

Report to:	Council of Governors	Agenda item:	9
Date of Meeting:	13th June 2024		

Title of Report:	Council of Governors Terms of Reference Review
Status:	For approval
Board Sponsor:	Roxy Milbourne, Interim Head of Corporate Governance
Author:	Lauren McEwan, Corporate Governance Manager
Appendices	None

1. Executive Summary of the Report

The Council of Governors is responsible for approving and/or updating the Council of Governors Terms of Reference on an annual basis.

The Terms of Reference were last reviewed formally in June 2023. They have been reviewed and the following amendments are presented to you for approval as follows:

- Include reference to approval of significant transactions, mergers, acquisitions, separations or dissolutions to section 2.
- Include seeking views of the population of the local system within section 7.1.
- Include section on holding the Non- Executive Directors to account. See section 7.2.
- Inclusion of 2 additional bullet points to strengthen “holding the NEDs to account. See section 7.2.
- Removal of all references to the Quality Accounts as this is no longer audited.
- Removal of all references to NHS Improvement. See section 7.4.
- Approve the appointment of the Deputy Lead Governor. See section 7.5.
- Adjusting the title of the “Audit Committee” to read “Audit and Risk Committee”.

The Council of Governors is asked to approve the Terms of Reference for the next 12 months.

2. Recommendations (Note, Approve, Discuss)

The Council of Governor is asked to note and approve the contents of the Council of Governors Terms of Reference

3. Legal / Regulatory Implications

The Council of Governors are required to approve or amend the Terms of Reference on an annual basis.

4. Risk (Threats or opportunities, link to a risk on the Risk Register, Board Assurance Framework etc)

N/A

5. Resources Implications (Financial / staffing)

N/A

6. Equality and Diversity

N/A

7.	References to previous reports
N/A	

8.	Freedom of Information
Public	

9.	Sustainability
N/A	

10.	Digital
N/A	

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~~2022. This document should be read in conjunction with the Act.

2. General duties

The general duties of the Council of Governors are:

- (a) to hold the Non-Executive Directors individually and collectively to account for the performance of the Trust Board, and
- (b) ~~(b)~~ to represent the interests of the members of the NHS Foundation Trust as a whole and the interests of the public, and
- (c) to approve 'significant transactions', mergers, acquisitions, separations or dissolutions.

Formatted: List Paragraph, Indent: Left: 1.27 cm, Hanging: 1.23 cm, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.27 cm + Indent at: 3.81 cm

3. Standing

The full meeting of the Council of Governors and its Nominations and Remuneration Committee are the bodies 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 Trust Chair is the chair of the Council of Governors and presides over the meetings of the Council of Governors.

If the Trust Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Trust Vice Chair shall preside. If the Vice Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director shall be appointed by the Council of Governors for that meeting shall preside.

5. Quorum

The quorum for meetings of the Council of Governors is set out in the Constitution and requires one third of the total number of Governors to be present, including 3 Public Governors and 2 Staff Governors.

6. Council of Governors Committees

Author : Roxy Milbourne, Deputy Head of Corporate Governance	Date: May 2022
Document Approved by: Council of Governors	Version: 1.0
Agenda Item:	Page 1 of 6

The Council of Governors will establish:

- A Nominations and Remuneration Committee; and
- Such other committees, working groups and task and finish groups as necessary.

7. The Role of the Council of Governors

7.1 Representing Members and the Public

- Approve the Membership Development & Engagement Strategy.
- Contribute to members' and other stakeholders' understanding of the work of the Trust in line with engagement and communication strategies.
- Seek the views of stakeholders, including members and the public, this includes the population of the local system of which the Trust is part, and feedback relevant information to the Board of Directors or to individual managers within the trust as appropriate.
- Act as ambassadors in order to raise the profile of the Foundation Trust's work with the public and other stakeholders.
- Promote membership of the Foundation Trust and contribute to opportunities to recruit members in accordance with the Membership Strategy.
- Attend events that facilitate contact between members, the public and Governors to promote Governor accountability.
- Report to members each year on the performance of the Council of Governors.

7.2 Holding the Non-Executive Directors to Account

The Council of Governors must hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors. [In holding Non-Executive Directors to account for the performance of the Board, the Council of Governors should consider whether the interests of the public at large have been factored into board decision-making, and be assured of the board's performance in the context of the system as a whole and as part of the wider provision of health and social care.](#) It must agree a process and dialogue with the Board of Directors that will enable them to fulfil this duty.

As part of this a good working relationship between the Board of Directors and Council of Governors is critical; it can be fostered by meeting regularly and

Author : Roxy Milbourne, Deputy Head of Corporate Governance	Date: May 2022
Document Approved by: Council of Governors	Version: 1.0
Agenda Item:	Page 2 of 6

with sufficient frequency to establish appropriate channels of communication and constructive challenge.

