



## **Proposed Change to the Trust's Constitution**

Berkshire Healthcare NHS Foundation Trust's Constitution sets out the powers and functions of the Trust and how its governance operates.

Changes to the Constitution can take effect only if the amendments are approved by both the Trust Board and the Council of Governors. The Board and Council approved changes to the Constitution in December 2022.

Where there have been amendments to the Constitution which relate to the powers, duties or roles of the Council of Governors, at least one governor must attend the next annual members' meeting/annual general meeting and present the amendment(s) to members. Members have the right to vote on and veto these types of constitutional amendments.

The purpose of this report is to present to the Members, **for approval**, an amendment to the Constitution.

## **Change to the Constitution**

The change to the Constitution is to provide a review process for a member who has been excluded from membership by the Council of Governors.

The change is highlighted in blue tracked changes in the extract from the Constitution below.

Members are invited to forward any comments and/or to indicate if they do not support the constitutional change using the email: **ourAGM@berkshire.nhs.uk**. Members attending the AGM can also use the chat function to forward any views.

## **Extract from the Constitution showing the proposed change in blue tracked changes**

### **Restrictions on Membership**

#### **8. Restriction on membership**

- 8.1 A member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3 An individual shall not be eligible for membership if he or she:
  - 8.3.1 is under 12 years of age.
  - 8.3.2 fails or ceases to fulfil the criteria for membership of any of the constituencies.

- 8.3.3 has demonstrated aggressive or violent behaviour at any Hospital or other trust premises or during any other interaction with Trust staff or Sub-contractors or Volunteers and following such behaviour he or she has been asked to leave or has been removed or excluded from any Hospital or other Trust premises or programmes of home or community visits, under the Trust's policy for withholding treatment from violent/aggressive patients: zero tolerance.
- 8.3.4 has been confirmed by the Trust to be a 'vexatious complainant' as defined in the Trust's policy on handling of complaints.
- 8.3.5 has been removed from being a member of another NHS Foundation Trust.
- 8.3.6 has been deemed by the Trust to have acted in a manner contrary to the interests of the Trust; or
- 8.3.7 has previously been removed from being a member of the Trust under paragraph 8.5.3.
- 8.4 Members should ensure their own eligibility for membership and inform the Trust if they cease to be eligible.
- 8.5 A member shall cease to be a member if—
  - 8.5.1 they resign by notice in writing to the Trust,
  - 8.5.2 they die, or
  - 8.5.3 they cease to be eligible for membership under paragraph 8.3 and they are removed from membership following the process set out in 8.6 below.
- 8.6 The Trust shall give any member at least 14 days' written notice of a proposal to remove them from membership under paragraphs 8.5.3 and:
  - 8.6.1 the notice shall state the date by which the member must respond by if they wish to make any representations;
  - 8.6.2 the Trust shall consider any representations made by the member during that notice period, and the Secretary shall decide whether to remove the member;
  - 8.6.3 within 14 days after receiving notice of the Secretary's decision, a person wishing to dispute the decision may require the Secretary to refer the matter to the Council of Governors to determine whether the decision was fair and reasonable taking all relevant matters in to account;
  - 8.6.4 where a member does not ask the Secretary to refer their proposed removal to the Council of Governors, they shall cease to be a member 14 days after receiving notice of the Secretary's decision;
  - 8.6.5 where a member does ask the Secretary to refer their proposed removal to the Council of Governors, they shall continue to be a member until the Council of Governors has reached a decision on their membership and provided them with notice;
  - 8.6.6 the decision of the Council of Governors shall be final.

An individual member removed under paragraph 8.6 may make a request to the Secretary that their membership removal be reviewed by the panel of the Council of Governors, chaired by a Non-Executive Director and their eligibility to be a member will be considered at the following points:

8.7.1 No earlier than 12 months from the date of the first review for removal ("the first review").

8.7.2 No earlier than 36 months after the date of the outcome of the first review ("the second review"); and

8.7.3 No earlier than sixty month intervals after the date of the outcome of the second review.

8.8 When making a request under paragraph 8.7 the individual must make such a request in writing to the Secretary and outline whether they wish to be considered as eligible to be a member and the reasons for the requested review. The Trust shall endeavour to issue a decision in writing within 28 days of receipt of the request.