**Council of Governors – Terms of Reference**

This example draws out the relevant parts of the foundation trust’s (FT’s) constitution in respect of the council’s role and powers, and fleshes them out in some cases according to practice at the specific FT.

Council of Governors terms of reference

Purpose

The establishment of, and 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 (the Act). This document should be read in conjunction with the Act and with the foundation trust code of governance and other guidance from NHS England (formerly Monitor).

General duties

The statutory general duties of the council of governors are:

* to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and
* to represent the interests of the members of the corporation as a whole and the interests of the public.

Membership

The composition of the council of governors is set out in the constitution. The chair of the board of directors is the chair of the council of governors and presides over the meetings of the council of governors. In the absence of the chair, the Senior Independent Director will preside and in the absence of this individual another non-executive director or another person as defined in the constitution or standing orders will preside.

Quorum

The quorum for meetings of the council of governors is set out in the standing order of the constitution and shall be at least 13 Governors present, and of that 13, at least eight must be public or patient governors. For the avoidance of doubt, the number of public or patient governors present at a meeting should be in the majority.

Council of Governors committees

The council of governors may establish the following committees:

* Nominations and remuneration committee
* such other committees as required from time to time
* Task and finish working groups as necessary

Roles of the Council of Governors

Holding non-executive directors to account

* Hold the non-executive directors individually and collectively to account for the performance of the board.

Non-executive directors, chief executive and external auditor

* Approve the policies and procedures for the appointment and where necessary for the removal of the chair of the board of directors and non-executive directors.
* Approve the appointment (or removal) of the chair of the board of directors.
* Approve the appointment (or removal) of a non-executive director.
* Approve the policies and procedures for the appraisal of the chair of the board of directors and non-executive directors
* Approve changes to the remuneration, allowances and other terms of office for the chair and other non-executive directors.
* Consider and if considered appropriate approve the appointment of a proposed candidate as chief executive recommended by the chair and the non-executive directors.
* Approve the criteria for appointing, re-appointing or removing the auditor.
* Approve the appointment or re-appointment and the terms of engagement of the auditor.

Constitution and compliance

* Following consultation with the board of directors, approve amendments to the constitution. Any changes in respect of the powers, duties or role of the council of governors being considered, need to be approved at the next general meeting of members.
* Notify NHSE/I if the council of governors is concerned that the trust has breached, or is at risk of breaching, its licence conditions if these concerns cannot be resolved through engagement with the board of directors.

Governors

* Approve the appointment of governors to any committees or working groups of the council of governors or the board of directors.
* Determine whether to create the role of lead governor and, if there is one, approve the process for appointment or election to the role.
* Receive reports from the chairs of any committees or working groups of the council of governors on the discharge of the committees’ duties.
* Approve the removal from office of any governor in accordance with procedure set out in the constitution.
* Approve jointly with the board of directors the procedure for the resolution of disputes and concerns between the board of directors and the council of governors

Strategy, planning, reorganisations

* In response to requests from the board of directors, provide feedback on the development of the annual plan and the strategic direction of the foundation trust.
* Contribute to the development of stakeholder strategies, including member engagement strategies.
* Where the forward plan contains a proposal that the trust will carry on an activity other than the provision of goods and services for the purposes of the NHS in England, determine whether the council of governors is satisfied that such activity will not interfere in the fulfilment by the 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.
* Consider and if appropriate approve proposed increases to 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 5% of the total income of the trust in the relevant financial year.
* Consider and if appropriate approve proposals from the board of directors for mergers, acquisitions, separations and dissolutions. Any such proposals may only be approved if more than half of the total number of governors agree with them.
* Consider and if appropriate approve proposals for significant transactions where defined in the constitution or such other transactions as the board may submit for the approval of governors from time to time. Any proposals for significant transactions (as defined in the constitution) may only be approved if more than half of governors voting at a quorate meeting of the council of governors agree with them.

 Representing members and the public

* Represent the interests of the members of the trust as a whole and of the public.
* Consider and if appropriate approve the membership 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 and feedback relevant information to the board of directors or to individual managers within the trust as appropriate.
* Promote membership of the foundation trust and contribute to opportunities to recruit members in accordance with the membership strategy.
* Report to members each year on the performance of the council of governors. 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;
  + be equipped by the trust with the skills and knowledge they require in their capacity as governors;
  + receive the annual report of the audit committee on the work, fees and performance of the auditor;
  + Receive the annual report and accounts (including quality accounts).;
  + receive the quarterly report of the board of directors on the performance of the trust against agreed key financial, operational, quality and regulatory compliance indicators and stated objectives;
  + participate in opportunities to review services and environments such as PEAT inspections/quality reviews/local activities and evaluation of user/carer experience;
  + receive and review quarterly assurance reports;
  + receive reports from the board on important sector-wide or strategic issues;
  + use information obtained through the above sources to monitor performance and progress against the key milestones in the strategic and annual plans and to hold the non-executive directors to account for the performance of the board of directors;
* If considered necessary (as a last resort), in the fulfilment 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 governor meeting.

Collective evaluation of performance

* The council of governors will undertake an annual review of its effectiveness and efficiency in the discharge of its responsibilities, seeking the views of key stakeholders to inform the review.

Frequency of meetings

The council of governors meets a minimum of four times a year.

Minutes

Minutes of the meetings will be circulated promptly to all members of the council of governors as soon as reasonably practical. The target date for issue is 10 working days from the date of the meeting.

Review

The council of governors will review this document annually.