

Document: Minutes UNAPPROVED	
<b>Meeting:</b>	<b>Council of Governors session in public Monday 19 July 2021, 14:30 – 16:30</b>
<b>Present:</b>	Beryl Hobson (BH) Trust Chair
	Chris Barham (CB) Public governor
	Elizabeth Bowden (EB) Public governor
	St John Brown (StJB) Stakeholder governor
	Andrew Brown (AB) Public governor
	Tim Butler (TB) Public governor
	Balj Dheansa (BD) Staff governor
	Miriam Farley (MF) Public governor <b>[part item: 70-21]</b>
	Antony Fulford-Smith (AF-S) Public governor
	Janet Haite (JDH) Public governor
	Oliver Harley (OH) Public governor
	John Harold (JRH) Public governor
	Anita Hazari (AH) Staff governor
	Julie Holden (JWH) Stakeholder governor
	Raman Malhotra (RM) Staff governor
	Caroline Migo (CM) Public governor
	Peter Shore (PS) Public governor
	Ken Sim (KS) Public governor
	Alison Stewart (AS) Public governor
	Peter Ward Booth (PWB) Public governor
Thavamalar Yoganathan (TY) Public governor	
<b>In attendance:</b>	Steve Jenkin (SJ) Chief Executive
	Clare Pirie (CP) Director of communications and corporate affairs (CoSec)
	Hilary Saunders (HS) Deputy CoSec (mins)
	Paul Dillon-Robinson (PDR) Non-executive director
	Kevin Gould (KG) Non-executive director
	Gary Needle (GN) Non-executive director
	Karen Norman (KN) Non-executive director
<b>Apologies:</b>	Roger Smith (RS) Public governor
<b>Public gallery:</b>	7 members of the public
<b>Ref.</b>	<b>Item</b>
<b>Standing items</b>	
<b>58-21</b>	<p><b>Welcome, apologies and declarations of interest and eligibility</b>            The Chair welcomed everyone to the meeting including seven members of the public. The Chair noted that Liz Bennett would be attending this session as a member of the public whilst awaiting formal ratification of her reappointment as West Sussex stakeholder governor.</p> <p>Apologies were noted as above.</p> <p>The Chair received confirmation that the meeting was quorate and that there were no new declarations of interest or ineligibility.</p>
<b>59-21</b>	<p><b>Draft minutes of meeting held on 10 May 2021</b>            The Chair sought approval of the draft minutes of the meeting held on 10 May.</p>

	<p>TB stated that he didn't believe the minutes to be an accurate reflection of the meeting as there were instances where he had made comments which had not been included; he repeated his request for CoG meetings to be recorded. As he was unable to provide the item references in question, the Chair suggested he follow this up via email and noted that the minutes would remain in draft format for now. <b>[Action: TB]</b></p>
60-21	<p><b>Matters arising and actions pending from previous meetings</b></p> <p>CM sought clarification on item 46-21 of the draft minutes regarding her motion to rescind the amendments to the GSG terms of reference (ToRs).</p> <p>CP reminded CoG of the process, explaining that as GSG ToRs were incorporated into the Trust's Constitution any amendment also required the support of the Board. Only if the Board agreed to the rescindment would the ToRs revert back to their original format. CM said that this was not her understanding of the term to rescind. CP confirmed that this matter would be considered by the Board at its meeting in August.</p>
<b>Council business</b>	
61-21	<p><b>Appointment of Trust Chair</b></p> <p>This item had been considered at the preceding private session and was being presented again now for the public record. JH described to Council the process the committee had followed highlighting the following:</p> <ul style="list-style-type: none"> <li>• That the committee had taken into account the skills and experience important for this role at this stage in the Trust's journey; these included prior experience of chairing an NHS provider and working with governors, as well as experience in managing strategic change, meaningful engagement, system working and good governance.</li> <li>• The committee had agreed to recruit a chair for a six month appointment with the option to extend for a further three months.</li> <li>• Following interviews of 25 June, the panel was unanimous in its decision to appoint Dr Peter Carter. At interview, Dr Carter had demonstrated excellent understanding of the difficulties facing the Trust and the need for effective engagement with staff, patients and the public in the months ahead; the panel were confident that he had the skills and experience needed to lead the Trust through this challenging time.</li> <li>• Details of Dr Carter's CV and experience.</li> </ul> <p>GN, who had chaired the interview panel, concurred with JH's statement; he added that the unanimous view of the panel was this candidate was outstanding.</p> <p>Council <b>approved</b> the appointment of Peter Carter as Chair of Queen Victoria Hospital NHS Foundation Trust by a majority (with a majority of 16 in favour and 3 abstentions).</p> <p>It was noted that the new Chair lived outside the Trust's constitutional area. However, noting Dr Carter's skills and experience, and as recommended by NHSEI, Council <b>approved</b> on this occasion only, (again by a majority of 16 in favour and 3 abstentions) a variation to the constitutional requirement for the Chair to be member of the Trust's Public constituency.</p>
62-21	<p><b>Chair and NED appraisal process</b></p> <p>Council was advised that the process for annual Chair and NED appraisals had taken into account feedback, including that from governors, and was now complete. All documents had been signed off. In line with the approved process, the Chair's appraisal had been submitted to NHSEI.</p> <p>There were no further comments and Council <b>noted</b> the contents of the update.</p>

