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| Report to: | Council of Governors | Agenda item: | 12 |
| Date of Meeting: | 12 December 2022 | | |

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| Title of Report: | Lead Governor Appointment and Deputy Lead Governor Process |
| Status: | For approval and discussion |
| Board Sponsor: | Alison Ryan, Chair |
| Author: | Roxy Milbourne, Deputy Head of Corporate Governance |
| Appendices | Appendix 1 - Lead & Deputy Lead Governor Role & Responsibilities Appendix 2 – NHSE “Appendix B: Council of governors and role of the nominated lead governor” |

1. Executive Summary of the Report

At the 2020 public governor elections, the then Lead Governor was not re-elected meaning that the role was unfilled for some time. The Council of Governors was understandably concerned about how this would affect the Council’s work in terms of resilience and continuity.

To ameliorate the impact of a Lead Governor not being re-elected at a subsequent election, the Council agreed in March 2022 to create a Deputy Lead Governor role. The aim being that the governor occupying that role would succeed the Lead Governor and provide continuity of experience and knowledge. Peter McCowen was subsequently appointed as the first Deputy Lead Governor.

As a result of Gill Little (previous Governor for South Wiltshire and Lead Governor) deciding not to stand for re-election this year, it is recommended that Peter McCowen be elevated to the Lead Governor role, and the Council of Governors is asked to approve this appointment.

Peter’s appointment as Lead Governor, will create a vacancy for a Deputy Lead Governor. All Governors are asked to consider putting themselves forward for this role.

2. Recommendations (Note, Approve, Discuss etc)

The Council of Governors is asked to discuss and approve:

- The appointment of Peter McCowen as Lead Governor.
- The next steps as listed within the report;
- All Governors should consider putting themselves forward for the role of Deputy Lead Governor.

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| 3. | Legal / Regulatory Implications (NHSLA / Value for Money Conclusion etc) |
| NHS England's Code of Governance requires each NHS Foundation Trust to appoint or elect a Governor as Lead Governor. | |
| 4. | Risk (Threats or opportunities link to risk on register etc.) |
| N/A | |
| 5. | Resources Implications (Financial / staffing) |
| None | |
| 6. | Equality and Diversity |
| It is open to all Governors to express interest in the role of Deputy Lead Governor. | |
| 7. | References to previous reports |
| Process for Electing a Lead Governor – January 2021. Deputy Lead Governor Role and Appointment – March 2022. | |
| 8. | Freedom of Information |
| Public. | |

Lead Governor Appointment and Deputy Lead Governor Process

Introduction

In 2021, the Council of Governors expressed concern in relation to the resilience of the Lead Governor role following the 2020 elections in which the Lead Governor was not re-elected.

In order to reduce the impact of this, in March 2022, the Council of Governors agreed to appoint a Deputy Lead Governor to succeed the Lead Governor and provide continuity of experience and knowledge.

At its meeting in March 2022, the Council of Governors appointed Peter McCowen, Public Governor for North Wiltshire as Deputy Lead Governor.

As a result of Gill Little (previous Governor for South Wiltshire and Lead Governor) not standing for re-election this year, it is recommended that Peter will now be promoted into the Lead Governor role. The Council of Governors is asked to approve this appointment.

If Peter is appointed to the Lead Governor Role, it will leave a vacancy for a Deputy Lead Governor. All Governors are asked to consider putting themselves forward for the role of Deputy.

The Lead & Deputy Lead Governor Role & Responsibilities can be seen at appendix 1.

Process

The selection process for appointing a Lead or Deputy Lead Governor is as follows:

- The Membership Office to seek expressions of interest for the role of Lead/Deputy Lead Governor;
- Each candidate, even if unopposed will provide a short statement setting out what they would bring to the role;
- The Membership Office will circulate all statement(s) to the Governors;
- If there is a single nomination, the Governors will be asked to endorse (or not) that nomination by voting for that person or abstaining;
- If there is more than one nomination, an election will be conducted by the Membership Office using an electronic survey. If there is a tie in the number of votes, the Trust Chair has a casting vote;
- If there are no nominations, the Trust Chair, in consultation with the Council of Governors Nominations and Remuneration Committee may appoint a Lead/Deputy Lead Governor.

Next steps:

- Governors to express an interest in the role and submit a nomination statement to the Membership Office by Tuesday 20th December 2022.
- A ballot will be used to carry out the nomination process via an anonymous survey and sent to Governors on Wednesday 21st December 2022;
- Governors must cast their vote by close of play Monday 2nd January 2023;
- The appointment of the newly elected Deputy Lead Governor would be announced by email during the week commencing 2nd January 2023 and formally announced at the March 2023 Council of Governors meeting.

