

# **Board of Directors - Public**

Date:	10 March 2021	Item Ref:	17
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TITLE OF PAPER	Governance Structure Review Update
TO BE PRESENTED BY	David Walsh, Director of Corporate Governance (Board Secretary)
ACTION REQUIRED	<ul> <li>To receive assurance on progress of the governance review below Board Committees</li> <li>To approve the establishment of a Mental Health Legislation Committee as a sub-committee of the Board of Directors, and to approve the terms of reference</li> <li>To approve the proposed revised structure of groups reporting to Board Committees for implementation from 1 April 2021</li> <li>To approve the corporate calendar for 2021/22</li> </ul>

OUTCOME	The collective decisions detailed above will result in a revised governance structure being in place for 2021/22 to better enable
	effective floor-to-Board reporting.
TIMETABLE FOR	Approval – 10 March 2021
DECISION	Internal communication – 11 March-31 March 2021
	Implementation – 1 April 2021.
LINKS TO OTHER KEY	Well Led Development Plan – Back to Good Governance Workstream
REPORTS / DECISIONS	
STRATEGIC AIM	Back to Good Programme
STRATEGIC OBJECTIVE	BAF002: There is a risk the Trust does not deliver on its Well-Led
BAF RISK NUMBER &	Development Plan. This would result in a failure to meet the regulatory
DESCRIPTION	framework, get back to good and a failure to remove additional
	conditions placed on the Trust's Provider Licence.
LINKS TO NHS	NHSI Well-Led Framework
CONSTITUTION /OTHER	
RELEVANT FRAMEWORKS,	
RISK, OUTCOMES ETC	
IMPLICATIONS FOR	Good governance underpins effective decision making, leadership and
SERVICE DELIVERY	operational delivery. The governance review is being undertaken by
& FINANCIAL IMPACT	external consultants as part of an approved bid to deliver the Trust's
	Well Led Development Plan.
CONSIDERATION OF	CQC regulatory Framework
LEGAL ISSUES	

Author of Report	Sam Harrison
Designation	Governance Consultant
Date of Report	March 2021





# Summary Report

### 1. Purpose

For approval	For assurance	For collective decision	To seek input	To report progress	For information	Other (Please state)
	X			X		

To present the revised governance structure following the governance review process, including the terms of reference for the proposed Mental Health Legislation Committee and the corporate calendar for 2021/22.

### 2. Summary

- As part of the Well-Development Plan a review of the Trust-wide governance structure has been undertaken over recent months
- The work has been tailored under the direction of Executive Director leads to involve and engage staff in development of a governance structure that is fit for purpose for the Trust's current governance needs
- Governance structures have been presented to respective Board Committees and agreed at their January or February 2021 meetings
- The governance structure includes new and consolidated groups and the full governance structure arrangements will be implemented from April 2021
- As part of the review, the requirement for a Board Committee focussing on Mental Health Legislation has been identified and terms of reference developed
- Governance reviews to develop individual governance action plans are underway and will be taken forward by each forum to develop and embed good governance practice
- A revised corporate calendar has been developed to allow the flow of review and scrutiny of performance and operational information from floor to Board, and will be used to ensure meetings are aligned throughout the governance structure.

### 3. Background

The Trust agreed a Well-Led Development Plan designed by Charis Consultants, which includes the corporate governance remit of the Governance Workstream for our Back to Good work. As part of the Plan and as required by the Governance Workstream, there is a commitment to review governance arrangements below Board Committees to ensure effective working and assurance in all regulatory areas. This includes working across the Trust's governance structure to review the remit, role and information flows supporting governance and compliance for those groups below Board Committees.

### 4. Review of Trust governance structure

Work has been undertaken following the approach of working with Executive Director Leads across their portfolios, and viewing the governance structure from the perspective of reporting lines to each Board Committee. This allows the interrelationship and information flows between governance groups to be more comprehensively reviewed than considering each group in isolation. It however allows challenge on purpose, remit and role of each group and helps highlight duplication and potential synergies that can be addressed. As part of the reviews there has been a wider view taken on interrelationships across the entire governance structure and this has been included in governance review outcomes.

