

Board of Directors (in Public)

Item 5.3

Subject: Annual Review of Board Directors' Disclosures
Date of meeting: Tuesday 29th March 2022
Prepared by: Nusaiba Hannan, Executive Office Manager & Corporate Governance Lead
Presented by: Karan Wheatcroft, Chief Governance Officer
Purpose of Report: For Approval

| BAF Ref | Impact on BAF |
|---------|---------------|
| N/A | N/A |

1. Executive Summary:

The purpose of this paper is to request that the Board undertakes its annual evaluation of:

- i) Interests declared by Directors to determine any potential material conflicts;
- ii) NED independence;
- iii) Compliance with fit and proper persons criteria (Licence Condition 4 and Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014).

2. Annual Board Declaration Process:

- i) The NHS Foundation Trust *Code of Governance* ('the Code') states that Boards should follow a policy of openness and transparency and make clear how conflicts of interests are dealt with (provision A1.9). Board Directors are prompted to review their declarations of interests on an annual basis, and the Register of Interests is then updated and reviewed by the Board in March each year, to enable the identification and consideration of any potential conflicts. This process is supplemented by the inclusion of a standing agenda item on all Board meetings for 'Declaration of Interests' relating to items on the agenda. All Board Directors are required to declare any interests as soon as they arise in order that any potential conflicts can be mitigated. The Trust in place a Policy on Managing Conflicts of Interest which is compliant with national guidelines. An electronic register developed by MES Declare is now in place and enables web-based public accessibility to the Trust's Register of Interests via the LHCH website; this is now a formal requirement. The MES Declare system has recently been enhanced to prompt line managers to review and acknowledge entries made by their direct reports to the Register of Interests.
- ii) Provision B1.1 states that the Board should determine the independence of each Non-Executive Director and sets out criteria for independence. The Board should determine whether each Director is independent in character and judgement and whether there are any relationships or circumstances which are likely to affect or could appear to affect the Director's judgement. Non-Executive Directors have previously been asked on appointment to complete a self-declaration in respect of the independence criteria set out in the Code, for review by the Board and to support the required disclosure in the Annual Report. Non-Executive Directors are asked to

complete a self-declaration annually and to highlight any new issues as these arise for the Board's consideration.

- iii) The Provider Licence came into effect on 1st April 2013 and requires that all Board Directors (and Governors) are 'fit and proper persons' (as defined in condition G.4). Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 places a further duty on NHS Providers not to appoint or allow a person to continue to serve on a Board unless certain requirements are met. A Fit and Proper Person's Policy has been adopted by the Board and is reviewed annually; this requires all existing Directors to complete an annual self-declaration.
- iv) In response to the above requirements, Board members have been asked to complete the following annual declarations for review by the Board:
 - a) Interests (Register of Interests is attached at Appendix 1)
 - b) Independence (NEDs only- summary of declarations is attached at Appendix 2)
 - c) Fit and Proper Persons self-declaration (Summary at Appendix 3)

3. Exception Report

The following extracts are from provisions of the NHS Foundation Trust Code of Governance:

- *Serving more than six years could be relevant to the determination of a non-executive's independence.' (B.7.1)*
- *The Board should determine whether the director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect or could appear to affect the director's judgment; (B1.1)*

3.1 Independence of Neil Large, Chair

Neil Large has been re-appointed by the Council of Governors until 31st March 2022, at which point he will have served on the Board of the foundation trust for just over 12 years. A rigorous review of Neil Large's independence and other criteria was undertaken by the Council of Governors to support his extended period of office. (Refer papers and minutes of Council of Governors meeting held on 23.09.19).

In considering Neil Large's re-appointment in 2019, the Board confirmed that the Chair continues to be independent based on (but not limited to) the following points:

- No material conflicts of interest
- Clear boundaries maintained between professional and personal relationships
- Steady turnover of NEDs which brings independence to the collective Board
- No involvement of Chair in Audit Committee, or Board Assurance Committees, which are all NED Committees.
- No involvement at Operational Board meetings, Executive Team meetings or management forums.
- Evidence of effective board culture and constructive challenge (minutes and action logs; evaluation of meetings, NED review at NED meetings and independent observations and evidence set out in Well Led Report.

The Board is asked to re-affirm that this continues to be the case.

3.2 Independence of Julian Farmer, Non Executive Director

Julian Farmer has been re-appointed by the Council of Governors until 30th November 2022, at which point he will have served on the Board of the Foundation Trust for 7.5 years. A review of Julian Farmer's independence and other criteria including the importance of continuity in light of other NED changes was undertaken by the Council of Governors to support his extended period of office.

The Board should confirm continued independence based on (but not limited to) the following points:

- No material conflicts of interest
- Clear boundaries maintained between professional and personal relationships
- Turnover of NEDs and recruitment of a new Chair from April 2022 which brings independence to the collective Board
- No involvement at Operational Board meetings, Executive Team meetings or management forums.
- Evidence of effective board culture and constructive challenge (minutes and action logs; evaluation of meetings).

4. Recommendations

The Board is asked to:

- i) Review the Register of Interests (Appendix 1) and consider any potential conflicts, confirming either that there are no material conflicts or else determining how any conflicts are to be dealt with.
- ii) Review the self-declarations of NED independence and determine the independence of each NED (Appendix 2), paying particular attention to the long service of Neil Large, Chair (Refer para 3.1) and Julian Farmer, Non Executive Director (Refer para 3.2) re-affirming that the criteria to demonstrate the ongoing independence continue to apply.
- iii) Review the self-declarations in respect of the fit and proper persons test and confirm that based on self-declarations; there is no evidence to suggest that the Trust is non-compliant with Condition G.4 of the Provider licence or Regulation 5 (Health & Social Care Act 2008 [Regulated Activities] Regulations 2014 in respect of all existing directors Appendix 3).