="list-style-type: none"> <li>• Liverpool Hope University</li> <li>• Liverpool John Moores University</li> <li>• Edge Hill University</li> </ul>	Merseyside Learning and Skills Council has ceased to exist and has been removed from the list.
3.	Annex 3; 3.5	New clause	One Student Governor appointed jointly by the student councils of: <ul style="list-style-type: none"> <li>• University of Liverpool</li> <li>• Liverpool Hope University</li> <li>• Liverpool John Moores University</li> <li>• Edge Hill University</li> </ul>	To support the Councils view that a representative was required, appointed by the students from the four main universities that the Trust has a link with. Following comments at the last CoG meeting agreement will be reached with the Student bodies that any

				appointment from each of the universities would be for a maximum of two years and that the appointee would be taken on a rota basis.
4.	Annex 6; 9	<p>Further provisions as to eligibility to be a Director</p> <p><b>9.</b> A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if:</p> <p><b>9.1</b> subject to 9.2 below, she is a member of the Council of Governors, or a Governor or Director of an NHS body or another NHS Foundation Trust;</p> <p><b>9.2</b> in the case of a non-executive Director of the Trust, a person so appointed may hold one or more additional non-executive directorships in other NHS bodies;...</p>	<p>Further provisions as to eligibility to be a Director</p> <p><b>9.</b> A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if:</p> <p><b>9.1</b> subject to 9.2 below, she is a member of the Council of Governors, or a Governor or Director of an NHS body or another NHS Foundation Trust;</p> <p><b>9.2</b> in the case of a non-executive Director of the Trust, a person so appointed may hold one or more additional non-executive directorships in other NHS bodies;</p>	<p>In 2015 the Council agreed to remove the restriction on the appointment of Non-Executive Directors holding NED posts in other NHS bodies</p> <p>The amendment supports the position that the Trust would be able to appoint an Executive Director who is also an Executive Director of another NHS Trust. The future direction of NHS Trusts has seen the move towards the sharing of executive director posts in order to reduce cost and provide continuity.</p> <p><b><i>The Board of Directors have considered the amendment and approved the removal of the restriction on Executive Director posts.</i></b></p>
5.	Annex 7; 37	<p>Quorum for a Council of Governors Meeting</p> <p><b>Ten</b> governors shall form a quorum, at least <b>five</b> of whom must be Public Governors.</p>	<p>Quorum for a Council of Governors Meeting</p> <p><del>Ten</del> Eight (8) governors shall form a quorum, at least <del>five</del> four (4) of whom must be Public Governors.</p>	<p>Given that we have been unable to recruit to the public constituency of Knowsley and the rest of England and Wales.</p> <p>The number of public governors available for the meetings of the council is 14 when all seats are filled. Currently</p>

				there are 11 Public Governors.
6.	Annex 8; 31	<p>The composition of the Board shall be:</p> <ul style="list-style-type: none"> <li>• A Non-Executive Chair</li> <li>• Not more than <b>six</b> other non-executive Directors</li> </ul>	<p>The composition of the Board shall be:</p> <ul style="list-style-type: none"> <li>• A Non-Executive Chair</li> <li>• Not more than <b>six seven</b> other non-executive Directors</li> </ul>	Consistency brings the maximum number of NEDs on the Board in line with the main body of the constitution at 23.2.
7.	Annex 9; 7&8	<p>Dispute Resolution Procedures</p> <p>7. Every unresolved dispute which arises out of this constitution between the Trust and:</p> <ul style="list-style-type: none"> <li>• a member; or</li> <li>• any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or</li> <li>• any person bringing a claim under this constitution; or</li> <li>• an office-holder of the Trust</li> </ul> <p>is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties.</p> <p>8. Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £100) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.</p>	<p>Dispute Resolution Procedures NEW Clauses 7&amp;8</p> <p>7. In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Chair who shall make a determination on the point in issue. If the person in dispute is aggrieved at the decision of the Chair she may appeal in writing within 14 days of the Chair's decision to the Council of Governors whose decision shall be final.</p> <p>8. In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.</p>	<p>Advice received from the Trust Solicitors is that the Dispute Resolution Clause is not fit for purpose and creates confusion on how to implement the clause.</p> <p>It is recommended that the clauses are amended to make sure that any decision reached by the Council is final.</p>

## Governor Code of Conduct

The following sets out the changes to the Code of Conduct. The removal of “simple majority” and inserting “not less than two thirds” of those present and voting is consistent to the number of governors required to remove a member.

### Non-compliance with the Code of Conduct

Governors are required to give an undertaking that they will comply with the provisions of this code.