The resulting governance structure is attached at **appendix A**. Respective Board Committees have been updated on progress as the structure has developed culminating in all Board Committees agreeing the structures within their remit at their January or February 2021 meetings.

Please note that names of some of the groups are yet to be finalised as these are being developed through engagement with staff and will be confirmed before terms of reference are finalised in forthcoming weeks.

The review has focussed on developing a structure that is appropriate for the Trust at the current time, and effective to provide assurance to Board Committees and the Board.

- Several groups have been consolidated (eg Research and Innovation and Clinical Effectiveness), some groups have been removed (including several below Tier 2) and new groups created where governance gaps have been identified (eg Estates Strategy Implementation Group, Risk Oversight Group).
- In addition, particularly for the newly created/consolidated groups, further work is ongoing by the relevant leads to clarify governance reporting into these Tier 2 groups and will be overseen be the respective Board Committees.
- There is also ongoing dialogue to review and coordinate oversight of Emergency Planning and this is being taken forwards by the Director of Special Projects in liaison with the Director of Nursing, Professions and Operations.
- Chairs have been identified wherever possible, however some are subject to further staff engagement and will be confirmed on finalisation of terms of reference.

### 4.1 Mental Health Legislation Committee

Following debate by Board members, it is proposed that this governance group be established as a formal Board Committee, with the Medical Director as Executive Director lead. This will allow increased focus on ensuring mental health legislation is effectively implemented across the Trust. The Committee will be chaired by a Non Executive Director and be constituted as per other Board Committees. It is planned that the Committee will be operational from April 2021, chaired by an existing NED, pending new NED recruitment. In addition, there will be operational monthly Mental Health Legislation meetings feeding into the Board Committee. The Reducing Restrictive Practices Group will remain a direct reporting Group (Tier 2), chaired by the Director of Quality. The terms of reference for the new Committee have been developed by key professional leads and are attached at **appendix B** for consideration and approval.

### 4.2 Individual Governance Action Plans and terms of reference

As governance groups have been confirmed in the new structure, all have undergone individual governance reviews either through engagement with relevant leads and/or development sessions, and governance action plans prepared for each group. These capture actions required by the group to adopt and embed good governance practice going forwards and help focus on continuous improvement. These are agreed by each group, owned and taken forward as a standing item on their business agenda until completion. Exceptions to progress and significant issues arising are reported to respective parent bodies as part of routine reporting.

The governance reviews have a standardised format and cover many elements of good practice including prompting challenge on:

- current purpose and how this relates to oversight of compliance and/or provision of assurance
- remit and relationship to other groups within the corporate governance structure
- the information flows to and from the group including reports received from sub-groups, data reports and reporting upwards to other groups/committees
- clarification of delegated authority
- membership to ensure appropriate decision making
- commitment to recording and following up actions to ensure accountability and timely completion
- development of clear and agreed terms of reference

- development of an annual cycle of business
- actions to further develop good governance practice in the work of the group.

Carrying out this review for all groups helps to apply consistency across the Trust, clarity of role and purpose for members and help focus on ongoing improvement and embed good governance practice.

A key focus of the governance review is the development of new/refreshed terms of reference. Tier 2 groups in the proposed governance structure are scheduled to have finalised terms of reference for approval by respective Board Committees during March, or April in the case of Audit and Risk Committee (who do not have a February/March meeting) and the Mental Health Legislation Committee (which has its first meeting in April).

### 4.3 Principles

At the outset of the governance review, there were key principles in terms of consistency in terminology – including that, unless exceptions apply, only Board Committees should be termed 'committees' and the Trust Board should be the only forum with the name 'Board'. The majority of meetings have adopted this approach, but with the agreed exceptions of the Safeguarding Assurance Committee, Health and Safety Committee Joint Local Negotiating Committee, Transformation Board and Back to Good Programme Board.

A further principle was that Tier 2 meetings should be chaired wherever possible by an Executive Director or another senior person who would be present at the appropriate Board Committees to represent that group. Due to the number of Tier 2 meetings and the breadth of portfolios, this has been adopted for the majority of meetings but with nominated deputies at deputy executive director level where appropriate.

