

SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST

EXECUTIVE SUMMARY

REPORT TO THE COUNCIL OF GOVERNORS

14 DECEMBER 2021

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|------------------------------|---|
| Subject | Terms of Reference for Council of Governors |
| Supporting TEG Member | Sandi Carman, Assistant Chief Executive |
| Author | Jane Pellegrina, Foundation Trust Membership Office Manager |
| Status | For Approval |

PURPOSE OF THE REPORT

To seek the Council of Governors’ approval of the updated Terms of Reference for the Council of Governors.

KEY POINTS

An annual review of the Terms of Reference for the Council of Governors has been completed by the Assistant Chief Executive and the Foundation Trust Membership Office Manager. The changes identified are noted below:

| Section | Change |
|---------------|--|
| Page 2 | Amended wording to reflect current approach |
| Page 4 | Add Deputy Lead Governor following recent developments |
| Page 6 | Amend dates and one change in title |
| Pages 8 & 9 | Delete Lead Governor role and appointment process |
| Pages 10 - 13 | Add agreed new criteria, eligibility and process for the appointment of a Lead Governor and a Deputy Lead Governor |
| Throughout | Auditor becomes External Auditor |

For ease of reference all of the changes have been tracked in the document attached.

IMPLICATIONS

| AIM OF THE STHFT CORPORATE STRATEGY 2017-2020 | TICK AS APPROPRIATE |
|--|---------------------|
| 1 Deliver the Best Clinical Outcomes | ✓ |
| 2 Provide Patient Centred Services | ✓ |
| 3 Employ Caring and Cared for Staff | ✓ |
| 4 Spend Public Money Wisely | ✓ |
| 5 Deliver Excellent Research, Education & Innovation | ✓ |

RECOMMENDATIONS

The Council of Governors is asked to **APPROVE** the updated Terms of Reference for the Council of Governors.



TERMS OF REFERENCE

COUNCIL OF GOVERNORS

1. PURPOSE

In accordance with the Constitution, the Trust has a Council of Governors who are elected by members of the Trust or appointed by partner organisations.

The purpose of the Council of Governors is to:

- Hold the Non-Executive Directors individually and collectively to account for the performance of the Unitary Board of Directors.
- Represent the interests of the members of the Trust as a whole and the interests of the public.

(Note: 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)

2. DUTIES/RESPONSIBILITIES

2.1 General

- To act at all times in the best interests of the Trust and in accordance with the Provider Licence, the Constitution and the Governors' Code of Conduct.
- To promote the achievement of the Trust's objectives within its Provider Licence and of its Principal Purpose as set out in the Constitution.
- To approve the policies and procedures for the appointment, re-appointment, removal, appraisal and remuneration of the Chair of the Board of Directors and Non-Executive Directors on the recommendation of the Council of Governors' Nomination and Remuneration Committee.
- To approve the appointment or re-appointment of the Chair and Non-Executive Directors of the Board of Directors on the recommendation of the Council of Governors' Nomination and Remuneration Committee and having taken into account the views of the Board of Directors on the [composition of the Board in terms of balance of skills, experience and diversity](#). ~~qualifications, skills and experience required for each position as Non-Executive Director.~~
- To approve the removal of the Chair or a Non-Executive Director of the Board of Directors on the recommendation of the Council of Governors' Nomination and Remuneration Committee, providing that the Council of Governors has first exhausted all other means of resolving the matter at issue in accordance with the *NHS Foundation Trust Code of Governance*.
- To approve the remuneration, allowances and other terms of office on appointment and any changes thereafter for the Chair and Non-Executive Directors of the Board of Directors on the recommendation of the Council of Governors' Nomination and Remuneration Committee.

