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To: Council of Governors

Date: 17 May 2018

Subject: Significant Business Committee – change to Terms of Reference and Membership

1.0 Purpose of the Report

1.1 The Council of Governors are asked to consider an amendment to the Terms of Reference of the Significant Business Committee (SBC), and to approve a change in the membership of this Committee.

2.0 Request to join the SBC

2.1 Rehana Ameer, Appointed Governor of City of London Corporation who replaced Dhruv Patel, has expressed her interest in joining the Committee. Dhruv Patel used to be a member of the SBC.

2.2 The Trust Chair had no objection as long as this was agreed by the Committee. SBC members were asked via email if they agreed to this appointment and that the Terms of Reference be amended to allow up to two appointed governors to be included in its membership.

2.3 The SBC members replied to confirm the proposed appointment and the required amendment of the Terms of Reference.

3.0 Action requested

3.1 The SBC recommends to the Council of Governors that:

- A. The Council **APPROVE** the changes to the Terms of Reference of the SBC (tracked changes in Annex I); and
- B. The Council **APPROVE** Rehana Ameer becoming a member of the SBC.

SIGNIFICANT BUSINESS COMMITTEE OF THE COUNCIL OF GOVERNORS

TERMS OF REFERENCE

1. CONSTITUTION

- 1.1 The Council of Governors hereby resolves to establish a Committee of the Council to be known as the Significant Business Committee (The SB Committee), which is directly accountable to the Council of Governors.
- 1.2 The SB Committee is authorised to act within these terms of reference.
- 1.3 All procedural matters in respect of conduct of meetings shall follow the Standing Orders of the Council of Governors, as far as possible.

2. MEMBERSHIP

- 2.1 The SB Committee shall be appointed by the Council and shall be composed as follows:
 - Non-Executive Director
 - Assistant Deputy Chair of the Council of Governors
 - Five public governors
 - One governor representing the staff constituency
 - One Up to two appointed governor representing partnership organisations
- 2.2 A quorum shall be at least one third of its members, attending either in person, via teleconference or via video conference, one of which must be the Non-Executive Director or Assistant Deputy Chair of the Council of Governors. However, should a significant transaction be considered for recommendation to the Council of Governors, the quorum shall be at least half of its members.
- 2.3 The Chair of the SB Committee shall be the Non-Executive Director. In the absence of the Non-Executive Director, the Assistant Deputy Chair shall Chair the Committee.
- 2.4 Appointments to the SB Committee shall be for a period of the individual member's current terms of office.

3. ATTENDANCE AT MEETINGS

- 3.1 Only members of the SB Committee have the right to attend meetings. Other individuals, such as Trust Directors or external advisors may be invited to attend for all or part of any meeting, when appropriate.

3.2 The Commercial and Business Development Director would normally attend each meeting.

3.3 The Trust Secretary shall act as the Secretary to the SB Committee.

4. FREQUENCY OF MEETINGS

4.1 The SB Committee shall normally meet quarterly or as required to fulfil its duties as the Chair shall decide.

5. AUTHORITY

5.1 The SB Committee is authorised to investigate and/or conduct any review into any activity within its terms of reference.

5.2 The SB Committee is authorised to obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary. The costs of such advice must be agreed with the Trust.

6. DUTIES

The duties of the SB Committee can be categorised as follows:

6.1 Private income

6.1.1 To consider whether the Trust's private patient work would significantly interfere with the Trust's principal purpose, which is to provide goods and services for the National Health Service (*NHS) in England, or performing the Trust's other functions, and to make recommendations to the Council.

6.1.2 To review any proposed increases in non-NHS income, and where it is 5% or more in any financial year, to make recommendations to the Council regarding their power to approve the proposed increase.

6.2 Significant transactions, mergers, acquisitions, separations and dissolution

6.2.1 To review any proposals for the Trust to enter into a significant transaction as defined in the Constitution, and to make recommendations to the Council regarding their power to approve the transaction. The definition of a significant transaction is presented at the Appendix.

6.2.2 To review any applications by the Trust to enter into a merger, acquisition, separation or dissolution, and to make a recommendations to the Council regarding their power to approve the transaction.

- 6.2.3 In conducting their review, the SB Committee shall consider the impact of the proposal on the Trust's long-term performance (as indicated by the analysis of future financial and governance risk ratings), taking into account the views of members and the impact on staff and service users.
- 6.2.4 The Committee can request to discuss transactions below the formal definition of a significant transaction.

6.3 Business Strategy

- 6.3.1 To be consulted by the Trust on its Business Development Strategy, to take place annually as part of the development of the Annual Plan, and to make recommendations to the Council regarding the response to the proposed strategy.
- 6.3.2 To receive periodic reports from the Trust on the progress in implementing the Trust's Business Strategy, and to bring forward any significant issues or areas of concern to the Council.
- 6.3.3 To receive periodic reports from the Trust on potential and actual business developments, and to bring forward any significant issues or areas of concern to the Council.

7. REPORTING

- 7.1 The SB Committee shall report to the Council by means of reports setting out the matters discussed and the SB Committee's recommendations to the Council.
- 7.2 The SB Committee shall review its own performance and terms of reference on an annual basis and recommend any changes to the Council.

8. COMMITTEE SECRETARY

The SB Committee shall be supported administratively by the Trust Secretary, whose duties in this respect will include:

- Agreement of agenda with Chair and attendees and collation of papers
- Taking the minutes and keeping a record of matters arising and issues to be carried forward
- Advising the SB Committee on any matters considered pertinent.

Definition of significant transaction

The Trust has adopted the definition of “significant transaction” that is used by Monitor (now NHS Improvement), the sector regulator for health services in England. A “significant transaction” is a transaction which meets any of the following thresholds:

- **Assets:** the gross assets or capital* subject to the transaction, divided by the gross assets of the Trust is greater than 25%;
- **Income:** the income attributable to:
 - i. The assets; or
 - ii. The contract;

associated with the transaction, divided by the income of the Trust is greater than 25%;

- **Consideration to total Trust capital:** the gross capital** of the company or business being acquired/ divested, divided by the total capital*** of the Trust following completion, or the effects on the total capital of the Trust resulting from a transaction, is greater than 25%.

* gross assets is the total of fixed assets and current assets;

**gross capital equals the market value of the target's shares and debt securities, plus the excess of current liabilities over current assets;

***total capital of the Trust equals taxpayers' equity.