### 4.4 Lived Experience involvement

Service user, carer and staff involvement across the governance structure is an area which Executive and professional leads are keen to develop. There is ongoing work to review and extend the nature of current involvement, the clarification of roles and support that we can provide. The Director of Quality is leading work to clarify and develop a clear organisational approach so that we can effectively co-produce and meaningfully involve those with lived experience throughout our governance structure and services.

### 4.5 Corporate Calendar

An identified area of improvement as part of the Well-Led Development Plan was to support the smooth flow of information to enable effective "floor to Board" reporting. Key to this was the reordering of Board Committees, and the groups that sit beneath them, to provide for an orderly regular sequencing of meetings. This has been built around the timescales required for the effective consideration of the Integrated Performance and Quality Report, but the principle adopted should allow for all information to similarly flow with ease. The final Corporate Calendar has been widely shared with colleagues and Board members informally, and is presented for formal adoption.

### 5. Next Steps

- Governance structure and corporate calendar to be implemented from April 2021
- Mental Health Legislation Committee to go ahead from May 2021 (as per corporate calendar)
- All Tier 2 forums to present new/updated terms of reference to established Board Committees during March, or April in the case of Audit and Risk Committee who do not have a February/March meeting.
- Terms of reference for groups reporting to the newly established Mental Health Legislation Committee will be received at its first meeting in April 2021.
- All forums to continue with progressing and completing governance action plans.

### 6. Required Actions

- To approve the Trust-wide governance structure (appendix A)
- To approve the establishment and terms of reference of the Mental Health Legislation Committee (Board Committee) (appendix B)
- To approve the corporate calendar which outlines all Board, Board Development, Board Committee and Council of Governors' meetings for 2021/22 (appendix C).

### 7. Monitoring Arrangements

- The governance action plans will be taken forward by each group, with exceptions to progress reported to Board Committees as part of routine reporting.
- All meetings have a standing item to review meeting effectiveness which will be an opportunity to review arrangements on an ongoing basis, particularly whether new/consolidated groups are working effectively in the structure
- Board Committees are encouraged to review governance arrangements that sit within their remit in six months (September 2021), particularly in the light of development of new enabling strategies which may impact directly on the remit and objectives of governance groups.
- Terms of reference review and annual review of effectiveness to be undertaken by all groups in March 2022.
- Preparations for the SHSC Internal Audit Plan for 2021/22 include draft provision for an
  audit on assurance arrangements, which will include review of how effectively the changes
  detailed in this report have been embedded. The Internal Audit Plan will be presented at the
  next Audit and Risk Committee in April 2021 for approval, but the initial discussions
  proposed an audit would be undertaken in Quarter 2 or Quarter 3 during 2021/22.