- To approve the appointment of the Chief Executive recommended by the Non-Executive Directors.
- To approve the criteria for appointing, re-appointing and removing the [External Auditor](#) on the recommendation of the Audit Committee.
- To appoint, re-appoint and/or remove the [External Auditor](#) and to approve the terms of engagement of the Auditor on the recommendation of the Audit Committee.
- To receive the Annual Accounts, any report of the Auditor on the Annual Accounts and the Annual Report, including the Quality Report.
- To receive and consider updates on the Trust's strategic direction and act as a critical friend in providing feedback to the Board of Directors on the development of the Trust's Operational Plan.
- To consider any proposal in the Operational Plan to carry on non-NHS activity, and to be satisfied that such proposals will not interfere with the Trust's principal purpose (the provision of goods and services for the purposes of the health service in England) and to notify the Board of Directors of the Council of Governors' opinion.
- To approve any proposal to increase the amount of income derived from the provision of goods and services other than for the purpose of the NHS in England where such an increase is greater than by 5% or more in any financial year.
- To approve proposals from the Board of Directors in respect of mergers, acquisitions, separations and dissolutions and significant transactions as defined in the Constitution.

2.2 Constitution

- To jointly approve with the Board of Directors any amendment to the Constitution.
- To approve the removal from office of a Governor in accordance with the procedure outlined in the Constitution.
- To approve the expulsion of a member of the Trust in accordance with the procedure outlined in the Constitution.
- With the support of the Assistant Chief Executive to convene an Annual Members' Meeting and to present an Annual Report to members, in accordance with the Constitution.
- In collaboration with the Board of Directors, to approve and routinely review the procedure for the resolution of disputes between the Board of Directors and the Council of Governors as outlined in the Constitution.

2.3 Holding the Board of Directors to Account

- To receive the agenda and minutes of the meetings of the Board of Directors.
- To develop and maintain good working relationships with the Board of Directors by meeting regularly and with sufficient frequency to establish appropriate channels of communication and constructive challenge.
- Hold the Non-Executive Directors individually and collectively to account for the performance of the unitary Board of Directors.
- In addition to statutory duties, to receive and comment on reports by the Board of Directors on the performance of the Trust against agreed financial, operational, quality and regulatory compliance indicators and on progress against key milestones in the strategic and annual plans.

- Receive the annual report of the Audit Committee on the work, fees and performance of the [External Auditor](#).

2.4 Membership Engagement

- To represent the interests of Trust members and members of the public.
- To approve the membership engagement strategy.
- To promote membership of the Trust and contribute to opportunities to recruit members in accordance with the membership strategy.
- Contribute to members' and other stakeholders' understanding of the work of the Trust by feeding back and seeking the views of the relevant member constituencies and partner organisations who elect / appoint Governors and the wider public.
- To act as ambassadors in order to raise the profile of the Trust's work with the public and other stakeholders.
- To attend relevant Trust events that facilitate contact between members, the public and Governors to promote governor accountability.

2.5 Compliance

- To ensure the Trust complies with its Provider Licence, the Constitution and any other applicable legislation and regulation.
- To engage with the Board of Directors as a critical friend if the Council of Governors has concerns about the Trust's compliance with its Provider Licence, the Constitution and any other applicable legislation and regulation.
- To inform NHS Improvement, via the Lead Governor, if the Council of Governors is concerned that the Trust is at risk of breaching its Provider Licence and the Directors have failed to address non-compliance and concerns cannot be resolved at the local level.

2.6 Other Duties and Responsibilities

- To approve the allocation of members to committees or working groups of the Council of Governors and approve or ratify governor representatives on any Trust group or committee by invitation.
- To approve the comments or contributions of the Council of Governors, its committees or any working groups on Trust strategies, plans, policies and procedures, as appropriate.
- Contribute to the development of the Annual Report and Accounts, including the Quality Report, as appropriate.
- Participate in opportunities to review services and environments such as Patient-Led Inspections of the Care Environment; quality reviews; local evaluations of the user/carer experience etc.
- To approve the appointment of the Lead Governor; [the Deputy Lead Governor](#) and the Vice-Chair of the Council of Governors' Nomination and Remuneration Committee, following an open election.
- Be equipped by the Trust with the skills and knowledge they require in their capacity as Governors.