<p>63-21</p>	<p><b>Chair and NED remuneration for 2021/22</b>            JH confirmed that the Appointments committee had undertaken its annual review of Chair and NED remuneration for 2021/22 and were now recommending that levels should remain unchanged in 2021/22 for the current NEDs and Chair.</p> <p>There were no questions and Council <b>approved</b> this recommendation (with a majority of 18 in favour and 1 abstention).</p> <p>The Appointments committee had also noted that the Chair’s annual remuneration may need to increase to £50k in order to attract the right candidate, and also in recognition that interim posts attract higher remuneration. CP explained that it was hoped that Dr Carter’s appointment could be secured at a cost to the Trust of no more than £50k, details were yet to be finalised. Council <b>approved</b> remuneration for the new Chair of £50,000, (by a majority of 17 in favour and 2 two abstentions).</p>
<p>64-21</p>	<p><b>Assessment of the auditor’s 2021/22 work and fees</b>            KG presented a report providing a review of the 2020/21 audit to members of the Council, highlighting:</p> <ul style="list-style-type: none"> <li>• Whilst a full report on the Trust’s annual report and accounts would be provided by KPMG at the AGM, the Audit committee was satisfied with KPMG’s quality of output and performance.</li> <li>• In 2020, CoG had reappointed KPMG for 2021/22 with the option for appointment for one further year; CoG were now asked to formally approve the reappointment of KPMG today.</li> </ul> <p>In response to questions raised following this report, KG advised:</p> <ul style="list-style-type: none"> <li>• Fees had not yet been agreed but wouldn’t be significantly different to previous years;</li> <li>• There had been additional reporting around ‘value for money’ this year;</li> <li>• The services provided can vary if required by the Regulator; however, on a fixed piece of work this was unlikely to be more than 5%;</li> <li>• Fees are reviewed before the appointment process starts; KPMG’s fees are competitive compared to other organisations.</li> </ul> <p>There were no further questions and Council <b>approved</b> the reappointment (by a majority of 18 in favour and 1 abstention).</p>
<p>65-21</p>	<p><b>Motion to pause all further activities, meetings, dialogue or expenditure, formal or informal, relating to the proposed Acquisition (‘merger’) of QVH NHSFT by UHS NHSFT</b></p> <p>It was noted that this item had been considered in detail in the earlier closed session of Council, where NEDs had explained the reasons why they could not be bound by this motion.</p> <p>PS drew Council’s attention to Chapter 4 of the Monitor reference guide ‘<i>Your statutory duties</i>’ which stated that ‘<i>Governors may not always agree with the decisions taken by the directors. On the other hand, directors do not always have to adhere to the governors’ preferences</i>’. He suggested that instead of voting for this motion, a compromise might be for the Board to note that this was the view of governors. OH reiterated that that the current strategy could not be justified, that it was up to the NEDs as to the level of importance they wished to attach to the views expressed by governors through the motion, and stated that the motion should remain unchanged.</p>