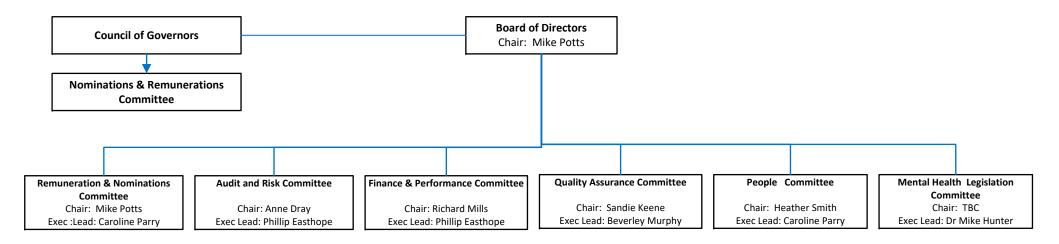
#### 8. Contact Details

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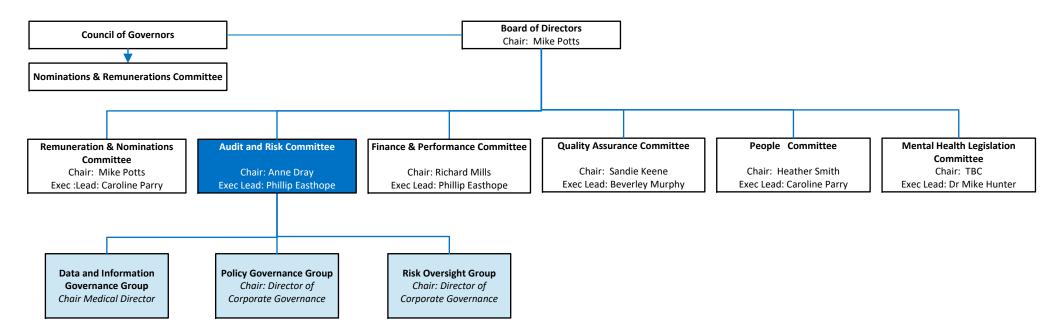


### **Board & Committee Governance Structure**

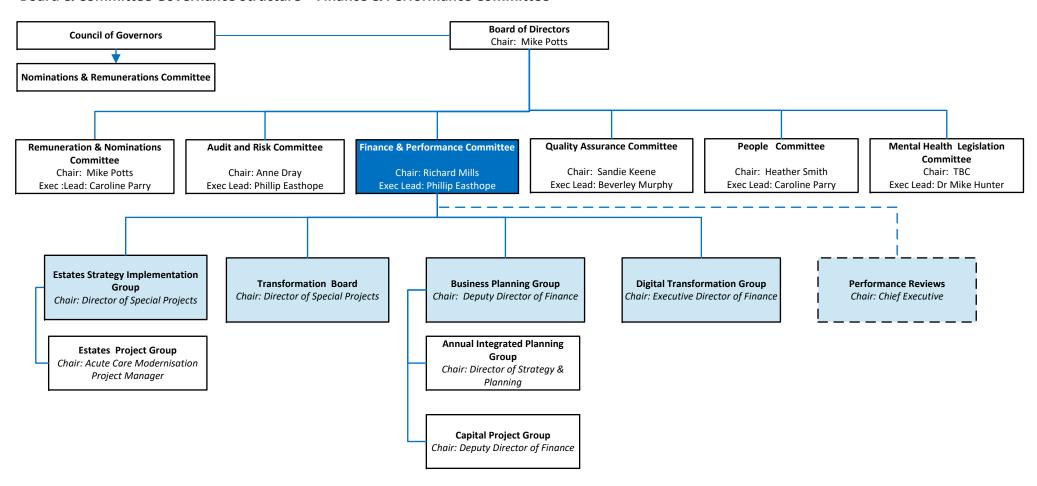


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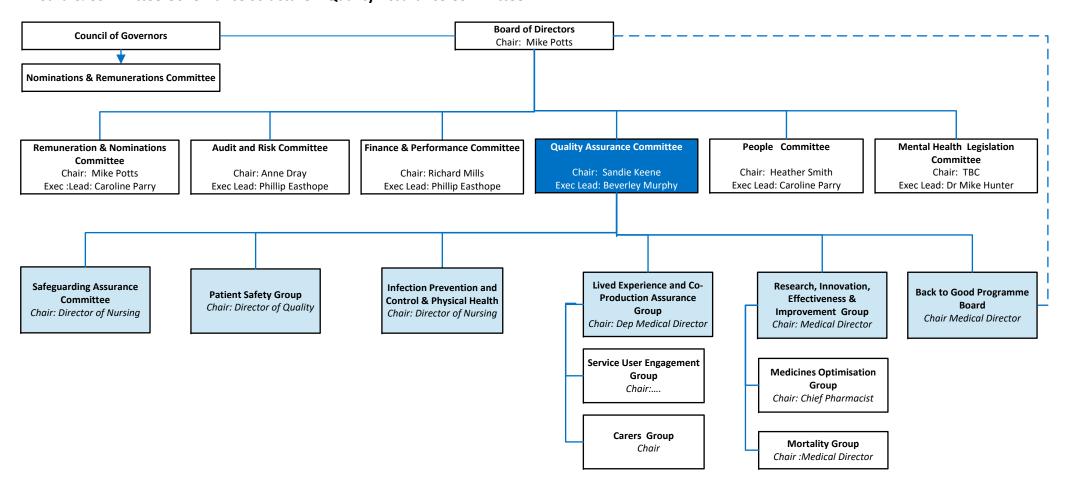
### **Board & Committee Governance Structure – Audit & Risk Committee**