3. **ACCOUNTABLE TO**

The Council of Governors represents the interests of and is accountable to the membership of the Trust

(Note: The Council of Governors has a broader duty to represent the interests of the general public in the area served by the Trust.)

4. **REPORTS TO AND METHOD (INCLUDING MINUTES CIRCULATION)**

The Council of Governors reports to the membership of the Trust.

The Council of Governors meet in public and the agenda, papers and minutes for all the meetings are posted on the Trust's website.

A report on the work of the Council of Governors shall be given at the Annual Members' Meeting.

5. **MEMBERSHIP**

Members

| DESIGNATION |
|--|
| Chair of the Board of Directors / Council of Governors |
| Three Public Governors (Sheffield North) |
| Three Public Governors (Sheffield South West) |
| Three Public Governors (Sheffield West) |
| Three Public Governors (Sheffield South East) |
| One Public Governor (Outside of Sheffield) |
| Seven Patient Governors |
| Staff Governor (Medical and Dental) |
| Staff Governor (Nursing and Midwifery) |
| Staff Governor (Allied Health Professionals, Scientists and Technicians) |
| Staff Governor (Ancillary, Works and Maintenance) |
| Staff Governor (Administration, Management and Clerical) |
| Staff Governor (Primary and Community Services) |
| Appointed Governor (NHS Sheffield Clinical Commissioning Group) |
| Appointed Governor (The University of Sheffield) |
| Appointed Governor (Sheffield Hallam University) |
| Appointed Governor (Sheffield City Council) |
| Appointed Governor (Sheffield City Council) |
| Appointed Governor (Sheffield College) |
| Appointed Governor (Voluntary Action Sheffield) |

Chair

The Council of Governors will normally be chaired by the Chair of the Board of Directors. Provision for chairing the meeting if the Chair is absent from the meeting or is temporarily absent on the grounds of a declared conflict of interest are set out in the Constitution.

Standing invitation

| DESIGNATION |
|---|
| All Non-Executive Directors |
| Chief Executive |
| <u>Chief Finance Officer</u> Director of Finance |
| Chief Nurse |
| Medical Director (Development) |
| Medical Director (Operations) |
| Chief Operating Officer |
| Director of Human Resources and Staff Development |
| Director of Strategy and Planning |
| Assistant Chief Executive |
| Communications and Marketing Director |

In attendance

| DESIGNATION |
|--|
| Foundation Trust Membership Office Manager |
| Corporate Governance Manager |

(Note: Trust Members and members of the public are invited to attend.)

Serviced by

| DESIGNATION |
|--------------------------------------|
| Business Manager, Board of Directors |
| Membership Manager |

6. QUORUM

One-third of the Governors which must include at least five Public Governors, one Patient Governor and one Staff Governor.

7. MEETING FREQUENCY AND PROCEDURES (MINIMUM IF APPLICABLE)

At least four meetings held in any one Financial Year including an Annual Members' Meeting.

8. DATE TERMS OF REFERENCE WERE LAST APPROVED

1~~5~~⁷ December 20~~19~~²⁰, Council of Governors meeting TBC

9. REVIEW DATE

December 202~~20~~²⁰.

(Note: These Terms of Reference shall be reviewed annually)

10. PROCESS FOR REVIEWING EFFECTIVENESS

With the support of the Assistant Chief Executive, the Council of Governors will carry out an annual review of its work including the effectiveness and efficiency in the discharge of its responsibilities, its success in meeting the objectives of its membership strategy and a record of Governor attendance at meetings. The outcome of the review shall be reported to the Annual Members' Meeting.

