

# **Meeting of the Council of Governors**

**Thursday 21 April 2016**

**Session in private at 15.00**  
**Session in public at 16.00**

Dove Suite  
The Ark  
Mount Lane  
Turners Hill  
West Sussex  
RH10 4RA



**Meeting of the private session of the Council of Governors**  
**Thursday 21 April 2016, 15:00 – 16:00**  
**Dove Suite, The Ark, Mount Lane, Turners Hill, West Sussex RH10 4RA**

**Agenda: meeting session held in private**

Statutory duties		
No.	Item	Mode
16-16	<b>Welcome, apologies, declarations of interest and eligibility</b> <i>Beryl Hobson, Chair</i>	verbal
17-16	<b>Proposed changes to the constitution: Public Constituency</b> <i>Beryl Hobson, Chair</i>	papers
18-16	<b>Recommendation to appoint a non-executive director</b> <i>Beryl Hobson, Chair</i>	papers

**Meeting of the public session of the Council of Governors**  
**Thursday 21 April 2016, 16:00 – 18:00**

**Agenda: meeting session held in public**

No.	Item	Mode
Standing items		
19-16	<b>Welcome, apologies, declarations of interest and eligibility</b> <i>Beryl Hobson, Chair</i>	verbal
20-16	<b>Draft minutes of the meetings held on 14 January 2016 (for approval)</b> <i>Beryl Hobson, Chair</i>	papers
21-16	<b>Matters arising and actions pending from previous meeting including:</b> <i>Beryl Hobson, Chair</i> <ul style="list-style-type: none"> <li>Recent environmental health inspection: [RT]</li> <li>Quality Indicators 2015/16 [JMT]</li> <li>Formal feedback of Quality Account priorities 2016/17 [JMT]</li> <li>2015 AGM: An update on plans to increase the proportion of the membership base for which the trust holds an email address was provided in recent edition of GMU [HS]</li> </ul>	verbal
Council business		
22-16	<b>Approval of proposed changes to Constitution</b> <i>Beryl Hobson, Chair</i>	paper
23-16	<b>Approval of non-executive director appointment</b> <i>Beryl Hobson, Chair</i>	paper

24-16	<b>External Auditor provision</b> <i>Beryl Hobson, Chair</i>	verbal
25-16	<b>Forum meeting feedback</b> <i>Beryl Hobson, Chair</i>	verbal
<b>Representing the interests of members and the public</b>		
26-16	<b>CQC inspection</b> <i>Jo Thomas, Director of Nursing</i>	verbal
<b>Holding non-executive directors to account for the performance of the board of directors</b>		
27-16	<b>Executive overview</b> <ul style="list-style-type: none"> <li><b>National survey results 2015</b> Link (previously circulated): <ul style="list-style-type: none"> <li>Full report: <a href="http://www.nhsstaffsurveys.com/Caches/Files/NHS_staff_survey_2015_RPC_full.pdf">http://www.nhsstaffsurveys.com/Caches/Files/NHS_staff_survey_2015_RPC_full.pdf</a></li> <li>Summary report: <a href="http://www.nhsstaffsurveys.com/Caches/Files/NHS_staff_survey_2015_RPC_sum.pdf">http://www.nhsstaffsurveys.com/Caches/Files/NHS_staff_survey_2015_RPC_sum.pdf</a></li> </ul> </li> </ul> <i>Richard Tyler, Chief Executive and executive team</i>	verbal
28-16	<b>Financial and performance committee</b> <i>John Thornton, Non-Executive Director and committee Chair; Clare Stafford, Director of Finance and John Belsey, committee governor representative</i>	verbal
29-16	<b>Quality and governance committee</b> <ul style="list-style-type: none"> <li><b>National inpatient survey results</b> Link (previously circulated) <ul style="list-style-type: none"> <li><a href="http://www.cqc.org.uk/provider/RPC/survey/3#undefined">http://www.cqc.org.uk/provider/RPC/survey/3#undefined</a></li> </ul> </li> </ul> <i>Lester Porter, Senior Independent Director and acting committee Chair, Jo Thomas Director of Nursing and Tony Martin, committee governor representative</i>	verbal
30-16	<b>By application to the Chair</b> <i>Beryl Hobson, Chair</i>	verbal
31-16	<b>To receive any questions or comments from members of the foundation trust or members of the public</b> <i>Beryl Hobson, Chair</i>	verbal

