

Council of Governors

8 March, 2023

Report Title:	Proposals for changes to the Trust Constitution
Executive/NED Lead:	Steve Parsons, Interim Director of Governance
Report author(s):	Steve Parsons, Interim Director of Governance
Previously considered by:	N/A

Approval
 Discussion
 Information
 Assurance

Executive summary		
<p>As a Foundation Trust, the Trust is required to maintain a Trust Constitution, which must meet the requirements set out in Schedule 7 of the National Health Service Act 2006 (as amended).</p> <p>In connection with the work on the Well-Led review, a review has been undertaken of areas where the current Constitution might be updated or changed; and this paper outlines the main areas of possible change, and the proposed process. The paper also outlines some areas where change is not positively suggested, but where it is important that Council gives consideration to the question of change to assure itself that the current arrangements remain appropriate.</p>		
Action requested of the Council of Governors		
<p>The Council of Governors is requested to-</p> <ol style="list-style-type: none"> a. Note the intention to revise sections of the Trust Constitution; b. Comment on the proposed areas of change; c. Identify any other areas where change should be considered. 		
Link to Strategic Objectives (SO)		Please tick
SO1	Keep people in control of their health	<input type="checkbox"/>
SO2	Lead the integration of care	<input type="checkbox"/>
SO3	Develop our centres of excellence	<input type="checkbox"/>
SO4	Support and develop our staff	<input type="checkbox"/>
SO5	Drive technology enabled care	<input type="checkbox"/>
Risk Implications for the Trust <i>(including any clinical and financial consequences)</i>		A failure to have a Constitution that meets the statutory requirements would be likely to lead to regulatory intervention.
Trust Risk Appetite		The Trust has a cautious risk appetite when it comes to compliance and regulatory issues. Where the laws, regulations and standards are about the delivery of safe, high quality care, or the health and safety of the staff and public, it will make every effort to meet regulator expectations and comply with them and will only challenge them if there is strong evidence or argument to do so and the gain will outweigh the adverse consequences.
Legal and regulatory implications <i>(including links to CQC outcomes, Monitor, inspections, audits, etc.)</i>		The Trust is required to have a Constitution that complies with the statutory requirements. The Trust also has obligations to have effective and compliant governance systems under the NHS Provider Licence arrangements.
Financial Implications		N/A
Equality and Diversity		N/A

Proposals for changes to the Trust Constitution

Context

As a Foundation Trust, the Trust is required to maintain a Trust Constitution, which must be compliant with the requirements of [Schedule 7 to the National Health Service Act 2006](#) (as amended by later legislation).

As part of a process of review by the Interim Director of Governance and the Trust Secretary, a number of areas have been identified where change to the current Constitution should be considered. This paper outlines those areas, with proposals for how that change should be structured.

The next steps would be to formally word the necessary changes to the Constitution, following views from Council and Directors on the best way forward on these areas (and any others that might be considered), which would then come for formal approval to Council's meeting in June 2023. As Constitutional amendments, the law requires that they receive the support of a majority of Council's members, and a majority of the Board's members, to be approved.

Item A- The 'Rest of England' constituency

Currently, the Trust Constitution provides for a 'rest of England' membership area, covering all of England not within the other parts of the Public Constituency. This was introduced in 2021 to support the Trust in being able to access appropriate talent for appointments to Non-Executive Director posts, particularly where specific skills or experience are desirable, given the relatively limited population available within the Trust's main geographical area. It is a requirement that Non-Executive Directors are members of the Trust when they enter office; and so they must live within the Trust's Public Constituency area.

Further experience suggests that having an area covering all of the remainder of England is probably unnecessary to meet the objective the Trust had in introducing it. It is therefore suggested to Council that the objective (ensuring a sufficient availability of talent to make good appointments as Non-Executive Directors) can be met by reducing the 'Rest of England' area to an 'Eastern Region' area, covering the local authority areas of¹

- Norfolk County Council
- Hertfordshire County Council
- Cambridgeshire County Council, and the City of Peterborough
- Bedford Borough, Central Bedfordshire, and Luton.

This would cover a population of approximately six to seven million (including Essex and Suffolk, within the other parts of the Public Constituency), giving sufficient scope to make appointments.

It is a statutory requirement that, for each public membership area, there is at least one Governor elected to represent public members in that area; but this seems to have been overlooked and there is currently no provision for a Governor to represent these members. In making the changes, we would therefore propose to introduce this Governor; with a Governor being likely to be sought in the Spring 2024 round of elections.

Proposal-

A.1 Reduce 'Rest of England' to 'Eastern Region' within the Public Constituency;

A.2 Introduce a Governor for the 'Eastern Region' area, in line with the statutory requirements, from the Spring 2024 elections.

Item B- Staff Constituencies

¹ The legislation requires that Public Constituency areas are defined by local authority wards or Divisions (the electoral areas that return Councillors), or combinations of them.

Currently, the areas for the election of Governors from the Staff Constituency are defined on a geographical basis; Governors are elected to represent Ipswich and Suffolk, and Colchester and Essex. Concerns have been expressed that the current arrangements do not guarantee an appropriate spread of representation for the various groups of staff: with some staff having effectively cross-Trust roles that do not conveniently fit into a Suffolk or Essex division of the Staff Constituency.

There are two main ways in which the system could be changed-

- We could move to arrangements where Governors are elected in groups to represent Acute-based staff and Community-based staff
- We could move to arrangements where Governors are elected to represent the main professional groups amongst staff.

