

BOARD OF DIRECTORS MEETING

Agenda Item	P1/116/18	Date: 31st October 2018
Subject /title	Proposed amendment to Trust Constitution	
Author	David Holden – Associate Director of Corporate Governance (interim)	
Responsible Director	On behalf of the Chair of the Trust – Philip Edgington - David Holden, Associate Director of Corporate Governance (interim)	
Executive summary and key issues for discussion		
<p>Section 12.11.1 of the Trust’s Constitution concerns the disqualification of directors becoming members of the Trust Board. As the Constitution currently stands, this applies equally to executive and non-executive directors.</p> <p>In 2014, the regulation regarding ‘disqualification of directors’ criteria was revised. This was primarily aimed to support NHS organisations (CCG’s and NHS Trust’s) recruit non-executive directors and was then a choice for Foundation Trusts to adopt or not. At that time along with the majority of Foundation Trust’s, CCC decided not to amend its Constitution to reflect this change. More recently the benefit of this change has been realised and therefore it is proposed that section 12.11.1 of the Trust’s constitution is amended.</p> <p>Non-executive directors often have a portfolio career of NED roles across public, private and charitable sectors. Removing the constraint that NEDs can only undertake one NHS NED role will assist the trust in broadening its range for attracting future candidates for non-executive director positions.</p> <p>Increasingly, executive directors are being called upon to be the director of more than one NHS board when collaborative/shared working takes place across a local geographical area. E.g. STP working. However, this is currently a contracting issue between two or more organisations, rather than it being concerned with recruitment or for strategic organisational reasons. Removing the word director will ensure that the Constitution is fit for change in the future.</p> <p>The proposal therefore is that the word “director” be removed from the Constitution in order to provide the flexibility for board members, especially non-executive directors as outlined above, to sit on more than one NHS board.</p> <p>Matters on the “fit and proper person test” and on “conflicts of interest” will continue to be monitored and managed for all board members in the same way as present, following the Trust’s policies and national guidance.</p> <p>The only other matter to raise with the Trust Board is to advise that it is good practice to review the Constitution on an annual basis (with the Standing Orders, Standing Financial Instructions and Delegated Authority rights) to ensure that it remains relevant and in line with statutory guidance and local practice. It is advised that a full review of the Constitution takes place in the next six months when the new Chair and Chief Executive Officer have joined the Trust.</p>		

Strategic context and background papers (if relevant)														
N/A														
Recommended Resolution														
<p>The Board resolves:</p> <ul style="list-style-type: none"> That the words “or director” be removed from Section 12.11.1; 1.1 sub-section 1.1.1. as detailed in the extract of the Constitution provided in this paper. 														
Risk and assurance														
There are no risks associated with this item at this time.														
Link to CQC Regulations														
Regulation 17 - Good Governance														
Resource Implications														
Not applicable for this paper.														
Key communication points (internal and external)														
<ol style="list-style-type: none"> 1. Current board of directors note this change. 2. CCC staff undertaking recruitment of future board members (executive and non-executive directors) to be aware of this change. 														
Freedom of Information Status														
<p>FOI exemptions must be applied to specific information within documents, rather than documents as a whole. Only if the redaction renders the rest of the document non-sensical should the document itself be redacted.</p> <p>Application Exemptions:</p> <ul style="list-style-type: none"> Prejudice to effective conduct of public affairs Personal Information Info provided in confidence Commercial interests Info intended for future publication 	<p>Please tick the appropriate box below:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; text-align: center; border: 1px solid black; padding: 5px;"><input checked="" type="checkbox"/></td> <td>A. This document is for full publication</td> </tr> <tr> <td style="text-align: center; border: 1px solid black; padding: 5px;"><input type="checkbox"/></td> <td>B. This document includes FOI exempt information</td> </tr> <tr> <td style="text-align: center; border: 1px solid black; padding: 5px;"><input type="checkbox"/></td> <td>C. This whole document is exempt under FOI</td> </tr> </table> <p>IMPORTANT:</p> <p>If you have chosen B above, highlight the information that is to be redacted within the document, for subsequent removal.</p> <p>Confirm to the Trust Secretary, which applicable exemption(s) apply to the whole document or highlighted sections.</p>		<input checked="" type="checkbox"/>	A. This document is for full publication	<input type="checkbox"/>	B. This document includes FOI exempt information	<input type="checkbox"/>	C. This whole document is exempt under FOI						
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Equality & Diversity impact assessment														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%; padding: 5px;"></th> <th style="width: 20%; padding: 5px; text-align: center;">Yes</th> <th style="width: 20%; padding: 5px; text-align: center;">No</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Are there concerns that the policy/service could have an adverse impact because of:</td> <td></td> <td></td> </tr> <tr> <td style="padding: 5px;">Age</td> <td></td> <td style="text-align: center;">X</td> </tr> <tr> <td style="padding: 5px;">Disability</td> <td></td> <td style="text-align: center;">X</td> </tr> </tbody> </table>				Yes	No	Are there concerns that the policy/service could have an adverse impact because of:			Age		X	Disability		X
	Yes	No												
Are there concerns that the policy/service could have an adverse impact because of:														
Age		X												
Disability		X												

Sex (gender)		X	
Race		X	
Sexual Orientation		X	
Gender reassignment		X	
Religion / Belief		X	
Pregnancy and maternity		x	
<p>If YES to one or more of the above please add further detail and identify if full impact assessment is required.</p>			
<p>Next steps</p>			
<p>1. This proposal will be discussed at the next Council of Governors meeting. 2. If adopted, the Constitution will be amended accordingly and the appropriate communication would take place.</p>			
<p>Appendices</p>			

Strategic Objectives supported by this report

Improving Quality	x	Maintaining financial sustainability	
Transforming how cancer care is provided across the Network		Continuous improvement and innovation	x
Research		Generating Intelligence	x

Link to the NHS Constitution

Patients		Staff	
Access to health care		<i>Working environment</i> Flexible opportunities, healthy and safe working conditions, staff support	x
Quality of care and environment	x	<i>Being heard:</i> • Involved and represented • Able to raise grievances • Able to make suggestions • Able to raise concerns and complaints	x
Nationally approved treatments, drugs and programmes			
Respect, consent and confidentiality			
Informed choice		Fair pay and contracts, clear roles and responsibilities	x
Involvement in your healthcare and in the NHS		Personal and professional development	
Complaint and redress		Treated fairly and equally	

EXTRACT from Constitution:

12.11. 1 - Disqualification

- 1.1 A person may not become or continue as a Director of the Trust if:
 - 1.1.1 they are a member of the Council of Governors, or a governor **or director** of a health service body;
 - 1.1.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 1.1.3 they are a member of a committee of a local authority that has any role in scrutinising health matters;
 - 1.1.4 they are subject to a sex offender order;
 - 1.1.5 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
 - 1.1.6 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 8A of the Insolvency Act 1986);
 - 1.1.7 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
 - 1.1.8 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
 - 1.1.9 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 1.1.10 in the case of a non-executive Director, they are no longer a member of one of the public constituencies;
 - 1.1.11 they are a person whose tenure of office as a Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 1.1.12 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment;
 - 1.1.13 in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
 - 1.1.14 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.