<b>Document:</b>	<b>Minutes (draft and unconfirmed)</b>	
<b>Meeting:</b>	<b>Council of Governors (session in public)</b> <b>Thursday 14 January 2016, 15.00 – 17.00</b> <b>The Dove Suite, The Ark, Mount Lane, Turners Hill, West Sussex</b>	
<b>Present:</b>	Beryl Hobson (BH)	Chair
	Brian Beesley (BB)	Public Governor
	John Belsey (JEB)	Public Governor
	Liz Bennett (LB)	Stakeholder Governor (WSCC)
	Milton Chimonas (MC)	Public Governor
	Jenny Cunnington (JC)	Public Governor
	John Dabell (JD)	Public Governor
	Robert Dudgeon (RD)	Public Governor
	Chris Halloway (CH)	Public Governor
	John Harold (JH)	Public Governor
	Anne Higgins (AH)	Public Governor
	Moirra McMillan (MM)	Public Governor
	Tony Martin (TM)	Public Governor
	Julie Mockford (JM)	Staff Governor
	Christopher Orman (CO)	Public Governor
	Mansoor Rashid (MR)	Staff Governor <b>[08-16 onwards]</b>
	Glynn Roche (GR)	Public Governor
	Gillian Santi (GS)	Public Governor
	Michael Shaw (MS)	Public Governor
	Shona Smith (SS)	Staff Governor
	Norman Webster (NW)	Stakeholder Governor (EGTC)
	Peter Wickenden (PW)	Public Governor
<b>In attendance:</b>	Graeme Armitage (GA)	Director of HR & Organisational Development
	Kathleen Anderson (KA)	Company Secretary
	Katharine Bond (KB)	Senior Learning & development facilitator
	Andrew Demetriades (AD)	Burns project manager
	Balj Dheansa (BD)	Consultant Plastic Surgeon
	Stephen Fenlon (SF)	Medical Director
	Sharon Jones (SJ)	Director of Operations (SJ)
	Lester Porter (LP)	Senior Independent Director
	Hilary Saunders (HS)	Deputy Company Secretary (secretariat)
	Clare Stafford (CS)	Director of Finance & Performance
	Jo Thomas (JT)	Director of Nursing (JMT)
	Richard Tyler (RT)	Chief Executive
<b>Apologies:</b>	John Bowers (JB)	Public Governor
	Ginny Colwell (GC)	Non-Executive Director
	Angela Glynn (AG)	Public Governor
	Brian Goode (BG)	Public Governor
	Ian Playford (IP)	Non-Executive Director
	Andrew Robertson (AR)	Stakeholder Governor (League of Friends)
	John Thornton (JT)	Non-Executive Director
<b>Observing:</b>	None	
<b>Standing items</b>		
<b>01-16</b>	<b>Welcome, apologies and declarations of interest and eligibility</b> Apologies were noted as above. BH made particular reference to the absence of three of	

	<p>the NEDs at today's meeting. She reminded Council that this was unprecedented and gave assurance that every effort would be made to avoid a recurrence in the future.</p> <p>BH went on to record her thanks formally for the hard work undertaken by the executive team (and in particular JMT and Kelly Stevens) in preparation for the recent Care Quality Commission inspection. Thanks were also extended to those governors who had attended the CQC governor forum, which had been convened at short notice during the week of the inspection. The draft report was anticipated at the end of January, with the final version to be made available from early February.</p> <p>Although there were no new declarations of interest or ineligibility, BH noted that an item relating to business rates to be discussed later in the agenda could impact on those governors with a vested interest in Mid Sussex District Council.</p> <p>Finally, BH reported that this would be KA's last CoG meeting as she would be leaving QVH in early April. On behalf of the Council and the Board, she expressed her gratitude for all KA's hard work, noting her departure would be a great loss to the trust.</p>
<b>02-16</b>	<p><b>Draft minutes of the meeting held on 08 October 2016 (for approval)</b></p> <p>The minutes were <b>APPROVED</b> as an accurate record of the meeting.</p>
<b>03-16</b>	<p><b>Matters arising and actions pending from previous meeting</b></p> <ul style="list-style-type: none"> <li>• 18-15: Council to receive a brief report on the financial position at future meetings: A full executive review, including an update on the financial position, had been included in the papers and would be presented later in the agenda.</li> <li>• 2015 AGM: Update on plans to increase the proportion of the membership base for which the trust holds an email address to 50%: Work had now commenced on the data collection project (in conjunction with MES, the trust's membership database provider). Further updates would be provided in due course.</li> <li>• 31-15: Review of membership of governor representatives to non-board-level governance groups: Governors were aware that this issue had been deferred during the recent board governance review. KA would map what was currently in place against the revised governance process and bring back at the next Forum (details to be agreed later in today's agenda).</li> </ul> <p>There were no further questions and Council duly <b>NOTED</b> the matters arising update.</p>
<b>Know your trust</b>	
<b>04-16</b>	<p><b>Equality and diversity training</b></p> <p>BH reminded Council that in order to better align governor training with staff statutory and mandatory training requirements, a session on Equality and Diversity training had been arranged for today's meeting. To support this, all new governors were now required to attend the staff induction programme shortly after appointment. Katharine Bond, Senior Learning &amp; development facilitator joined the meeting and opened by explaining the distinction between 'equity' and 'equality'. She went on to describe the aims and objectives of today's presentation which would include the meaning of equality and</p>

	<p>diversity, information on relevant UK legislation, the nine protected characteristics, types and nature of discrimination, human rights and the FREDA principles and those QVH and NHS strategies and policies in place to support E&amp;D legislation. Diversity had been proven to make for better teams with improved decision making, and that patients responded better to those who met their diversity needs.</p> <p>The NHS Constitution requires the trust to provide a comprehensive service, available to all - irrespective of gender, race, disability, age, sexual orientation, religion or belief. It has a duty to each and every individual that it serves and must respect their human rights. The purpose of Equality and Diversity legislation is to create a fairer society where all can be involved and have opportunity to fulfil their potential and is designed to protect against unfair discrimination based on membership of particular group.</p> <p>Council was apprised of the nine characteristics protected under the legislation which included age, race, sex, sexual orientation, religion or belief, disability, gender reassignment, pregnancy and maternity and marriage and civil partnership. A brief discussion entailed on the different types of discrimination which legislation sought to prevent. Governors were assured that QVH monitored compliance through policies such as Bullying &amp; Harassment, Whistle Blowing, and Equality Impact Assessments.</p> <p>In response to a query raised by one of the governors, KB recommended that the FREDA principles of Fairness, Respect, Equality, Dignity and Autonomy would ensure an appropriate and proportionate response.</p> <p>The Chair thanked KB for her update, the contents of which were <b>NOTED</b> by Council.</p>
<b>05-16</b>	<p><b>Developing our burns services</b></p> <p>Baljit Dheansa, QVH Consultant Plastic Surgeon and Clinical Lead for Burns, and Andrew Demetriades, Burns Programme Lead for both QVH and BSUH joined the meeting to update Council on the current review of our burns services. BD explained that currently the majority of burns care was ambulatory and took place either within outpatients or as planned surgery. He went on to summarise the reasons for this review which included both local and national drivers, and the case for change.</p> <p>The main principle for any future model of care would be to retain what currently worked at QVH. This would include referrals management, outpatient assessments, day case or planned admissions, rehabilitation services and scar management and reconstruction. However, in order to meet key criteria and 'must have' standards, future QVH in-patients would be treated by QVH at Brighton under the 'QVH @Brighton' banner.</p> <p>Phasing and resourcing would vary. Changes to paediatric services would be implemented earlier as it would be easier to secure capacity at the Royal Alexandra Children's Hospital. However, changes to adult pathways would be delayed whilst physical capacity was negotiated. It was anticipated that adults would eventually be admitted to Royal Sussex County Hospital, and have dedicated theatres and clinics</p> <p>Brighton and QVH currently had a strong working relationship; Brighton welcomed the support provided by QVH and it was anticipated there could be additional plastics work at QVH for major lower limb trauma.</p> <p>BD went on to describe the themes arising from the December engagement workshop. These included strong support for the clinical case for change, recognition that the trust</p>