11. REPORTING STRUCTURE

Council of Governors' Nomination and Remuneration Committee
Governors' Forum
Such other groups/committees as required from time to time
Task and finish working groups as necessary

~~COUNCIL OF GOVERNORS
PROCESS FOR APPOINTING THE NOMINATED LEAD GOVERNOR~~

~~1. Context~~

~~The Monitor* NHS Foundation Trust Code of Governance (July 2014) sets out the requirement for Trusts to appoint a Lead Governor. A description of the role as adopted by Sheffield Teaching Hospitals is attached and can be found as appendix 1 of the Terms of Reference of the Council of Governors.~~

~~— An outline of the process for the appointment of the Lead Governor was as originally approved by the Council of Governors at meeting on 20 November 2012.~~

~~2. Appointment Process~~

~~— When a vacancy occurs the Chair will inform all governors of the vacancy and invite expressions of interest in the role. Governors interested in taking up the role should, in the first instance, discuss their intentions with the Chair. In the event that a number of governors express an interest, a ballot amongst governors will be held and each candidate will be invited to submit a short statement supporting their application to take up the role.~~

~~3. Process following Selection of the Lead Governor~~

~~— The Chair will~~

- ~~• Report the outcome of the ballot to the Council of Governors~~
- ~~• Write to the governor confirming their appointment as Lead Governor~~

~~— The Assistant Chief Executive will:~~

- ~~• Notify NHS Improvement of the appointment~~

~~* Now NHS Improvement~~

The Role of the Nominated Lead Governor

The lead governor has a role to play in facilitating direct communication between NHS Improvement (NHSI) and the Trust's Council of Governors. This contact is likely to be infrequent and will occur in a limited number of circumstances but particularly where it may not be appropriate for NHSI to communicate through the normal channels, which in most cases would be via the Trust Chair or the Trust Secretary.

It is not anticipated that there will be regular direct contact between NHSI and the Council of Governors in the ordinary course of businesses. Where contact is necessary it is important that it happens quickly and effectively. To this end a lead governor should be nominated and contact details provided to NHSI. The lead governor may be nominated from any of the governors.

The main circumstances where NHSI will contact the lead governor are where NHSI has concerns as to Board leadership provided to a Foundation Trust and those concerns may in time lead to the use by NHSI of its formal power to remove the Chair or Non-Executive Directors and it will usually be the case that NHSI will wish to understand the views of the governors as to the capacity and capability of these individuals to lead the Trust and to rectify successfully any issues and also for the governors to understand NHSI's concerns.

NHSI does not envisage direct communication with the governors until such time as there is a real risk that the Trust may be in significant breach of its licence. Once there is a risk that this may be the case, and the likely issue is one of Board leadership, NHSI will often wish to have direct contact with the Trust governors but at speed and through one established point of contact, the Trust's nominated lead governor. The Trust should support the lead governor in understanding of NHSI's role, particularly the basis on which NHSI may take regulatory action, to ensure the lead governor is able to correctly communicate more widely with other governors.

Similarly, where individual governors may wish to contact NHSI, this would be expected to be through the lead governor.

The other circumstance where NHSI may wish to contact the lead governor is where, as the regulator, NHSI has been made aware that the process for the appointment of the Chair or other members of the Board, or elections for governors, or other material decisions, may not have complied with the Trust's Constitution, or alternatively, whilst complying with the Trust's Constitution, may be inappropriate. In such circumstances, where the Chair, other member of the Board of Directors or the Trust Secretary may have been involved in the process by which these appointments or other decisions were made, the lead governor may provide the point of contact for NHSI.

At Sheffield Teaching Hospitals the role of lead governor has developed since the role's inception in 2008 and in addition to the duties set out above now also includes the following:

- With the Convener of the Governors' Forum meets informally with the Chair and Assistant Chief Executive between four and six times per year.
- Where appropriate, supports the Chair in ensuring that governors act within the STH Governors' Code of Conduct. This is an infrequent duty but one which may arise should individual cases of misconduct occur.

The following wording replaces the wording on pages 8 & 9

**Criteria, eligibility and process for the appointment of
a Lead Governor and a Deputy Lead Governor**

1 Introduction

- 1.1** Since 2010 Monitor, now NHS Improvement (NHSI), has required all NHS Foundation Trusts to have a lead governor to facilitate direct communication in the limited circumstances where it may not be appropriate to communicate through the normal channels.

The criteria, eligibility and process for the selection of a lead governor and deputy lead governor within Sheffield Teaching Hospitals NHS Foundation Trust (STH) are outlined in this document.