	<p>CP reminded Council that the Trust had received legal advice stating: <i>'It is legally not possible for the CoG to restrict the business of the Board of Directors whether relating to a potential merger with UHS or at all'</i>; therefore any motion passed today would not be legally binding but an expression of the views of governors only.</p> <p>In response to a question, CP confirmed that the provision of Trust legal advice was for both the Board and Council, and that this advice is independent. This was contested by some governors who stated:</p> <ul style="list-style-type: none"> <li>• Browne Jacobson had not been appointed by Council</li> <li>• One governor stated there were inaccuracies in the letter from the legal advisor and a strong likelihood that this advice was inaccurate; he also stated that Browne Jacobsen would stand to benefit if the merger went ahead and therefore their advice could not be independent.</li> <li>• Another governor commented that the legal advisor could not be 'disinterested' as he was being paid by the Trust</li> <li>• Governors would be requesting further legal advice following today's meeting. CP stated that she would follow up on this outside of meeting and reminded Council that the Trust had a fiduciary duty to use public money responsibly.</li> </ul> <p>In addition to advice provided by the lawyers, CP reminded Council that the Regulator had also indicated that it would not be reasonable for the Board to act in accordance with this motion.</p> <p>There were no further comments and Council <b>approved</b> (with a majority of 12 in favour, 5 against and 2 abstentions) the motion for the Trust Board to pause all further activities, meetings, dialogue or expenditure, formal or informal, relating to the proposed Acquisition ('merger') of QVH NHSFT by UHS NHSFT</p>
<p><b>66-21</b></p>	<p><b>Motion to review format and content of Council of Governors Agendas</b></p> <p>The Chair addressed the second motion put forward by CM which stated that the current CoG Agenda format was not fit for purpose and proposing it be reviewed. BH reminded Council that the agenda was drawn up by the Governor Steering Group on behalf of the full Council of Governors and in line with their remit. She also noted that much of what had been requested was already covered on today's agenda.</p> <p>CP highlighted the need for Council to be cognisant of future GSG meeting dates which would enable all governors to engage in this process. She then went on to address the request for written reports from NEDs reminding Council that these were already provided at the public board meetings, with latest versions incorporated into today's papers; however, these documents were less current than a verbal update would be, which is the usual process adopted at CoG meetings.</p> <p>The motion was passed (by a majority of 15 in favour, 1 against and 3 abstentions).</p> <p>It was agreed that GSG would discuss the motion and return with a proposal at the next formal CoG meeting.</p>
<p><b>67-21</b></p>	<p><b>Approval of revised Appointments committee ToRs</b></p> <p>JH reported that in 2020, new guidance was issued by the regulator for Trust's to review the process for Chair appraisal. The revised process included feedback from external system partners and put the 'facilitation' of the process with the Senior Independent Director, not chair of the appointments committee. This proposal had been unanimously supported by the Appointments committee and guidance formally adopted by Council. However, it had been noted that when the committee came to undertake its annual review of Terms of Reference this amendment had not been incorporated into the updated</p>

	<p>version. To rectify this, the ToRs had been amended at the recent Appointments committee meeting and the correct version was now presented for approval.</p> <p>As Senior Independent Director, GN confirmed that the Trust has been following the updated guidance for the past two years and the process has worked smoothly.</p> <p>Some governors who had not been in post when this change was implemented contested the updating of the ToRs, stating that it was important for Council to maintain the lead in the process in order to demonstrate open, honest and transparent process which would not be case if NEDs 'mark their own homework'.</p> <p>CP explained that this was not a new change, with the timeline dating back to the Spring of 2020. She reiterated that the Trust had incorporated these changes in 2020 but when the ToRs underwent their annual review this item had been overlooked. At the time the guidance was updated, the Trust had contacted the NHSEI governance lead who had confirmed that the Regulator could not force this upon the Trust but were keen to introduce a consistent approach. Some governors restated that they felt this retrospective approval was inappropriate as it diluted their ability to participate fully in the appraisal process.</p> <p>The Senior Independent Director reminded Council that this process had been in place for two years and expressed concern that the term 'NEDs marking their own homework' brought his integrity into question. It was also noted that it is common practice in the public sector for the Senior Independent Director to undertake appraisals on behalf of stakeholders. Some governors responded that they had not intended to cast aspersions but were merely seeking greater clarification.</p> <p>It was agreed that the Appointments committee would revisit its recommendation, which could be referred back to Council for approval at a later date. It was noted that this matter was not time critical given that the new Chair had been just been appointed to start in October on a 6-month contract.</p>
<p><b>68-21</b></p>	<p><b>Approval of governor representative roles 2021</b></p> <p>Council <b>approved</b> the Chair's recommendation for PS to remain as lead governor this year, noting the following Governor Representative roles for 2021/22 as follows:</p> <ul style="list-style-type: none"> <li>• Governor Representative to the BoD Finance and performance committee (F&amp;PC) Thava Ruben</li> <li>• Governor Representative to the BoD Quality and governance committee (Q&amp;GC) Antony Fulford-Smith</li> <li>• Governor Representative to the QVH Charity committee Caroline Migo</li> <li>• Governor Representative to the BoD statutory Audit committee Oliver Harley</li> <li>• Stakeholder Governor member of the Governor Steering Group Julie Holden</li> <li>• Chair of the Council of Governors' Appointments committee John Harold</li> </ul> <p>New members of the Council of Governors' Appointments committee</p> <ul style="list-style-type: none"> <li>• Oliver Harley</li> <li>• Caroline Migo</li> <li>• Ken Sim</li> <li>• Peter Ward Booth</li> </ul>