	<p>had to meet national Burns standards, and support for further development of links between QVH burns, plastics and BSUH trauma services (whilst retaining a regional burns service in Sussex).</p> <p>BD concluded his presentation by summarising the next steps in the process. This would include a review by both trusts' boards of the Strategic Outline Case (SOC) before submission to NHS England in March. The timing of any changes would be subject to investment approval by NHS England, and in securing the workforce required. A further strategic case for adult burns services would be developed later in 2016.</p> <p>Council went on to discuss the matters arising from the presentation, including:</p> <ul style="list-style-type: none"> <li>• Despite common misconception, burns treatment at QVH was not inextricably linked to East Grinstead. In fact, QVH currently treats around 4m people in the South East. Governors were urged to correct this misapprehension in their dealings with the local community;</li> <li>• Additional clarification as to the reasons why burns inpatients should be treated at a DGH;</li> <li>• Assurance that this strategy would not lead to more work being devolved to Brighton in the future. On the contrary, these changes would improve QVH capacity. NW noted this model aligned well to the evolving strategy and felt assured that QVH clinicians were based at both organisations.</li> </ul> <p>The chair thanked AD and BD for their contribution, recognising that plans would continue to unfold, and assuring Council that any developments would be communicated in a timely manner.</p> <p>There were no further questions and Council <b>NOTED</b> the contents of the update.</p>
<b>Council business</b>	
<b>06-16</b>	<p><b>Approval of terms of reference: Governor Steering Group</b></p> <p>Revised GSG terms of reference were presented to Council for approval. These had been reviewed in line with other corporate ToRs and considered by GSG at its meeting in December.</p> <p>After due consideration, Council <b>APPROVED</b> the terms of reference.</p>
<b>07-16</b>	<p><b>Next governor forum meeting: planning</b></p> <p>KA set out proposals for the next governor forum meeting suggesting the programme for the day could include:</p> <ul style="list-style-type: none"> <li>• A discussion on the appointment of governor representatives/lead governors to non-board level groups/projects. This issue had been touched on at the last forum but 'parked' while the governance review was implemented.</li> <li>• Sharing governors' individual skills and experience. KA explained that MS and AG had suggested recently that governors could set time aside to learn more about each other's skills and experience. As well as getting to know one another better, we could gain a better understanding of what individual governors might bring to bear on particular topics and opportunities, to the benefit of the council.</li> </ul> <p>KA would contact governors regarding dates and requesting views on these potential topics and any other suggestions for the programme. <b>[Action: KA]</b></p>



Holding non-executive directors to account for the performance of the board of directors	
08-16	<p><b>Setting the scene: executive overview</b></p> <p>RT explained why the focus of any update should extend beyond finance to include quality, operational performance and organisational development. He drew particular attention to:</p> <ul style="list-style-type: none"> <li>• The work currently underway in preparing a detailed plan for consideration by the Board in March before submission to NHS England, (see item 05-16);</li> <li>• The trust's successful bid to be a vanguard site for Primary Care Home. This was a national initiative to develop locality based approaches to the commissioning and delivery of care. In parallel, the trust would continue to encourage GPs to relocate to the QVH site.</li> <li>• The three priorities for the remainder of the financial year, including delivery of the planned year-end position. However he warned that the consequences of the junior doctors' strike and also of a recent significant change to our business rates could severely impact on our ability to do so. Other priorities included responding to the CQC report and ensuring a robust business plan was in place for 2016/17</li> </ul> <p>JMT urged Council to remember that the trust was already meeting its aims under KSO1 by delivering safe, compassionate and competent care via well led teams in an environment that met the needs of patients and their families. This had been evidenced by the raft of metrics the trust provided during the CQC inspection. Other highlights included:</p> <ul style="list-style-type: none"> <li>• An update on Patient Experience: Under the Friends and Family Test, 100% of inpatients and 95% of outpatients would recommend us, and complaint responses were handled in a timely manner. The Patient Experience Group (PEG) continued to lead on changes to patients' experience of food.</li> <li>• Assurance that the CQC had not identified any immediate compliance or regulatory issues. JMT provided Council with the latest timetable for publication of the report, which was anticipated at the end of January, with a Quality Summit planned for February. An internal action plan was in place to address areas identified during inspection preparation;</li> <li>• Despite current vacancy levels, the trust continued to provide good patient experience. However, the biggest threat currently was that of recruitment and retention. JMT outlined reasons why it was difficult to retain staff and described some of the measures adopted to tackle this, including recruitment days, retention incentives and education and development packages.</li> </ul> <p>SJ presented an update on current operational performance, apprising Council of the trust's achievements for RTT18 and Cancer waiting times. She explained that during the proposed junior doctor industrial action the trust would prioritise cancer patients and also ensure we could still undertake paediatric trauma. Council was also updated on the status of those cancellations which would be rescheduled as a result of strike action.</p> <p>An update on finance presented by CS comprised:</p> <ul style="list-style-type: none"> <li>• The 2015/16 financial position to date, reporting a surplus of £606k, (£388k below plan). She explained that key variances related to patient treatment income and non-pay expenditure, and also that whilst the first two months of Q3 were broadly in line with the forecast, there had been a material deterioration in patient treatment income in Month 8. Council was assured that further initiatives had been identified to address the shortfall. A review of the forecast assumptions had been undertaken and the trust was still aiming to achieve a £1m surplus. However, CS warned that there were still risks to</li> </ul>