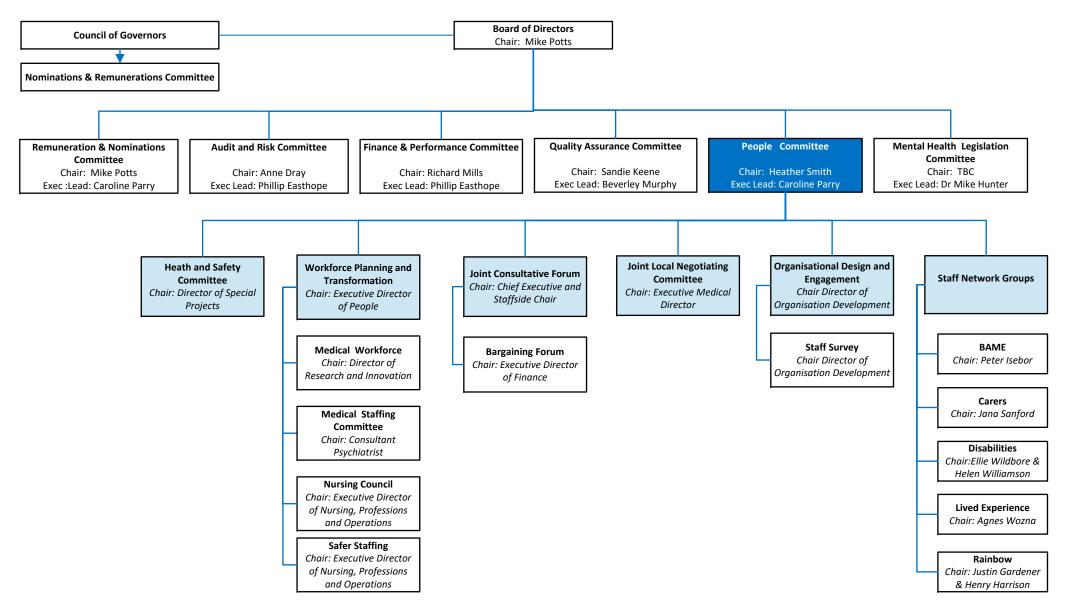
### Board & Committee Governance Structure - Finance & Performance Committee



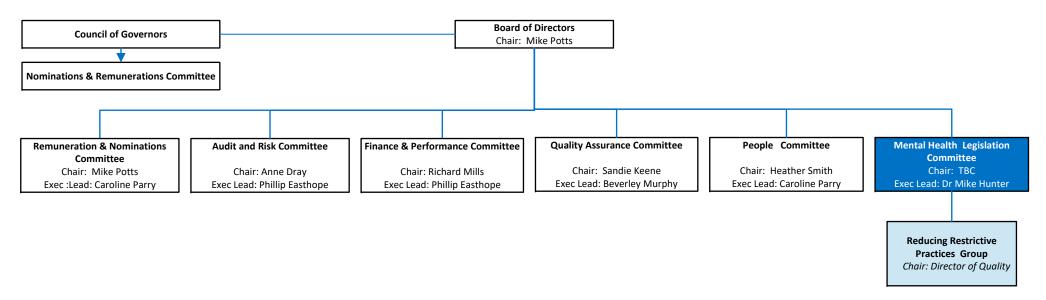
### **Board & Committee Governance Structure – Quality Assurance Committee**



### **Board & Committee Governance Structure – People Committee**



### **Board & Committee Governance Structure – Mental Health Legislation Committee**







# **Terms of Reference**

Document History:							
Version Number:	1						
Approved by:	Trust Board						
(parent Committee/group)							
Date approved:	Scheduled for 10 March 2021						
Name of author(s):	Salli Midgely; Jonathan Mitchell; Anne Cook						

Name of Committee	Mental Health Legislation Committee
Type of Committee	Board Committee reporting to Trust Board

# 1. Purpose of Committee

To ensure of effective application and administration of the Mental Health Act (MHA), the Mental Capacity Act (MCA), including its Deprivation of Liberty Safeguards (DoLS) or, when they come into effect, Liberty Protection Safeguards (LPS) and any associated safeguarding matters, Human Rights Legislation and adherence to the associated Codes of Practice.