Some of the following may support this process and dialogue:

- Receive the agenda of the meetings of the Board of Directors before the meeting takes place.
- Receive the minutes of the meeting of the Board of Directors as soon as is practicable after the meeting.
- Governors to observe the Board of Directors' meetings to provide assurance to Governor sub-committees.
- Governors to observe the sub-committees of the Board to see the Non-Executive Directors in their holding to account role and provide assurance to Governor sub-committees
- Holding discussions with the NED committee chairs when they attend working group meetings.
- Be equipped by the Foundation Trust with the skills and knowledge they require in their capacity as Governors.
- Receive the Annual Report of the Audit and Risk Committee on the work, fees and performance of the External Auditor.
- Receive the Annual Report and Accounts (including Quality Accounts).
- Receive reports of the Board of Directors on the performance of the Foundation Trust against agreed key financial, operational, quality and regulatory compliance indicators and stated objectives.
- Participate in opportunities to review services and environments such as PLACE inspections/quality reviews/local activities and evaluation of user/carer experience.
- Receive reports from the Board of Directors on important sectoral or strategic issues.
- Use information obtained through the above sources to monitor performance and progress against the key milestones in the strategic, quality and annual plans and to hold the Non-Executive Directors to account for the performance of the Board of Directors.

Formatted: Space Before: 12 pt

Commented [LM1]: Should we also include the ward accreditation programme?

Author : Roxy Milbourne, Deputy Head of Corporate Governance	Date: May 2022
Document Approved by: Council of Governors	Version: 1.0
Agenda Item:	Page 3 of 6

- If considered necessary (as a last resort), in the fulfillment 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 Governors meeting.

7.3 Non-Executive Directors, Chief Executive and the External Auditors

- Approve the policies and procedures for the appointment and where necessary for the removal of the Trust Chair and Non-Executive Directors on the recommendation of the Council of Governors Nominations and Remuneration Committee.
- Approve the appointment or removal of a Trust Chair on the recommendation of the Council of Governors Nominations and Remuneration Committee.
- Approve the appointment or removal of a Non-Executive Director on the recommendation of the Council of Governors Nominations and Remuneration Committee.
- Approve the policies and procedures for the appraisal of the Trust Chair and Non-Executive Directors on the recommendation of the Council of Governors Nominations and Remuneration Committee.
- Approve changes to the remuneration, allowances and other terms of office for the Trust Chair and other Non-Executive Directors on the recommendation of the Council of Governors Nominations and Remuneration Committee.
- Approve or where appropriate decline to approve the appointment of a proposed candidate as Chief Executive recommended by the Non-Executive Directors.
- Approve the criteria for appointing, re-appointing or removing the Trust's External Auditor.
- Approve the appointment or re-appointment and the terms of engagement of the External Auditor on the recommendation of the Audit [and Risk](#) Committee.

7.4 Constitution and compliance

- Jointly approve with the Board of Directors amendments to the NHS Foundation Trust's Constitution, subject to any changes in respect of the powers, duties or role of the Council of Governors being ratified at

Author : Roxy Milbourne, Deputy Head of Corporate Governance	Date: May 2022
Document Approved by: Council of Governors	Version: 1.0
Agenda Item:	Page 4 of 6

the next Annual Members Meeting (at which a member of the Council of Governors needs to present the change).

- Notify NHS [Improvement, England](#), via the Lead Governor, if the Council of Governors is concerned that the Trust is at risk of breaching its Provider Licence from the regulator if these concerns cannot be resolved at the local level.

7.5 Governors

- 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.
- Approve the appointment and role of the Lead Governor every two years.
- Approve the appointment of the Deputy Lead Governor. This role will succeed the Lead Governor and provide continuity of experience.
- Receive quarterly reports from the Chairs of the Council of Governors' Working Groups on the discharge of the Groups duties.
- Approve the removal from office of a Governor in accordance with procedure set out in the Foundation Trust's Constitution.

Formatted: Space Before: 12 pt

7.6 Strategy, Planning and Reorganisations

- Provide feedback on the development of the strategic direction of the NHS Foundation Trust to the Board of Directors as appropriate.
- Contribute to the development of stakeholder strategies, including member engagement strategies.
- Act as a critical partner to the Board of Directors in the development of the Business Plan.
- Where the Business Plan 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 it will interfere or not in the fulfillment by the Foundation Trust of its principal purpose (the provision of goods and services for the purposes of the health service in England). Notify the Board of its determination.
- Approve or not approve increases to the proposed amount of income derived from the provision of goods and services other than for the

Author : Roxy Milbourne, Deputy Head of Corporate Governance	Date: May 2022
Document Approved by: Council of Governors	Version: 1.0
Agenda Item:	Page 5 of 6



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

- 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.
- Approve or not approve proposals for significant transactions as defined in the Foundation Trust's Constitution or such other transactions as the Board of Directors 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.

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 meets four times a year.

10. Minutes

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

11. Review

The Council of Governors will review this document annually.

Author : Roxy Milbourne, Deputy Head of Corporate Governance	Date: May 2022
Document Approved by: Council of Governors	Version: 1.0
Agenda Item:	Page 6 of 6