Representing the interests of members and the community	
69-21	<p><b>FT membership review 2020/21</b></p> <p>CP presented the Trust's annual membership update for assurance that that our membership engagement is relevant and appropriate for the size of the Trust, and that we continue to consider opportunities for enhancing current practice. CP highlighted:</p> <ul style="list-style-type: none"> <li>• Membership is drawn from areas as set out in our constitution; our membership of c7,800 is healthy for a trust of our size;</li> <li>• The 450 increase on the previous year is associated with recruitment of members during the governor election process.</li> <li>• Information governance regulations limit the amount of detail we hold on members, eg we would need a good rationale to ask about somebody's sexual orientation.</li> <li>• The Trust does not have the resources for a dedicated membership function.</li> <li>• All members are asked to provide an email address when joining up, but we also have postal members.</li> <li>• The Trust prefers to avoid 'over-communicating' in order to prevent 'engagement fatigue' resulting in members asking to be removed from the database.</li> <li>• Membership is promoted on our website; hard copy application forms will be made available again once Trust infection control teams deem this appropriate.</li> </ul> <p>Council sought additional clarification as follows:</p> <ul style="list-style-type: none"> <li>• There was a 16.8% turnout of the total number of members eligible to vote (7,644)</li> <li>• Those members without email are communicated with by post.</li> <li>• FT membership is no longer expected to grow since there is no longer a distinction at national level between FTs and non-FTs; there is now only one regulator and expectations are the same for both (for example the expectation that FTs would align their Chair's appraisal process to the national standard).</li> </ul> <p>There were no further comments and Council <b>noted</b> the contents of the report.</p>
Holding non-executive directors to account for the performance of the board of directors	
70-21	<p><b>Executive overview</b></p> <p>The CEO presented a summary update of activities within the Trust and the NHS as a whole over the last quarter. Highlights included:</p> <ul style="list-style-type: none"> <li>• An overview of the national scene including details on development of the new ICS framework;</li> <li>• SJ explained that reasons behind delay in publishing the Sussex Acute Collaborative Services review undertaken by KPMG had been compounded by the restrictions on communications activity during May elections; however, publication was anticipated later this week.</li> <li>• An update on our cancer alliances in Surrey, Sussex and Kent and Medway which enable care to be more effectively planned across local cancer pathways.</li> <li>• The current position with regard to our spoke sites in Kent, Surrey and Sussex; QVH is uniquely organised as a specialist Trust, with the majority of care delivered on a regional footprint.</li> <li>• A summary of the rationale behind the @QVH model, with an overview of the proposed super spoke/tier model drawn up by clinical directors and its critical success factors. However, progress to date had been impeded by the focus on recovery.</li> <li>• Summary findings of the staff survey, details of which had been published in the May public board papers. SJ highlighted in particular the finding that, in the midst of the pandemic, 94% of responses had confirmed they would be happy for friends and family to be treated at QVH.</li> </ul>

- There were several areas for improvement such as links with immediate managers, staff engagement and team working where findings correlated directly with the impact of the pandemic.
- The recovery position with risks to performance in the future; whilst numbers of long waiters are coming down, there is real concern that these will increase again in the autumn. With lockdown restrictions being lifted more people will visit A&E/GPs and we will start to see more referrals coming through. The national picture as a whole was a concern.