### 2. Scope

The scope of the Committee is Trust-wide

# 3. Authority/Accountability

The Committee is an assurance Committee for matters of statutory and regulatory compliance in respect of Mental Health and Human Rights Legislation.

The Committee reports to the Trust Board, and sits within the portfolio of the Executive Medical Director.

The Committee is authorised by the Trust Board to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any employee and all employees are directed to co-operate with any request made by the Committee.

The Committee is authorised by the Trust Board 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 budget for such advice must be within agreed financial constraints.

The Committee is authorised by the Trust Board to make decisions that are not of a significant matter to the parent body. Reference should be made, as appropriate to the Standing Orders and Standing Financial Instructions of the Trust.

The following matters that must be referred to the Trust Board:

- Where there is significant revenue, capital or cash implications as determined by the Trust's Standing Financial Instructions
- Conflict with statutory obligations, or have significant governance implications
- Likely to arouse significant public or media interest.

### 4. Objectives of Committee/Group

To receive assurance of performance across the Trust against Key Performance Indicators which reflect respect for service users' human rights, effective implementation of the statutes and their Codes of Practice, the guiding principles of the MHA & the MCA, and the requirements of the CQC. To oversee completion and embedding of corrective action, escalating any concerns, identifying trends and themes and overseeing recommendations. KPIs to include, but not limited to:

- a. Progress against Provider Action Statements (PAS) following Monitoring Visits by the Care Quality Commission, including evidence of practice being embedded where necessary
- b. Practice in respect of capacity to consent to informal admission
- c. Practice in respect of capacity to consent to treatment
- d. Adherence to Consent to Treatment Requirements under Part IV and Part 4A of the MHA and/or the MCA
- e. Practice in respect of the explanation of Rights under section 132 MHA
- f. Practice in respect of Section 17 Leave
- g. Practice in respect of the use of short-term sections: MHA s4; 5(2); 5(4)
- h. Practice in respect of detention in the Health Based Place of Safety
- i. Compliance with mandatory training
- j. Practice in relation to the MCA Deprivation of Liberty Safeguards (DoLs to be replaced by Liberty Protection Safeguards(LPS)).

To ensure the development, implementation and timely review of policies in relation to Mental Health and Human Rights Legislation, ensuring there is adequate engagement and involvement. Ratifying these, following approval by the Policy Governance Group.

To receive assurance from the Reducing Restrictive Practice Group on implementing the Trust's aim of reducing restrictive practice.

To receive assurance in respect of the performance and functions of the Associate MHA Managers.

To ensure that the Trust actively listens to the experiences of the service user, family and carer feedback in the application of MHA/Mental Health and Human Rights legislation to identify good practice and learning.

To seek assurance that inequalities are recognised where they occur in relation to the use of Mental Health Legislation and associated policies and that remedial action and reasonable adjustments are utilised to address them.

To ensure a coordinated organisational response to the introduction of changes to or new law, regulations, guidance etc.

To oversee training in relevant subject areas, ensuring this is effective to ensure staff are fully trained to implement relevant legislation as part of their work.

To consider issues arising out of the "Delegated Authority" function for Mental Health Working Age Adults (formerly Section 75 partnership).

To commission reviews and/or audits of standards and practice as required.

To seek assurance on effective implementation of action plans developed in response to reviews and audit to improve legislative compliance and good practice in service user experience.

The Committee will uphold the values of the Trust in the work it does. In particular it will look for assurances that these values are being delivered in the Trust, as part of its overall governance role on behalf of the Board.

### 5. Membership

Three Non-Executive Directors – one of which will be appointed chair.

**Medical Director** 

**Director of Quality** 

Director of Corporate Governance

### **Attendees**

Clinical Director: Rehabilitation and Specialist Services

Clinical Director Community and Acute Services

Clinical Director Learning Disability Services

Lead Social Worker

Head of Mental Health Legislation

Head of Nursing

Nurse Consultant for Restrictive Practice

Head of Safeguarding Service user/Carer representative

Members are accountable for the Committee decisions and attending as per clause 7 below.