Failure to comply with the code may result in action being taken as follows:

1. Where misconduct takes place, the Chair shall be authorised to take such action as may be immediately required, including the exclusion of the person concerned from a meeting
2. Where such misconduct is alleged, it shall be open to the Council of Governors to decide by simple majority of those in attendance, to lay a formal charge of misconduct
3. The individual will be notified in writing of the charge/s, detailing the specific behaviour which is considered to be detrimental to the Trust and inviting their response for consideration by the Council of Governors within a defined timescale
4. The Governor will be invited to address the Council in person if the matter cannot be resolved satisfactorily through correspondence
5. The Council of Governors will decide by ~~a simple majority~~ **not less than two thirds** of those present and voting whether to uphold the charge of conduct detrimental to the Trust
6. The Council of Governors may impose such sanctions as shall be deemed appropriate, ranging from the issuing of a written warning as to the member’s future conduct, to the removal of the individual from office
7. In order to aid participation by all parties it is imperative that all Governors observe the points of view of others and conduct likely to give offence will not be permitted. The Chair will reserve the right to ask any member of the Council who, in his or her opinion, fails to observe the Code to leave the meeting.

### Recommendation

- a. The Council is asked to consider each amendment to the constitution and if deemed appropriate approve the amendment. Subject to approval of each amendment, each amendment (with the exception of the removal of restriction on Executive Director eligibility which has already been considered and approved by the Board of Directors) will be presented to the Board of Directors for approval at the meeting on 2 February 2018.
- b. The Council is asked to approve the amendment to the Governors Code of Code.

<b>MEETING</b>	Board of Directors	
<b>PAPER/REPORT TITLE:</b>	Changes to the Trust Constitution	
<b>DATE OF MEETING:</b>	Friday, 02 February 2018	
<b>ACTION REQUIRED</b>	For Approval	
<b>EXECUTIVE DIRECTOR:</b>	Choose an item.	
<b>AUTHOR(S):</b>	Trust Secretary	
<b>STRATEGIC OBJECTIVES:</b>	<p><b>Which Objective(s)?</b></p> <p>1. To develop a well led, capable, motivated and entrepreneurial <i>workforce</i> <input checked="" type="checkbox"/></p> <p>2. To be ambitious and <i>efficient</i> and make the best use of available resource <input type="checkbox"/></p> <p>3. To deliver <i>safe</i> services <input checked="" type="checkbox"/></p> <p>4. To participate in high quality research and to deliver the most <i>effective</i> Outcomes <input type="checkbox"/></p> <p>5. To deliver the best possible <i>experience</i> for patients and staff <input type="checkbox"/></p>	
<b>LINK TO BOARD ASSURANCE FRAMEWORK (BAF):</b>	<p><b>Which condition(s)?</b></p> <p>1. Staff are not engaged, motivated or effective in delivering the vision, values and aims of the Trust <input type="checkbox"/></p> <p>2. The Trust is not financially sustainable beyond the current financial year <input type="checkbox"/></p> <p>3. Failure to deliver the annual financial plan <input type="checkbox"/></p> <p>4. Location, size, layout and accessibility of current services do not provide for sustainable integrated care or quality service provision <input type="checkbox"/></p> <p>5. Ineffective understanding and learning following significant events <input type="checkbox"/></p> <p>6. Inability to achieve and maintain regulatory compliance, performance and assurance <input checked="" type="checkbox"/></p> <p>7. Inability to deliver the best clinical outcomes for patients <input type="checkbox"/></p> <p>8. Poorly delivered positive experience for those engaging with our services <input type="checkbox"/></p>	
<b>CQC DOMAIN</b>	<p><b>Which Domain?</b></p> <p><b>SAFE</b>- People are protected from abuse and harm <input type="checkbox"/></p> <p><b>EFFECTIVE</b> - people's care, treatment and support achieves good outcomes, promotes a good quality of life and is based on the best available evidence. <input type="checkbox"/></p> <p><b>CARING</b> - the service(s) involves and treats people with compassion, kindness, dignity and respect. <input type="checkbox"/></p> <p><b>RESPONSIVE</b> – the services meet people's needs. <input type="checkbox"/></p> <p><b>WELL-LED</b> - the leadership, management and governance of the organisation assures the delivery of high-quality and person-centred care, supports learning and innovation, and promotes an open and fair culture. <input checked="" type="checkbox"/></p> <p><b>ALL DOMAINS</b> <input type="checkbox"/></p>	



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<b>RECOMMENDATION:</b> <i>(eg: The Board/Committee is asked to:-....)</i>	<b><i>The Board is asked to approve the recommended changes to the trust Constitution.</i></b>	
<b>PREVIOUSLY CONSIDERED BY:</b>	<b>Committee name</b>	<i>Choose an item.</i> Or type here if not on list: <a href="#">Click here to enter text.</a>
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## Executive Summary

An action was placed on the Trust Secretary by the Council of Governors to review the Trust Constitution and propose amendment to take account of changes to the Council of Governors membership regarding Student Appointed Governor Representative, dispute resolution and any ancillary areas that would be deemed appropriate such as consistency check, change of organisation names etc. Copies of both the constitution and code of conduct can be obtained from the Trust Secretary.