	<p>delivery. The first included the impact of the impact of junior doctors' strike action. CS then went on to provide more context regarding the business rates issue described earlier by RT. She advised there had been no prior communication from Mid Sussex District Council who had taken c£0.5m via a direct debit. CS assured Council the trust was doing everything possible to mitigate the effects, but that the situation would not be resolved before the end of the financial year. The trust was currently liaising with the valuation office and MSDC itself to understand the reasons behind this action and would keep Council fully apprised of outcome;</p> <ul style="list-style-type: none"> <li>• 2015/16 capital was currently significantly below plan due to delays in delivery of the IT Infrastructure Improvement Programme (IIP) and Electronic Document Management (EDM) system. However, it was anticipated that the capital budget would be fully spent following Board agreement of the IT IIP Business Case.</li> </ul> <p>Details of the business planning process for 2016/17 would be reported under item [11-16].</p> <p>GA presented an update on organisational development including:</p> <ul style="list-style-type: none"> <li>• Details of forthcoming industrial action by junior doctors. Following on from SJ's earlier report, Council was assured of the plans in place to minimise disruption for patients. Some surgical cases and outpatient appointments had been cancelled but all those affected would be offered new appointments in the near future;</li> <li>• Monitor/TDA had imposed an agency cap for those trusts in financial difficulty. QVH had applied the cap on a voluntary basis as good practice and was maintaining agency expenditure below the 10% cap, and</li> <li>• As previously highlighted by JMT, staffing remained one of our main areas of concern. Whilst the trust was able to maintain safe staffing levels, it would continue to focus on improving recruitment and retention and to reduce agency costs</li> </ul> <p>Council went on to discuss matters arising from the update, including:</p> <ul style="list-style-type: none"> <li>• Concerns that the change in business rates had not been anticipated. CS reminded Council that the trust could not comment at this stage as it was still in the process of gathering information but would report back the findings in due course;</li> <li>• Assurance that the Whole Time Equivalent gap in staffing appeared worse on paper than in reality. Some vacancies were covered by the use of our own staff working bank shifts, and also by the intelligent deployment of staff within ward settings;</li> <li>• Confirmation that the trust continued to work with RAF nurses. This practice was effective and we would seek to maintain it.</li> </ul> <p>There were no further questions and the chair thanked the executive team for its update.</p>
<b>09-16</b>	<p><b>Financial and performance committee</b></p> <p>It was noted that the majority of today's update had already been covered during the previous item, and also fully reported in the January board papers. BH assured Council that the executive reviewed each item thoroughly. Key points included:</p> <ul style="list-style-type: none"> <li>• Strong performance of the original delivery plan which should achieve its target;</li> <li>• Development of a second delivery plan following significant underperformance against the planned budget in November. This had provided the committee with a degree of assurance;</li> <li>• The IT Infrastructure Improvement Programme was on track with no major issues identified;</li> <li>• Capital expenditure was on track to achieve by year end.</li> </ul>

	<p>As governor representative to the F &amp; PC, JEB assured Council that JT and IP spend much time seeking assurance through robust appropriate questioning and made good contribution to discussions.</p> <p>In answer to a question raised by CO, CS confirmed that the coding exercise was now part of the regular reporting validation.</p> <p>There were no further questions and Council <b>NOTED</b> the contents of the update.</p>
<b>10-16</b>	<p><b>Quality and governance committee</b></p> <p>In the absence of GC, committee Chair, LP presented an assurance report, highlighting:</p> <ul style="list-style-type: none"> <li>• Approval by the board of new terms of reference (ToRs) for the committee;</li> <li>• An action plan developed following the Kate Lampard (Safeguarding) review, noting that QVH volunteers were now managed in the same way as staff in respect of safeguarding training.</li> </ul> <p>TM commented that the increased frequency of meetings was working well, enabling a more in-depth discussion. He reported that the committee was currently focused on reducing the length of time taken to investigate incidents.</p> <p>Further to queries raised last year at CoG, CO asked if there had been any improvement in the attendance by medical staff at these meetings. He was assured that clinical staff were fully engaged with those groups reporting into Q&amp;GC, but that additional attendance at the specific Q &amp; G meetings was not necessarily a good use of their time. RT commended SF for his work in improving the clinicians' engagement with governance in recent months.</p>
<b>Representing the interests of members and the public</b>	
<b>11-16</b>	<p><b>Annual planning 2016/17: update</b></p> <p>CS presented an update on the 2016/17 business planning process which comprised five separate components</p> <ul style="list-style-type: none"> <li>• National context around the business planning process, with details of the comprehensive spending review and the expectation that the provider sector would come back into balance;</li> <li>• A description of the national tariff (the set of prices and rules used to fund NHS providers for patient care services);</li> <li>• The impact on QVH in terms of the Cost Improvement Programme (5% in order to meet the 2% national efficiency targets) and other known additional cost pressures, such as the trust's transition to the ETO tariff (£0.7m), the impact of IT developments (£0.9m) and rates, depreciation and capital charges (£0.4m).</li> <li>• Details of the timetable designed to meet the 2016/17 planning submission deadline. A draft plan would be in place by the end of January, with the final due for submission in April, and</li> <li>• Information on this year's approach to business planning including revised governance arrangements, clear timetabling to enable progress, an integrated approach between finance, workforce and operations and a transparent sign-off process with clear accountability for performance.</li> </ul> <p>BH thanked CS for her report, the contents of which were <b>NOTED</b> by Council.</p>
<b>12-16</b>	<b>CQC inspection: update</b>