Membership will be reviewed annually.

### 6. Attendees

Other directors or their deputies may be asked to attend meetings or part meetings for discussions on matters relating to their portfolio, if required. The provisions of the Trust's Standing Orders relating to acting up arrangements and joint members will apply to this Committee with respect to decision making authority.

The Trust Secretary will provide advice to the Chair and members to ensure that the Committee has the appropriate administrative and secretarial support (an Administrator). A minute taker will also attend all Committee meetings and be stated as in attendance.

# 7. Chair, Quorum, Attendance and Meetings

#### Chair

The NED Chair will preside at all meetings having been approved as the Chair by the Trust Board. In extraordinary circumstances where the Chair cannot attend, one of the Non-Executive Director members will chair the meeting.

#### Quorum

A quorum will be 3 members and must include 2 Non-Executive Directors and 1 Executive Director including the Chair or deputy chair.

If the Committee is not quorate the meeting may be postponed at the discretion of the Chair. If the meeting does take place and is not quorate no decisions shall be made at that meeting and such matters must be deferred until the next quorate meeting.

### **Attendance**

Members are expected to attend all meetings. Apologies must be received by the Administrator in advance of the meetings. All members will be required to attend **a minimum** of two thirds of all meetings held annually. Members should not be absent for more than two consecutive meetings without the agreement of the Chair.

Any Committee member may participate in a meeting by way of telephone, computer or any other electronic means of communication provided that each person is able to hear and speak. A person participating in this way is deemed to be present in person although their actual location shall be noted in the minutes and is counted in a quorum and entitled to vote. The meeting is deemed to take place where the largest group of those participating is assembled, or if there is no such group, where the Chair of the meeting is located.

### Meetings

Where a specific matter is deemed to be of a confidential or commercially sensitive nature the Chair has the authority to restrict attendance at the meeting to members only and to ask all invitees to leave the meeting.

If any member or invitee has an interest, pecuniary or otherwise, in any matter and is present at the meeting at which the matter is under discussion, they will declare that interest as early as possible and shall not participate in the discussions. The Chair will have the power to request that member or invitee to withdraw until its consideration has been completed.

# 8. Frequency and Notice of Meetings

### Frequency

The Committee will meet quarterly. Additional meetings can be arranged for specific purposes as necessary, with agreement by the Chair or Deputy Chair.

If a matter of urgent business arises and an extraordinary meeting is required, this may be convened by the Chair, subject to the agreement of a quorum number of members. Decisions will be subject to achieving quorum attendance.

Where a decision needs to be taken outside the normal cycle of meetings, and where the matter is not deemed by the Chair to require an additional meeting to be called, the decision may be made via e-mail. The preference is for decisions to be taken at meetings. The decisions via e-mail process will be used on an exceptions basis. The process for decision via e-mail will be as follows:

- a) An e-mail setting out the matter for decision will be sent to all members on the same working day. This shall include a statement setting out how the members should signify what their view on the matter is and the deadline for doing so.
- b) Members will be given no less than five working days in which to respond.
- c) For a decision to be passed, all of the members must express the same view on

the matter.

- d) Where members have comments on the proposed decision or recommendation/s these will be circulated to other Committee members by the Administrator within one working day of receipt.
- e) If any individual member wishes to debate an item proposed for decision via email at a meeting instead they may ask the Chair to arrange an additional meeting or defer the item for decision until the next meeting (such agreement by the Chair not to be unreasonably withheld).
- f) Decisions via e-mail will be reported to the next meeting and the wording of the decision minuted. Any decision made in this manner will be effective from the date of agreement of all of the members and confirmed by email by the Administrator.

### **Notice of meetings**

Meetings shall be called by the Administrator at the request of the Chair or any of its members.

Unless otherwise agreed, notice of each meeting and agenda of items to be discussed, shall be forwarded to each member, any other person required to attend no later than five full working days before the date of the meeting. Supporting papers shall be sent to members and to other attendees as appropriate, at the same time.