Council considered the update, seeking additional clarification as follows:

- A staff governor suggested that 1 in 8 staff had refused the COVID vaccine; SJ stated that over 1,000 staff (including bank and volunteers) had been double vaccinated so he did not believe this could not be accurate.
- A presentation had been made to the consultant body last week ahead of the strategic case presentation to the Board on 5 August. This was specific that options were:
  - QVH and UHSussex to remain as separate organisations (the "Do Nothing" option)
  - The two trusts to merge through the acquisition of QVH by UHSussex
  - Collaboration between UHSussex and QVH supported by a management contract.

In response to a comment that the strategic case had not considered options outside the UHSx proposal, SJ stated that the Board had actively been seeking sustainable solutions since 2017.

- That the 'do nothing' option has to be included in any strategic case in order to demonstrate the need for change.
- That the provider collaborative as envisaged in the white paper was not the same as the collaboration as described in the strategic case which doesn't take into account any other options. SJ reminded Council that QVH was already part of the Sussex Acute Collaborative Network where work was proceeding well. In addition, and as described earlier, work on proposed super spoke in Kent was under consideration but progress was hampered by the recovery programme and the Trust had not identified a provider to work with. QVH was also building on the work it had undertaken in the last year as a cancer hub; this had raised our profile and was a rich opportunity to develop further in the future.
- Confirmation that most of the information contained in today's presentation (with the exception of the spoke sites work), was already in the public domain.
- Council were advised to ignore rumour and supposition regarding suggestion there would be loss of theatre capacity should the proposed merger go ahead.
- Guidance on funding for the second half of the year (H2) had still not been published; the Trust was still working on a block arrangement based on 2019 activity levels.
- There are ongoing discussions with ICS leads in Kent which QVH will be involved with, QVH Trust Chair attends the fortnightly Chairs' meeting in Kent. Kent is not as well advanced as Sussex in the ICS process, QVH is not aware of anything in Kent that is the equivalent of the Sussex Acute Collaborative.
- Kent too is concentrating on its recovery plans; given the current position, it is unsurprising that Kent ICS leads are focusing on their own geographic area at present.
- Staff survey focus is on team morale, which is entirely separate to the Trust's comms strategy. Not all issues are to do with the proposed merger and there is still more work to do to ensure staff morale is where we would like it to be.

The Chair concluded by summarising the following:

- As requested, CoG had received written board reports, noting these were not as current as a verbal update would be;
- GSG would be apprised of how the forward plan is developed;

	<ul style="list-style-type: none"> <li>Although already covered on several occasions, the Board will give further thought on how best to help governors understand the background to the Trust's financial deterioration;</li> <li>The GSG will review the CoG agendas to agree if the format should be amended.</li> </ul> <p>The meeting had run over schedule at this stage and the Chair closed it to enable the AGM to start promptly.</p>
<b>71021</b>	<b>Board of Directors</b> Due to the time taken to conclude previous items, the meeting closed before this could be addressed.
<b>72-21</b>	<b>Finance and performance committee (F&amp;PC)</b> Due to the time taken to conclude previous items, the meeting closed before this could be addressed.
<b>73-21</b>	<b>Quality and governance committee (Q&amp;GC)</b> Due to the time taken to conclude previous items, the meeting closed before this could be addressed.
<b>74-21</b>	<b>Audit committee</b> Due to the time taken to conclude previous items, the meeting closed before this could be addressed.
<b>75-21</b>	<b>Charity committee</b> Due to the time taken to conclude previous items, the meeting closed before this could be addressed.
<b>76-21</b>	<b>Any other questions for non-executive directors</b> Due to the time taken to conclude previous items, the meeting closed before this could be addressed.
<b>Any other business (AOB)</b>	
<b>77-21</b>	<b>NEDs letter to Governors dated 5th May</b> Due to the time taken to conclude previous items, the meeting closed before this could be addressed.
<b>Questions</b>	
<b>78-21</b>	Due to the time taken to conclude previous items, the meeting closed before this could be addressed.

Chair:..... Date: