

Council of Governors (in Public)

Item 11.1

Subject: Proposal to Amend the LHCH Constitution
Date of meeting: Tuesday 22nd September 2020
Prepared by: Gill Donnelly, Membership and Communications Officer
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Presented by: Lucy Lavan, Director of Corporate Affairs

1. Executive Summary

The purpose of this paper is to seek approval to make a number of amendments to the Trust's Constitution (as attached in Appendix 11.1a) which are explained within this paper.

The Council of Governors is asked to consider the rationale for making these outlined amendments and vote to enable the amendments to be made to the Trust's constitution.

2. Background and Rationale for Change

The main driver for reviewing the constitution at this time relates to the issue of membership for the staff of organisations hosted by LHCH.

LHCH has recently become the host for two partner bodies, Liverpool Health Partners and the Innovation Agency (AHSN for the Northwest Coast). These are set up as separate business units. Although both of these services fall under the umbrella of LHCH as a legal entity, they both operate with a degree of autonomy, including managing their own budgets and holding individual identities/brands. Accordingly, it is not thought appropriate that staff who work solely for the purposes of these hosted services should fall within the LHCH staff constituency, where they could potentially vote for and stand for election as a Staff Governor. This is because Staff Governors are expected to bring a unique understanding of the issues faced by LHCH (which would be difficult to attain when working for the hosted services), which they should seek to use in representing their members' interests and holding the non-executive directors to account for the performance of the board.

It is proposed that the constitution is amended to remove the eligibility of employees of hosted organisations to become staff members. Instead they could apply for public membership. As a public member, they can also vote for and stand for election as a Public Governor, subject to the usual eligibility criteria applicable to Public Governors.

A further provision is proposed to enable staff on other payrolls/employed by others to become staff members where for all intents and purposes they work for LHCH onsite but are actually employed by a third party – an example being catering staff.

In reviewing and redrafting these clauses, a number of other minor amendments are also proposed as listed and described in Section 3 below.

This review of the constitution has been supported by Hill Dickinson LLP and all proposed amendments are compliant with current legislation.

3. Proposed Amendments

A copy of the LHCH constitution showing all proposed amendments as tracked changes is attached. Each amendment is described as follows:

Amendment 1

This provision has been repositioned from paragraph 7 to a more prominent place and clarified to include constituencies as well as classes.

5.2 The Secretary shall make the final decision as to which constituency, and to which class of a constituency, an individual is eligible to be a member.

Amendment 2

Amendment two is to add a new paragraph 7.2 so that staff on other payrolls/employed by others can become staff members e.g. catering staff who for all intents and purposes might work for LHCH onsite but are actually employed by a third party.

7.2 Individuals who exercise functions for the purposes of the Foundation Trust, otherwise than under a contract of employment with the Foundation Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

Amendment 3

A new ground for ineligibility to become or continue as a staff member which should capture all staff working for LHCH hosted services has been added to paragraph 7 as below. For ease of reference, the Trust Secretary will maintain a list of all services deemed to be hosted by LHCH so that there can be no lack of clarity of whether something is a hosted service or not.

7.3 For the purposes of paragraph 7.4, a “hosted service” means a service or business that is hosted by the Foundation Trust and which operates with a degree of autonomy within the Foundation Trust. The Trust Secretary shall maintain a list of all hosted services of the Foundation Trust.

7.4 An individual may not become a member of the staff constituency of the Foundation Trust pursuant to this paragraph 7 if they exercise functions solely for the purposes of a hosted service of the Foundation Trust, whether or not they are employed by the Foundation Trust under a contract of employment.

Amendment 4

Addition of this ground for disqualification was added in to the NHS Act, although it has not yet been added to the Model Core Constitution. It was thought worthwhile including here for completeness. It applies to directors and both additions are included below:

Council of Governors – disqualification

12.1 A person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

Board of Directors – disqualification

26.2 A person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

Amendment 5

The Model Election Rules were amended on 2nd March 2015 to enable electronic and online voting. One reference to the original model election rules (paper voting) was left behind within Annex 9 the LHCH Constitution. The suggested deletion is recommended:

9.3 The Foundation Trust may make arrangements for members to vote by post, or, ~~except when voting to elect a Governor,~~ by using electronic communications.

4. Approving the Changes to the Constitution

The process for amending the constitution is set out in Paragraph 41 of the constitution:

No amendment shall be made unless:

- i) it has been approved by more than half of the members of the Council of Governors of the FT voting; and*
- ii) it has been approved by more than half of the members of the Board of Directors voting.*

The Council of Governors will be asked to consider and vote on these amendments on 22nd September 2020 and providing both the Board and the Council vote in favour at their respective meetings, then the changes to the constitution will take immediate effect i.e. following the Board of Directors meeting. The Board of Directors will consider and vote on the amendment on 29th September 2020, following the Council of Governors meeting.

5. Recommendation

It is recommended that the Council of Governors considers the rationale for the recommended amendments to the constitution, as set out in Section 3 of this report and approve these as outlined.