	This update had been covered under item 08-16
<b>Any other business</b>	
<b>13-16</b>	<p><b>By application to the Chair</b></p> <p>There was none.</p> <p>As there were no items for discussion under the private agenda, it was agreed that the minutes of the private session of the Council of Governors meeting held on 8<sup>th</sup> October 2015 would be formally <b>APPROVED</b> during this session.</p>
<b>QUESTIONS</b>	
<b>14-16</b>	<p><b>To receive any questions or comments from members of the foundation trust or members of the public</b></p> <p>There were none</p> <p>There being no further business, the meeting was closed at 17.20pm</p>

Chair:..... Date:.....

**Report to:** The Council of Governors (Public session)  
**Meeting date:** 21st April 2016  
**Agenda item reference no:** 22-16  
**From:** Beryl Hobson, Chair  
**Author:** Kathleen Anderson, Company Secretary (outgoing) and  
 Chipso Kazoka (Interim) Company Secretary  
**Date of report:** 12<sup>th</sup> April 2016

### **Proposed changes to the constitution: Public Constituency**

#### **Purpose**

1. The purpose of this paper is to set out the bases for the board of directors' recommendation to the Council of Governors for proposed changes to the QVH constitution that will expand the public constituency of the trust in order to:
  - a. Rectify an historic discrepancy between the electoral wards of Surrey County Council and neighbouring wards in Greater London that still identify with Surrey;
  - b. Extend eligibility for membership to many more members of the public to whom the trust provides its services (from 65,361-being 94% of QVH patients - to, 67,655-being 98% of QVH patients);
  - c. Allow Ginny Colwell to join the trust as a member;
  - d. Enable the council of governors to consider appointing Ginny Colwell as a non-executive director of the trust.

#### **Background**

##### *Non-executive director appointment: Ginny Colwell*

2. The trust recently discovered that Ginny Colwell is not eligible to be a member of the QVH NHS Foundation Trust because her home address is not within one of the electoral wards defined in Annex 1 of the trust's constitution. These are set out below as follows:

CONSTITUENCY	AREA	MINIMUM NO. OF MEMBERS	NO. OF GOVERNORS
Kent, Surrey, East and West Sussex	The electoral wards of: Kent County Council West Sussex County Council East Sussex County Council Surrey County Council Medway Unitary Authority Brighton and Hove City Council	200	20

3. The constitution states that a person may be appointed as a non-executive director only if he is a member of the public constituency and is not disqualified by any criteria set out in the constitution or by the fit and proper person test. Therefore Ginny Colwell ought not to have been considered eligible to apply for the post of non-executive director when she

was appointed to the role in 2013 as she did not meet the membership eligibility criteria.

4. Once the defect in Ginny Colwell's appointment became apparent, legal advice was sought that made clear that she must be removed from the register of members and the register of directors so as not to leave the trust in breach of its constitution and licence.<sup>1</sup>
5. At its meeting held in public on 3<sup>rd</sup> March 2016, the board of directors noted the immediate action taken but agreed that Ginny Colwell's experience and clinical expertise are extremely valuable to the trust, particularly as it prepares to respond to the report of the Care Quality Commission's recent inspection of its services. It was proposed and agreed that the board should appoint Ginny Colwell as an independent clinical advisor until such time as:
  - The board of directors and council of governors might agree any potential changes to the constitution that would incorporate Ginny Colwell's electoral ward into the public constituency and (subject to this agreement);
  - The council of governors might consider whether Ginny Colwell could be appointed as a non-executive director of the trust.

#### *Public constituency of the foundation trust*

6. Since the trust became a foundation trust in 2004, it has defined its public constituency as the people who live in the counties of Kent, Surrey, East Sussex and West Sussex.
7. Paragraph 3(2) of Schedule 7 of the NHS Act 2006 requires an NHS foundation trust constitution to define "*one or more areas as areas for public constituencies, each of which must be an electoral area for the purposes of local government elections in England and Wales or an area consisting of two or more such electoral areas*".
8. Annex 1 of the trust's constitution specifies the eligible electoral areas within its four counties (*See table in paragraph 2 above*). They do not include wards that are part of the electoral areas of Greater London boroughs but whose communities – and residential addresses – identify as being part of Surrey or Kent.

#### *Representative membership*

9. Section 61(1) of the NHS Act 2006 states that in deciding which areas are to be areas for public constituencies, or in deciding whether there is to be a patients' constituency, foundation trusts must have regard "*to the need for those eligible for such membership to be representative of those to whom the Trust provides services*".
10. Since QVH was authorised as a foundation trust, it has taken steps to ensure that the membership of its public constituency is representative of those eligible for membership, as required by the 2006 Act. But the trust has not reviewed whether its public constituency has remained representative of its patient population.
11. The trust's patient population data (*See Appendix A*) shows that QVH provides national services but the majority of the patients that it serves live in south east England. The next largest cohort of patients comes from the London boroughs, especially those south of the river Thames.
12. The issue of Ginny Colwell's membership ineligibility provided the board with an opportunity to review the matter of QVH's public membership base in a broader sense.

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<sup>1</sup> However, the constitution states that "the validity of any act of the Foundation Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Directors."