Given there are only six staff Governor seats, in any of these three arrangements there remains the possibility that the Governors elected to Council would not represent a full diversity of the various staff locations, types and professional groupings; either because of the colleagues who choose to nominate for election, or because of the choices made by the electors of who they wish to elect to office. Whilst the Secretariat and Communications teams would continue to encourage a wide range of colleagues to consider standing, ultimately it is for the electors to determine who are Governors and the Trust is prohibited from interfering in that process.

Each of the three arrangements can also have difficulties of definition-

- As has previously been mentioned, as the Trust continues to mature following the merger in 2018 there are a greater number of staff who work at more than one site, which may cross the current geographical boundary;
- Similarly, there may be a number of staff whose work is difficult to identify as entirely (or even mainly) Acute-based or Community-based. This may particularly be the case in some corporate teams, that provide support across the range of Trust services;
- There may be some colleagues whose position could fit into more than one professional grouping if formed; definitions may also be more difficult in respect of colleagues who do not require statutory professional registration (GMC/ NMC/ HCPC), but may clearly be different from other groups and require separate representation. There would also need to be a category that included anyone not included in another category, to meet the statutory requirements that all staff have a Governor to represent them.

In light of these considerations, at this stage no positive recommendation as to which option to adopt is being made to Council; rather, we invite Governors to discuss the options and provide a steer as to their preferred way forward. A steer will be just that, and would not commit Council or Governors to supporting a change or the status quo when formal proposals are considered.

Proposal-

B. Council considers the options for possible changes to how the staff constituency is structured, and gives a steer as to a way forward.

Item C- Spread of seats in the public constituency

The *Code of Governance* indicates that Council should regularly review its structure to ensure that it continues to be appropriately representative. The position for staff Governors have been covered within item B above; this section looks at the arrangements for public Governors.

Currently, the distribution of public Governor seats on Council is-

Area	Seats	Population (approx)
Colchester	4	121,800
Rest of Essex	5	1,721,000
Ipswich	4	139,600
Rest of Suffolk	5	621,000
<i>(Rest of England/ Eastern Region- Governor to be added)</i>	1	N/A
Total public Governors	19	

Whilst the distribution of seats on Council does not have to be undertaken on a strictly proportional basis, and can take into account other factors such as the level of service provision for different areas, there is expected to be some relationship between population and the number of seats for the various parts of the public Constituency. In that regard, it would be relevant that whilst the membership area is all of Essex, the Trust only provides services for part of that area in most circumstances.

Overall, we are not making proposals to Council for changes in the distribution of seats within the Public Constituency. However, Council should give consideration to this and whether any changes would be desirable.

Proposal-

C. Council considers whether any changes in the structure of representation in the Public Constituency is required.

Area D- Partnership Governors

The Council currently includes the following Partnership Governors, with one Governor being nominated by each organisation-

- Tendring District Council and City of Colchester Council (joint nomination)
- Ipswich Borough Council and East Suffolk Council² (joint nomination)
- Essex County Council
- Suffolk County Council
- University of Essex and Anglia Ruskin University (joint nomination)
- University of Suffolk
- Colchester Garrison (Ministry of Defence)
- Essex HealthWatch
- Suffolk HealthWatch

Suffolk HealthWatch have indicated that they do not currently wish to make a nomination of a Partnership Governor, as part of a wider approach where they are not making such appointments to any provider at present. To enable them to be represented if they change that approach, and to ensure that there is still representation for HealthWatch across the Trust's area, it is proposed that we amend the provision to allow a joint appointment of one Governor by both HealthWatches.

There remains a continuing focus within the NHS on ensuring the leadership and governance appropriately represent the diversity of the community, Trust staff and the patients supported. In light of this, Council may wish to consider whether a Partnership Governor seat is created to be nominated by an organisation that supports diverse interests.

The Council should, more generally, give consideration as to whether any other changes in organisations that nominate a Partnership Governor would be appropriate.

² East Suffolk Council is the joint nominator as the statutory successor to Suffolk Coastal District Council, which is named in the Constitution.

Proposal-

- D.1 Create a single seat representing HealthWatch, with a joint nomination from HealthWatch Essex and HealthWatch Suffolk.**
- D.2 Council considers whether a Partnership Governor seat should be appointed by an organisation representing diversity in the communities served by the Trust.**
- D.3 Council considers whether any other changes in the arrangements for Partnership Governors are required.**

Area E- other changes

More generally, there are a number of more minor changes and tidying-up proposals that can be made within the Standing Orders for both the Council and the Board, to reflect more accurately how both operate in practice. In particular-

- The Standing Orders for the Board are written on the basis of formal procedures of motions, resolutions and votes; whereas the Board generally operates in a more collegiate and informal manner, which is similar to other Boards in Foundation Trusts. It would be intended to change the Standing Orders to reflect this, whilst providing appropriate protections and opportunities for formal procedures if required.
- Similarly, the Standing Orders for the Council are formal, which although more appropriate for Council may still represent an imbalance between efficient conduct of business and protecting minority opinions from elected Governors. We would propose to review the Standing Orders to seek an appropriate balance between the two.
- There is currently an unusual provision within Council's Standing Orders that, in the event of an equality of votes on a proposal, the Lead Governor gets a casting vote. It would be proposed that this provision is removed, and provision made that if there is an equality of votes the proposal is not agreed.

Proposal-

- E. Council note any specific matters within the Standing Orders, or other parts of the Trust Constitution, that might merit review.**