

EXECUTIVE SUMMARY**REPORT TO THE BOARD OF DIRECTORS****17TH APRIL 2013**

| | |
|------------------------------|-----------------------------------|
| Subject | Trust Constitution Review |
| Supporting TEG Member | Neil Riley, Trust Secretary |
| Author | Andy Challands, Assurance Manager |
| Status¹ | N |

PURPOSE OF THE REPORT

To seek the Board of Director's approval for Version 3.1 of the Trust's Constitution prior to submission to the Council of Governors for approval.

KEY POINTS

- The Trust's Constitution was drawn up in 2004 and had been subject to only minor amendment.
- In July 2012 TEG and the Board approved proposals to undertake a thorough review and a timetabled programme of phased re-drafts in order to:
 - update the constitution and key supporting documents to ensure the Trust's governance arrangements followed best practice and were internally coherent
 - maintain compliance with relevant provisions of the Health and Social Care Act as the Commencement Orders were made.
- The Trust Constitution Review Steering Group (TCRSG), a joint task-and-finish committee of the Board and the Council of Governors, was established to provide oversight of the review process and to approve all re-drafts of the Constitution and relevant complementary documents prior to approval by TEG, the Board of Directors, the Council of Governors and Monitor.
- Phase 1 of the programme, to review and redraft the original Constitution to ensure compliance with provisions of the Health and Social Care Act that came into force from 1st October 2012 under Commencement Order 2, was completed and approved by the Trust in November 2012. Monitor gave final approval to Version 2 of the Constitution in February 2013 following a number of non material amendments.
- TCRSG originally planned Phase 2 of the programme i.e. to redraft Version 2 using Monitor's Model Core Constitution and to update or develop supporting documents, would be completed by early 2013. However, the scale and complexity of the work was greater than had been envisaged and in December 2012 the Steering Group approved slippage in the timetable.
- In the absence of prior confirmation that the remaining relevant provisions of the Health and Social Care Act would be in force by the 1st April 2013, the work on Version 3 and the supporting documents was completed and approved by the TEG and the Board of Directors in February 2013, awaiting final approval by the Council of Governors at an extra-ordinary meeting to be held in March 2013.
- However, before the extra-ordinary meeting of Council of Governors was held, the fourth Commencement Order for the Health and Social Care Act was released confirming that all relevant outstanding provisions would be in force on 1st April 2013, including the requirement to notify Monitor rather than seek its approval of any amendments to FT constitutions. In response, the Board of Directors agreed to cancel the extra-ordinary meeting of Council of Governors pending a further redraft of Version 3 for approval at the scheduled Council of Governors meeting in April 2013.

- Version 3.1 which is compliant with the fourth Commencement Order of the Health and Social Care Act is attached. The main amendments (highlighted in yellow) are:
 - Paragraph 11 and Annex 4: The requirement and provisions to hold an Annual Members Meeting.
 - Paragraph 17: A significant change in the duties of Governors to hold the NEDs individually and collectively to account for the performance of the Board of Directors and to represent the interests of members and of the public. In addition, the Trust is responsible for ensuring appropriate training for Governors to undertake their new duties.
 - Paragraph 20: The provision for Governors to refer matters of non-compliance with the Trust's Constitution to a Panel appointed by Monitor.
 - Paragraph 25: The inclusion of a description of the general duty of the Board of Directors.
 - Paragraph 31: The requirement to hold Board meetings in public and to make available agenda and minutes to the Council of Governors.
 - Paragraph 37.2: The requirement to make available to the public relevant documents, in the event of a special administration of the Trust.
 - Paragraph 44 and Annex 11: A major review and update of dispute resolution procedures between the Council of Governors and the Board of Directors.
 - Paragraph 45: Provisions for amending the Constitution, notably that responsibility for approval rests with the Council of Governors with a proviso that any change in relation to Council must be presented to members for ratification at the Annual Members Meeting. Monitor must be notified of any amendment.
 - Paragraph 46: Provisions relating to approval for mergers etc and for significant transactions, as defined.
- Subject to approval by the Board of Directors, Version 3.1 of the Constitution will be submitted for approval at the meeting of the Council of Governors on 30 April 2013.
- As the TCRSG had successfully discharged its duties under its terms of reference, the dissolution of the steering group was agreed at their meeting of 25 March 2013.

IMPLICATIONS²

| AIM OF THE STHFT CORPORATE STRATEGY 2012-2017 | | TICK AS APPROPRIATE |
|---|--|---------------------|
| 1 | Deliver the Best Clinical Outcomes | X |
| 2 | Provide Patient Centred Services | X |
| 3 | Employ Caring and Cared for Staff | X |
| 4 | Spend Public Money Wisely | X |
| 5 | Deliver Excellent Research, Education & Innovation | X |

RECOMMENDATIONS

The Board of Directors is asked to **APPROVE** Version 3.1 of the Trusts' Constitution prior to seeking approval at the meeting of the Council of Governors on 30 April 2013.

APPROVAL PROCESS

| Meeting | Date | Approved Y/N |
|--------------------|----------|--------------|
| TCRSG | 25.03.13 | Y |
| TEG | 10.4.13 | Y |
| Board of Directors | 17.4.13 | |