Recommendations

1. The Council of Governors is asked to approve the appointment of Peter McCowen as Lead Governor.
2. The Council of Governors is asked to approve the next steps as listed above and all Governors should consider putting themselves forward for the role of Deputy Lead Governor.

Appendix 1:

Lead & Deputy Lead Governor Role & Responsibilities

Role: Lead or Deputy Lead Governor of the Council of Governors

Accountable to: Council of Governors

Period of Office: Subject to annual reappointment (limit of 2 years in office)

Lead Governor Responsibilities:

1. Assist the Trust Chair to organise the business of the Council. In particular to support the Chair to set the agenda for the Council meetings and to advise the Chair on the process for consulting the Council on any matters between meetings. Encouraging all Governors to take part in Governor Working Groups.
2. Assist the Chair to promote amongst Governors a constructive, patient-focussed culture, and generally to further a good relationship with the Board of Directors.
3. Assist the Chair to develop and implement a programme of development for the Council.
4. Act as a point of contact for any Governor wishing to raise matters with the Chair, in the event that a Governor may not wish to do so directly.
5. In the absence of the Chair or any Non-Executive Director, chair any meeting of the Council of Governors.
6. In the event that NHS England wishes to contact the Council directly, or the Council decides to exercise its powers to contact NHS Improvement in line with the Trust's Constitution, act as the point of contact between the Regulator and the Council. This will include any referral by the Council to the Panel established by NHS Improvement to advise the Council.
7. Carry out the role described in Appendix B of NHS England's Code of Governance for NHS provider trusts 2022 – see Appendix 1.

Deputy Lead Governor Responsibilities:

1. Act as Deputy in the absence of the Lead Governor.
2. To support the resilience of the Council of Governors by working with the Lead Governor to gain experience and knowledge.
3. To succeed the Lead Governor providing they are still an elected Governor and this is supported by a majority on the Council of Governors.

4. In the permanent absence of the Lead Governor, the Deputy Lead Governor would be required to act as Lead Governor until further elections are held.

Appointment:

The Lead/Deputy Lead Governor shall be appointed by the Council of Governors. All candidates for appointment/re-appointment must submit a supporting statement, and a decision will be taken at a meeting of the Council of Governors by secret ballot.

Appendix 2 – NHS Improvement’s NHS Foundation Trust Code of Governance

Appendix B: The Role of the Nominated Lead Governor

4 Lead governor

- 4.1 The lead governor has a role in facilitating direct communication between NHS England and the NHS foundation trust's council of governors. This will be in a limited number of circumstances and, in particular, where it may not be appropriate to communicate through the normal channels, which in most cases will be via the chair or the trust secretary, if one is appointed.
- 4.2 It is not anticipated that there will be regular direct contact between NHS England and the council of governors in the ordinary course of business. Where this is necessary, it is important that it happens quickly and in an effective manner. To this end, a lead governor should be nominated and contact details provided to NHS England, and then updated as required. Any of the governors may be the lead governor.
- 4.3 The main circumstances where NHS England will contact a lead governor are where we have concerns about the board leadership provided to an NHS foundation trust, and those concerns may in time lead to our use of our formal powers to remove the chair or non-executive directors. The council of governors appoints the chair and non-executive directors, and it will usually be the case that we will wish to understand the views of the governors as to the capacity and capability of these individuals to lead the trust, and to rectify successfully any issues, and also for the governors to understand our concerns.
- 4.4 NHS England does not, however, envisage direct communication with the governors until such time as there is a real risk that an NHS foundation trust may be in breach of its licence. Once there is a risk that this may be the case, and the likely issue is one of board leadership, we will often wish to have direct contact with the NHS foundation trust's governors, but quickly and through one established point of contact, the trust's nominated lead governor. The lead governor should take steps to understand our role, the available guidance and the basis on which we may take regulatory action. The lead governor will then be able to communicate more widely with other governors. Similarly, where individual governors wish to contact us, this would be expected to be through the lead governor.

- 4.5 The other circumstance where NHS England may wish to contact a lead governor is where, as the regulator, we have been made aware that the process for the appointment of the chair or other members of the board, or elections for governors or other material decisions, may not have complied with the NHS foundation trust's constitution, or alternatively, while complying with the trust's constitution, may be inappropriate. In such circumstances, where the chair, other members of the board of directors or the trust secretary may have been involved in the process by which these appointments or other decisions were made, a lead governor may provide us with a point of contact.