The board has done so with a view to ensuring that the public constituency provisions of the constitution are made to secure QVH's ability to have a public membership population that most fairly represents the people to whom QVH provides its services. The review is in line with the requirements of Section 61(1) of the NHS Act 2006 which is aimed at ensuring that the democratic ethos that is the hallmark of NHS Foundation Trust status is underpinned by a public membership profile that most fairly enfranchises the people who are the recipients of a Foundation Trust's services.

## Issues

### *Vacancy and recruitment*

13. The board of directors now has a vacancy for a non-executive director because section B.1.2 of *The NHS Foundation Trust Code of Governance* requires that "at least half the board of directors, excluding the chairperson, should comprise non-executive directors determined by the board to be independent."
14. Under usual circumstances giving rise to a vacancy, the council of governors would move to commission a candidate search and recruitment process which it would expect to cost in the region of £20k.
15. In 2013 the council of governors invested in a recruitment process which identified (in good faith) Ginny Colwell as an appointable candidate. The board and the council now know her to be a person who is capable of being an effective and committed non-executive director and a fit and proper person to hold that office.

### *Other costs*

16. Legal costs incurred to inform this paper have been £6,287.48 plus VAT (which QVH will get back because of its VAT exempt status). There have been no further costs to date save for implicit opportunity costs of staff time.
17. None of the proposed constitutional amendment options that were recommended to the board of directors (*See Appendix B*) presented any prospect of significant additional costs to implement unless:
  - the trust chose to invest in membership recruitment in the electoral wards to be added to the public constituency; or
  - a significant number of people in those wards chose to join the trust proactively.

## **Proposed amendment agreed by the board of directors**

18. At its meeting held on 7<sup>th</sup> April 2016, the board of directors considered the two recommended options on the proposed changes to Annex1 of QVH's constitution (which defines the trust's public constituency)(*See Appendix B*).
19. Whilst both proposals could allow Ginny Colwell and more QVH's patients to join the trust as a member, the board, however, noted that the second, of the two recommended options, gave QVH a superior opportunity to establish a public constituency that provided a much fairer representation of the people to whom the trust provides its

services.

20. Both options were tested with the trust's legal advisors and discussed in principle with the council of governors. The board chose the second of the two recommended options because, in comparison to the first option, the second option gives QVH a better opportunity to establish a public constituency that most fairly represents the people who use the trust's services.
21. Particularly, whilst the first option would have enabled 598 more patients to become QVH members (which would be 0.86% of QVH's patient population), the second option renders 2,294 more patients (being 3.32% of its patient population) to become eligible for QVH's membership.
22. Thus, whilst the first option would secure the prospect of having 95% of patients represented in QVH's membership, the second option would help to secure 98% patient representation in QVH's membership catchment.
23. The proposed amendment to Annex 1 (*See Appendix C*) now fully reflects the board's considered position on how the trust should alter its public constituency in order to secure a public membership constituency that best represents the people to whom the trust provides its services. This option is also more closely aligned with the requirements of Section 61(1) of the NHS Act, 2006, as referred to above.
24. The amendment now proposed by the board to the council of governors, if approved, would also enable the council to be free to consider appointing Ginny Colwell as a non-executive director on the basis of its previous recruitment process. The council would not be required to open the vacancy to a second competitive process.

## **Recommendation**

25. Having agreed the proposed amendment (which sets out the electoral wards of specified south London boroughs) (*See Appendix C*), the board of directors now recommends it for adoption by the council of governors in order to allow for the expansion of QVH's public constituency beyond what is currently set out in Annex 1 of the constitution

**Kathleen Anderson**  
**(Outgoing) Company Secretary**  
**Chipo Kazoka**  
**(Interim) Company Secretary**



## Proposed changes to the constitution: public constituency

### Appendix A: patient population data

Region	Area / Health authority	Total no. patients	% of grand total
London	BARKING AND DAGENHAM	9	0.01%
	BARNET	13	0.02%
	BEXLEY	839	1.21%
	BRENT	15	0.02%
	BROMLEY	563	0.81%
	CAMDEN	9	0.01%
	CENTRAL LONDON (WESTMINSTER)	10	0.01%
	CITY AND HACKNEY	21	0.03%
	CROYDON	379	0.55%
	EALING	17	0.02%
	ENFIELD	6	0.01%
	GREENWICH	116	0.17%
	HAMMERSMITH AND FULHAM	13	0.02%
	HARINGEY	14	0.02%
	HARROW	8	0.01%
	HAVERING	8	0.01%
	HILLINGDON	20	0.03%
	HOUNSLOW	24	0.03%
	ISLINGTON	8	0.01%
	KINGSTON	56	0.08%
	LAMBETH	43	0.06%
	LEWISHAM	65	0.09%
	MERTON	33	0.05%
	NEWHAM	10	0.01%
	REDBRIDGE	19	0.03%
	RICHMOND	27	0.04%
	SOUTHWARK	31	0.04%
	SUTTON	103	0.15%
	TOWER HAMLETS	17	0.02%
	WALTHAM FOREST	17	0.02%
	WANDSWORTH	39	0.06%
	WEST LONDON	9	0.01%
London TOTAL		2561	3.70%
Midlands and East	Central Midlands	161	0.23%
	East	220	0.32%
	North Midlands	38	0.05%
	West Midlands	90	0.13%
Midlands and East TOTAL		509	0.74%
North	Cheshire and Merseyside	21	0.03%
	Cumbria and North East	19	0.03%