For any amendment of the Trust constitution to be effective both the Council of Governors and Board of Directors are required to approve the amendment in each forum.

The Board is asked to consider the amendments recommended by the Council of Governors agreed at their meeting held on 24 January 2018 and if thought appropriate approve the amendments.

## Report

The following table set out the changes proposed and the reasons for the amendment to the Constitution.

	Constitution Reference	From	To	Reason
1.	Throughout	Monitor	NHS Improvement or NHSI	Change of regulator name
2.	Annex 3; 3.4	One governor appointed jointly by: <ul style="list-style-type: none"> <li>• Liverpool Hope University</li> <li>• Liverpool John Moores University</li> <li>• Edge Hill University</li> <li>• <b>Merseyside Learning &amp; Skills Council</b></li> </ul>	One governor appointed jointly by: <ul style="list-style-type: none"> <li>• Liverpool Hope University</li> <li>• Liverpool John Moores University</li> <li>• Edge Hill University</li> </ul>	Merseyside Learning and Skills Council has ceased to exist and has been removed from the list.
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				bodies that any appointment from each of the universities would be for a maximum of two years and that the appointee would be taken on a rota basis.
4.	Annex 6; 9	<p>Further provisions as to eligibility to be a Director</p> <p><b>9.</b> A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if:</p> <p><b>9.1</b> subject to 9.2 below, she is a member of the Council of Governors, or a Governor or Director of an NHS body or another NHS Foundation Trust;</p> <p><b>9.2</b> in the case of a non-executive Director of the Trust, a person so appointed may hold one or more additional non-executive directorships in other NHS bodies;....</p>	<p>Further provisions as to eligibility to be a Director</p> <p><b>9.</b> A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if:</p> <p><b>9.1</b> <del>subject to 9.2 below,</del> she is a member of the Council of Governors, or a Governor <del>or Director</del> of an NHS body or another NHS Foundation Trust;</p> <p><b>9.2</b> <del>in the case of a non-executive Director of the Trust, a person so appointed may hold one or more</del> additional non-executive directorships in other NHS bodies;</p>	<p>In 2015 the Council and Board agreed to remove the restriction on the appointment of Non-Executive Directors holding NED posts in other NHS bodies</p> <p>The amendment supports the position that the Trust would be able to appoint an Executive Director who is also an Executive Director of another NHS Trust. The future direction of NHS Trusts has seen the move towards the sharing of executive director posts in order to reduce cost and provide continuity.</p> <p><b><i>NB The Board of Directors have considered the amendment and approved the removal of the restriction on Executive Director posts at its meeting on 1 December 2017</i></b></p>
5.	Annex 7; 37	<p>Quorum for a Council of Governors Meeting</p> <p><b>Ten</b> governors shall form a quorum, at least <b>five</b> of whom must be Public Governors.</p>	<p>Quorum for a Council of Governors Meeting</p> <p><del>Ten</del> Eight (8) governors shall form a quorum, at least <del>five</del> four (4) of whom must be Public Governors.</p>	<p>Given that we have been unable to recruit to the public constituency of Knowsley and the rest of England and Wales.</p> <p>The number of public governors available for the meetings of the</p>

				council is 14 when all seats are filled. Currently there are 11 Public Governors.
6.	Annex 8; 31	<p>The composition of the Board shall be:</p> <ul style="list-style-type: none"> <li>• A Non-Executive Chair</li> <li>• Not more than <b>six</b> other non-executive Directors</li> </ul>	<p>The composition of the Board shall be:</p> <ul style="list-style-type: none"> <li>• A Non-Executive Chair</li> <li>• Not more than <del>six</del> <b>seven</b> other non-executive Directors</li> </ul>	Consistency brings the maximum number of NEDs on the Board in line with the main body of the constitution at 23.2.
7.	Annex 9; 7&8	<p>Dispute Resolution Procedures</p> <p>7. Every unresolved dispute which arises out of this constitution between the Trust and:</p> <ul style="list-style-type: none"> <li>• a member; or</li> <li>• any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or</li> <li>• any person bringing a claim under this constitution; or</li> <li>• an office-holder of the Trust</li> </ul> <p>is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties.</p> <p>8. Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £100) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.</p>	<p>Dispute Resolution Procedures</p> <p>NEW Clauses 7&amp;8</p> <p>7. In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Chair who shall make a determination on the point in issue. If the person in dispute is aggrieved at the decision of the Chair she may appeal in writing within 14 days of the Chair's decision to the Council of Governors whose decision shall be final.</p> <p>8. In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.</p>	<p>Advice received from the Trust Solicitors is that the Dispute Resolution Clause is not fit for purpose and creates confusion on how to implement the clause.</p> <p>It is recommended that the clauses are amended to make sure that any decision relating to member and governors is approved by the Council</p>