### Agenda item:
8.1, Open

### Date:
May 30 2012

### Title:
Open Boards

### Prepared by:
Richard Schofield, Corporate Affairs Manager

### Presented by:
Jeff Chinnock, Divisional Manager, Corporate Affairs and Communications

### Responsible Executive:
Angela Pedder, Chief Executive

### Summary:
To provide the Board with proposals to decide appropriate arrangements for the conduct of open board meetings.

### Actions required:
The Board is recommended to consider the proposals and decide on appropriate arrangements for the conduct of open board meetings.

### Status (*):
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<th>Decision</th>
<th>Approval</th>
<th>Discussion</th>
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### History:
The issue was last discussed in March 2012

### Link to strategy/Assurance framework:
N/A

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**Monitoring Information**

Please specify CQC standard numbers and tick ✓ other boxes as appropriate

<table>
<thead>
<tr>
<th>Care Quality Commission Standards</th>
<th>Outcomes</th>
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<td>Monitor</td>
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<td>Service Development Strategy</td>
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<td>Assurance Framework</td>
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<td>Equality, diversity, human rights implications assessed</td>
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Open Boards
30 May 2012
1. **Purpose of paper**

To provide the Board with proposals to decide appropriate arrangements for the conduct of open board meetings.

2. **Background**

Section 152 of the Health and Social Care Act includes the following obligations on Foundation Trusts:

“1) The constitution must provide for meetings of the board of directors to be open to members of the public.

(2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.”

At the Board meeting in March and Task and Finish was appointed to make recommendations to the May Board about how the Trust may fulfil its impending obligation to hold Board meetings in public, including recommendations about the following:

a. The likely impact of any changes on the Council of Governors, and the structure of its meetings
b. The Board’s commitment to openness while preserving confidentiality where necessary
c. What would be a reasonable definition of ‘special reasons’ for issues to be excluded from public discussion?
d. The optimal frequency of open board meetings
e. What changes may be required to the Trust Constitution?

The Task and Finish Group met in April and reached consensus on the recommendations which should be put to the Board for approval

3. **Analysis**

The Group was committed to ensuring that the proposals they made reflected the Trust’s commitment to openness and transparency as evidenced by, for instance, the amount of material about Trust business available on the website and the well-developed role of the Council of Governors.

The Proposals fall into the following areas:

**i. Frequency of meetings**

Although the Group discussed the option of a fundamental shift in the existing Board meeting schedules, it was felt that the weight of business, and the logistical problems associated with changing meeting patterns, meant that the
existing pattern of meetings should not change. The proposal therefore is to retain ten board meetings a year, with each meeting being split between sessions held in public and closed sessions. The open session will take place at the start of the meeting and will be conducted for a set time agreed in advance.

ii. ‘Special reasons’
As stated in the provision of the Act, the public may only be excluded for ‘special reasons’ stated in the Trust constitution. However, the Act provides no further guidance on what these ‘special reasons’ should be. In deciding the approach to this issue the Group considered linking ‘special reasons’ to the reasons for exemption from disclosure contained in the Freedom of Information Act 2000. However, given the number of exemptions and complexity of the ‘case’ law it was felt that this could lead to over bureaucratisation of the process. Rather the Group decided to look to existing legislation governing the conduct of meetings by public bodies such as local authorities and NHS Trusts, namely the Public Bodies (Admission to Meetings Act) 1960. This Act permits the exclusion of the public in certain circumstances with the relevant meeting agenda containing an appropriate notice. Following this provision the Group, therefore, proposes that the statement of special reasons to be included in the constitution and notice of meetings should be as follows:
“The Board may, by resolution, exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution.”

iii. Public participation
Whilst the Group understood that there was no requirement to permit the public to ask questions at meetings it was felt that this should be considered. In airing the issues on allowing questions, it was recognised that the public could already use Council of Governor meetings for this purpose and the Board would want to continue to steer the public to attend Council of Governor meetings. However, there was a consensus that permitting limited public participation by allowing a small number of questions at the end of the meeting would provide additional opportunities to demonstrate accountability and could potentially provide useful insights for the Board. The Group felt that the ‘rules’ for any public question-time should be very clear, and be informed by good practice elsewhere, for instance in local authorities or NHS Trusts. Following a review of such practice it became clear that some bodies had very formal notice requirements for questions, whilst others favoured a less formal approach i.e. there was no settled view. Consequently the proposal below represents a position somewhere in the mid-range of the spectrum of current practice

Proposed notice re public questions:
“The Chairman of the Trust Board may permit an oral question to be asked at the end of the open session of the Trust Board meeting without notice having
been given. The period for oral questions will last for 10 minutes. Consequently any question asked should be brief. An answer to an oral question under this procedure will take the form of either:

- A direct oral answer;
- If the information required is not easily available a written answer will be sent to the questioner and circulated to all members of the Trust Board.

Oral questions need not be answered if the Chairman considers that they:

- Are not on any matter that is within the powers and duties of the Trust;
- Are defamatory, frivolous or offensive;
- Are substantially the same as a question that has been put to a meeting of the Trust Board in the past six months; or
- Would require the disclosure of confidential or exempt information
- Would be more appropriately asked at a CoG meeting.

Members of the Public will be asked whether they wish to raise a question prior to the start of the meeting by a member of the Corporate Secretariat and these will be recorded and provided to the Chairman of the Trust Board.

iv Timeline for introduction of the changes

Although the provision is new, the Group wanted to demonstrate the Board’s desire to be proactive. Consequently the Group propose that a ‘dry run’ of the new arrangements be trialled for the June Board – with staff members taking the role of the public, with a view to holding the first ‘open’ board in July. The arrangements put in place would be subject to ongoing review although a more formal review should be added to the Board’s agenda in November to assess the impact of the changes and to learn from practice elsewhere as necessary.

v. Constitution changes

As indicated the Act requires some changes to the Trust constitution and the Group propose that this be done at the July meeting of the Council of Governors. However, this may be subject to change once further guidance has been published by Monitor/the Department of Health on the timing of Monitor losing its power to approve changes to constitutions. This guidance is expected shortly.

In due course further changes to both the constitution and broader governance arrangements will need to be considered, once implementation of other requirements of the Act – for instance the changing role of governors; and the reduced role of Monitor in certain areas – becomes clearer. Appendix 1 provides a briefing from the FTN on the likely implementation dates for the different provisions of the Act.


The Trust is required to implement its obligations under legislation. Failure to implement appropriately could also impact on the Trust’s reputation for openness and transparency.
5. Link to BAF/Key risks

See 4 above

6. Proposals

The Board is recommended to consider the proposals in 3 above and decide on appropriate arrangements for the conduct of open board meetings.