Notices, agendas and supporting papers can be sent in electronic form where the recipient has agreed to receive documents in such a way.

A meeting workplan will be agreed on an annual basis, setting out the main work items to be carried out at each meeting to ensure that adequate time is given to the main objectives of the Committee.

# 9. Minutes and Reporting Arrangements

The Committee will report to the Trust Board on how it discharges its responsibilities. The Trust Board will report back if it has any concerns about its adherence to the Terms of Reference.

The minutes of Committee meetings will be formally recorded and submitted to the Trust Board by the Chair of the Committee. The Chair of the Committee will draw to the attention of the Trust Board any issues or decisions for disclosure or require executive action.

The Trust Board will receive standing reports following each meeting and additional reports as part of the scheduled programme of annual reports.

In addition, the Committee will receive thematic 'deep dive' reports or reviews as required to enable greater discussion about specific issues and to facilitate in depth discussions between the members and those staff providing services.

The Board has ultimate responsibility for the effectiveness of its governance below Board. The Board will rely on the work of its Committees to provide assurance on the effectiveness of the governance structure.

### 10. Administrative arrangements

The Committee will be supported by a nominated Administrator who will:

- produce a schedule of meetings and maintain the annual work plan for the Committee
- prepare the agenda and papers with the Chair and circulate five working days prior to the meeting;
- maintain accurate records of attendance, key discussion points and decisions taken and issue necessary action logs within five full working days of the meeting;
- draft minutes, recording where the Committee has delivered its purpose through relevant reports and subsequent discussion, debate and challenge, and where further information is required, for circulation to the meeting Chair within five full working days of the meeting;
- · organise future meetings; and
- file and maintain records of the work of the Committee in the required corporate records folder.

### 11. Meeting effectiveness review

The Committee shall at least once a year, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to its parent body for approval.

The Committee shall undertake appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members.

A record of the frequency of attendance by members, quoracy and the frequency of meetings will be maintained. Any areas of concern will be highlighted to the Chair of the Committee.

12.	Review to be conducted by	Committee/Group/Forum Chair
	Date Committee/Group	1 April 2021
	established	
	Terms of Reference to be	Annually
	reviewed	
	Date of last review	-
	Date of next review	March 2022

	Quarter 4			Quarter 1			Quarter 2			Quarter 3	
			IPQR & FIN (Feb)	IPQR & FIN (Mar)	IPQR & FIN (Apr)	IPQR & FIN	IPQR & FIN	IPQR & FIN (July)	IPQR & FIN	IPQR & FIN	IPQR & FIN (Oct)
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5	9	9	6	4	8	6	3	7 PC	5	9 <b>PC</b>	7 MHA
6	10 BOD Strategy BOD Dev Charis	10 Open BOD	7	5	9 QAC	7	4	8 QAC	6 CoG	10 QAC	8 QAC
7	11	11	8	6	10 FPC	8	5	9 FPC	7	11 FPC	9 FPC
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13 Open BOD	17	17		12 QAC 13 FPC	16	15 FPC		15		17	15
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15 16	19	19	16	14	18	16	13	17	15 16	19	17
18	22 FPC QAC	22	19 <b>CoG</b>	17	21	19	16	20	18	22	20
19 ARC	23	23	20 ARC	18 ARC	22	20 ARC	17 CoG	21	19 ARC	23	21
20	24	24	21	19	23 BoD	21	18	22 Public BOD	20	24 Public BOD	22 BoD
21	25 <b>CoG</b>	25 PC	22	20	24	22	19	23	21	25	23
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27	_	31	28 BoD	26 Public BOD	30	28 Public BOD	25 BoD	29	27 BoD		29
28 PC	_		29	27	1	29	26	30	28		30
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31				30 31 BH			30 BH		31		
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January	February	March	April	May	June	July	August	September	October	November	December
Board of Directors Public BOD Meetil BOD Workshop		Audit & Risk C	ommittee (ARC)	Finance & Perf (FPC)	ormance Committee	Quality Assura (QAC)	nce Committee  QAC	People Committ	ee (PC)	Mental Health Committee (M estabisehd	
Council of Govern		School Holiday	/s							<u> </u>	