2 Primary role and accountability

2.1 Lead governor

The primary purpose of the lead governor is to facilitate direct communication between the Regulator (NHSI) and the governors. NHSI does not envisage regular direct communication with governors save where there may be a real risk of the Trust significantly breaching its licence or constitution and where concerns cannot be satisfactorily resolved via the normal channels. Once there is a risk that this may be the case, and the likely issue is one of board leadership, NHSI may wish to make contact with the governors at speed, through one established point of contact – the lead governor. This will enable governors to understand the Regulator’s concerns and in understanding the views of governors as to the capacity and capability of individuals to lead the Trust and to rectify, successfully, any issues.

The Trust should support the lead governor in understanding NHSI’s role, particularly the basis on which NHSI may take regulatory action, to ensure the lead governor is able to correctly communicate more widely with other governors.

The lead governor is accountable to the Council of Governors as a collective and the Trust Chair. Other than the specified additional responsibilities, the role does not hold any additional responsibility or powers beyond those of an individual governor.

Similarly, but not exclusively, where individual governors may wish to contact NHSI, this would be expected to be through the lead governor.

2.2 Deputy lead governor

The primary role of the deputy lead governor is to deputise for the lead governor and to provide the Trust with a point of contact for the Council of Governors in the event that the lead governor is unavailable for a period of time or has a conflict of interest.

The deputy lead governor is accountable to the Council of Governors as a collective and the Trust Chair. Other than the specified additional responsibilities, the role does not hold any additional responsibility or powers beyond those of an individual governor.

3. Criteria and eligibility

3.1 The Council of Governors will select a public or patient governor to undertake the role of lead governor and deputy lead governor of STH. The selection of a public or patient governor will:

- afford greater independence,
- ensure adequate time can be committed to the role (which may potentially be an issue for both staff and appointed governors),
- avoid potential conflicts of interest that may arise for staff governors.

3.2 Governors wishing to undertake the role of lead governor or deputy lead governor must:

- have served as a governor for at least one year,
- be able to commit time to undertake the role,
- be prepared to acquire knowledge and understanding of the arrangements/requirements of the role and the responsibilities attaching,
- understand NHSI's role as an external regulator and the requirements of the Trust constitution,
- uphold the values of the Trust, understanding and championing the Trust's PROUD values,
- be committed to the success of the Trust.

3.3 Desirable personal qualities for a lead governor include:

- excellent interpersonal and communication skills,
- the ability to deal with potential conflicts,
- the ability to command the respect, confidence and support of their governor colleagues,
- the ability to represent the views of their governor colleagues.

4. Process

4.1 The lead governor and deputy lead governor will be selected by the Council of Governors.

4.2 The process for the selection and appointment of the lead governor and deputy lead governor is as follows:

4.2.1 Upon a vacancy arising, the Chair will inform the Council of Governors of the vacancy and invite public and patient governors to express interest in the role.

4.2.2 Where more than one nomination is received, a confidential ballot of all governors will be held. Nominees will provide a short nomination statement describing their reasons for standing and a ballot paper showing all the candidates and their nomination statements will be distributed to all governors. Votes will be counted on a 'first past the post' basis. The Membership Manager will act as returning officer and at the deadline for receipt of votes will provide the outcome of the ballot to the Chair for announcement of the result to the Council of Governors. Ballot papers will be kept for six months and made available for scrutiny if required.

4.2.3 Where only one nomination is received, the Council of Governors will be asked to ratify the appointment.

4.2.4 The term of office of the lead governor and deputy lead governor will be for a period of three years, to run concurrently with the term of office as a governor or:

- until they resign the position by giving notice to the Chair; or
- until they are removed from the position by a resolution passed at a general meeting of the Council of Governors.

At the end of their term of office an individual may stand for re-election to the role. Governors serving as lead governor are eligible to nominate themselves for the role of deputy lead governor and visa versa.

4.2.5 The Assistant Chief Executive will notify NHSI of any change of lead governor.