Region	Area / Health authority	Total no. patients	% of grand total
	Lancashire and Greater Manchester	47	0.07%
	Yorkshire and Humber	2	0.08%
North TOTAL		139	0.20%
South	South Central	123	0.18%
	<b>South East</b>	<b>65,361</b>	<b>94.53%</b>
	South West	99	0.14%
	Wessex	255	0.37%
South TOTAL		65,838	95.22%
Scotland	Ayrshire and Aran	4	0.01%
	Borders	1	0.00%
	Fife	4	0.01%
	Forth Valley	1	0.00%
	Grampian	5	0.01%
	Lothian	6	0.01%
	Tayside	2	0.00%
	Not known	8	0.01%
Scotland TOTAL		31	0.04%
Wales	Abertawe Bro Morgannwg University LHB	9	0.01%
	Aneurin Bevan University LHB	9	0.01%
	Betsi Cadwaladr University LHB	1	0.00%
	Cardiff & Vale University LHB	4	0.01%
	Cwm Taf University LHB	6	0.01%
	Hywel Dda University LHB	1	0.00%
	Powys Teaching LHB	3	0.00%
Wales TOTAL		33	0.05%
Guernsey	-	2	0.00%
Isle of Man	-	7	0.01%
Jersey	-	10	0.01%
N. Ireland	-	14	0.02%
Other TOTAL		33	0.05%
GRAND TOTAL		69,144	

<b>Included in current public constituency</b>	<b>65,361</b>	<b>94.53%</b>
<b>Included in recommendation to expand to include the electoral wards of the boroughs of: Croydon, Kingston, Merton, Richmond and Sutton</b>	<b>598</b>	<b>0.86%</b>
<b>Included in recommendation to expand to include the south London boroughs (according to the 2011 official Boundary Commission for England definition)</b>	<b>2,294</b>	<b>3.32%</b>

Proposed changes to the constitution: public constituency

Appendix B: options

Summary	Key change	Advantages	Disadvantages	Recommendation
1. <b>No change to the constitution</b>	Carry a temporary non-executive vacancy and move to a recruitment process	Offers an open and competitive recruitment process	<ul style="list-style-type: none"> <li>• Unnecessary cost to repeat a search and recruitment process</li> <li>• Misses opportunity to improve representative membership</li> <li>• Prohibits Ginny Colwell from applying for the post</li> </ul>	<b>Not recommended:</b> not cost-effective
2. <b>Establish a new public constituency for:</b>				
• <b>the rest of England or Wales</b>	Maximum permissible expansion of the public constituency	<ul style="list-style-type: none"> <li>• Consistent with constitutional approach of other specialist hospitals, especially those more recently authorised as foundation trusts.</li> <li>• Allows for any geographical development of the trust's services in England and Wales</li> <li>• Maximises the pool of individuals eligible for membership and therefore to stand as a governor or apply to become a non-executive director</li> </ul>	<ul style="list-style-type: none"> <li>• Would require investment to recruit members across the new constituency and then hold elections</li> <li>• Would require a significant review of the composition of the council of governors to establish proportionate representation</li> <li>• Potentially necessary to dissolve the current composition of the council or establish a significantly larger council which may not be practical</li> </ul>	<b>Not recommended:</b> disproportionately complex and demanding of limited resources
• <b>the electoral wards of all London</b>	Extend the public constituency to include greater London	<ul style="list-style-type: none"> <li>• Consistent with the trust's identity as a specialist</li> </ul>	<ul style="list-style-type: none"> <li>• More than doubles the population eligible for</li> </ul>	<b>Not recommended</b> disproportionately complex and

Summary		Key change	Advantages	Disadvantages	Recommendation
	<b>Boroughs</b>		<p>provider to the south east region</p> <ul style="list-style-type: none"> <li>Offers eligibility for membership to most of the trust's patient population</li> </ul>	<p>membership therefore likely to be considered a disproportionate expansion</p> <ul style="list-style-type: none"> <li>More likely to require a new constituency for London in which case the same disadvantages apply as described in relation to establishing a new public constituency for the rest of England and Wales (above)</li> </ul>	demanding of limited resources
3.	<b>Expand the current public constituency to include:</b>				
	<b>• the electoral wards of Kingston Council</b>	Limited expansion of the public constituency within commonly accepted boundaries of Kent, Surrey and Sussex	Minimal change to the public constituency in order to resolve issues of eligibility relating to Ginny Colwell	Misses opportunity to improve representative membership	<b>Not recommended:</b> technically permissible but disproportionately favours one individual member of the public who stands to gain
	<b>• the electoral wards of London boroughs most recently absorbed from Surrey into Greater London</b>	Extends the public constituency to include the electoral wards of the boroughs of Croydon, Kingston, Merton, Richmond and Sutton	Achieves the trust's original aim to define its public constituency as the population of the counties of Kent, Surrey, East and West Sussex	Relatively limited opportunity to enable more people to whom the trust provides services to become eligible for membership	<b>Presented to the board of directors on 7/4/2016 and recommended for consideration. The board did not accept this recommended option:</b> satisfies the trust's original intentions for its public constituency and moves towards more representative membership. However, it was inferior to the second

Summary		Key change	Advantages	Disadvantages	Recommendation
					recommended option as regards patient representation in trust membership
	<ul style="list-style-type: none"> <li>the electoral wards of specified London Boroughs</li> </ul>	Extend the public constituency to include the south London boroughs (according to the 2011 official Boundary Commission for England definition)	The majority of the trust's patients who live outside of Kent, Surrey and Sussex come from the south London boroughs	No significant disadvantages	<p><b>Presented to the board of directors on 7/4/2016 and recommended for consideration. The board accepted this recommended option:</b></p> <p>good balance of proportionality and develops representative membership. In this regard, it was a superior option in comparison to the first recommended option.</p>

## Appendix C

PROPOSED AMENDMENT TO QVH CONSTITUTION RECOMMENDED BY THE BOARD OF DIRECTORS TO THE COUNCIL OF GOVERNORS			
ANNEX 1 – PUBLIC CONSTITUENCY			
CONSTITUENCY	AREA	MINIMUM NO. OF MEMBERS	NO. OF GOVERNORS
Kent, Surrey, East and West Sussex and south London	The electoral wards of: Kent County Council West Sussex County Council East Sussex County Council Surrey County Council Medway Unitary Authority Brighton and Hove City Council London Borough of Croydon London Borough of Kingston London Borough of Merton London Borough of Richmond London Borough of Sutton London Borough of Bexley London Borough of Bromley London Borough of Greenwich London Borough of Lambeth London Borough of Lewisham London Borough of Southwark London Borough of Wandsworth	200	20

**Report to:** Council of Governors (Public Session)  
**Meeting date:** 21 April 2016  
**Agenda item reference no:** 23-16  
**From:** Beryl Hobson, Chair  
**Author:** Kathleen Anderson, (Outgoing) Company Secretary and  
Chipo Kazoka, (Interim) Company Secretary  
on behalf of the Appointments Committee  
**Date of report:** 12 April 2016

### **Recommendation to appoint a non-executive director**

#### **Purpose**

1. The purpose of this paper is to recommend that the council of governors appoints Ginny Colwell as a non-executive director of the trust for a period of office of three years.

#### **Background**

2. The trust recently discovered that Ginny Colwell is not eligible to be a member of the QVH NHS Foundation Trust because her home address is not within one of the electoral wards defined in Annex 1 of the trust's constitution.
3. The constitution states that a person may be appointed as a non-executive director only if he is a member of the public constituency and is not disqualified by any criteria set out in the constitution or by the fit and proper person test. Therefore Ginny Colwell ought not to have been considered eligible to apply for the post of non-executive director when she was appointed to the role in 2013 (as she did not meet the membership criteria).
4. Once the defect in Ginny Colwell's appointment became apparent, legal advice was sought that made clear that she must be removed from the register of members and the register of directors so as not to leave the trust in breach of its constitution and licence.
5. Ginny Colwell has been appointed as an independent clinical advisor to the board of directors while the board and council of governors consider potential changes to the constitution that would incorporate Ginny Colwell's electoral ward into the public constituency and allow her to join the trust as a member.
6. More than half of the board of directors present and voting at its meeting held on 7<sup>th</sup> April 2016 agreed such amendments of the constitution. The board, in turn, asked the council of governors to consider and approve (at the council's earlier meeting on 21<sup>st</sup> April 2016) the changes to the constitution as recommended by the board.
7. The remainder of this paper assumes that:
  - more than half the members of the council of governors present and voting saw fit to agree the amendments to the constitution and that provision 53.1 of the constitution (which sets membership of QVH as an eligibility requirement for appointment as a NED) is therefore satisfied in Ginny Colwell's case;
  - the amendments have, as a result, taken immediate effect; and



- Ginny Colwell's name has been entered in the trust's membership register following an application that she made to join the trust as a member

## **Search process**

### *Original search, 2013*

8. In 2013 the council of governors' appointments committee commissioned Odgers Berndtson to lead a search process across the NHS and a wide range of associated and other industries to find three appointable non-executive candidates.
9. An appropriate and robust selection process followed that was reported formally to the council of governors at its meeting held on 12<sup>th</sup> September 2013.
10. The interview panel at the time was unanimous in its recommendation to appoint three candidates, one of whom was Ginny Colwell.

### *Potential appointment, 2016*

11. In light of the circumstances described above, and in anticipation of the board of directors and council of governors preparing to consider amendments to the constitution that would allow Ginny Colwell to become a member of the trust, the council of governors' appointments committee met on 21<sup>st</sup> March 2016 to consider whether it would still recommend Ginny Colwell to be appointed as a non-executive director.
12. The committee was advised by Kathleen Anderson, the company secretary (then), who had consulted with the trust's legal advisors. It was the company secretary's view (and it remains so to date) that it would be constitutionally permissible for the council of governors to consider appointing Ginny Colwell without repeating a competitive recruitment process.
13. The committee duly re-considered the 2013 process and, in particular, Ginny Colwell's original application, references and performance appraisals since joining the trust in good faith.
14. The appointments committee is satisfied that Ginny Colwell is still an excellent fit to the person criteria for the role of non-executive director. The committee was also assured that, to the best of its knowledge, Ginny Colwell remains a "fit and proper person" to be appointed.

## **Statutory duties of the council of governors**

15. One of the statutory duties of an NHS foundation trust council of governors is to approve the appointment of non-executive directors, taking into account the views of its appointments committee and relevant advisors on the qualities, skills and experience required for each position.
16. Important background information for governors, including considerations a council might take into account to fulfil its duty to approve (or not approve) the appointment of the non-executive director is available from the following sources:
  - the Monitor *Code of Governance*

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/327068/CodeofGovernanceJuly2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327068/CodeofGovernanceJuly2014.pdf)  
(last accessed on 11<sup>th</sup> April 2016)

- the Monitor *Your statutory duties: a reference guide for NHS foundation trust governors*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/301286/BriefGuideForGovernors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301286/BriefGuideForGovernors.pdf)  
(last accessed on 11<sup>th</sup> April 2016)

17. Essentially, governor approval means that a council is assured that, in making an appointment, its appointments committee has complied with the law and relevant guidance, followed a robust process and found a candidate who fulfils the specification for the role.

### Recommendation

18. At its meeting on 21 March 2016 the appointments committee agreed unanimously to recommend that Ginny Colwell is appointed as a non-executive director of the trust for a period of office of three years, subject to agreement of the necessary amendments to the constitution described in paper 22-16.
19. On the assumption that the constitutional amendments have been agreed and are in effect at the time that this recommendation (which is being made on behalf of the council's appointment's committee) is presented to the council of governors (in its public meeting), the council of governors is now asked to **APPROVE** the appointment of Ginny Colwell to the office of non-executive director of the trust.