

To:	Trust Board		
From:	CHAIRMAN AND DIRECTOR OF CORPORATE AND LEGAL AFFAIRS		
Date:	29 NOVEMBER 2012		
CQC regulation:	N/A		
Title:	SENIOR INDEPENDENT DIRECTOR		
Author/Responsible Director: Chairman and Director of Corporate and Legal Affairs			
Purpose of the Report: To consider the appointment of a Senior Independent Director			
The Report is provided to the Board for:			
Decision		✓	Discussion
Assurance			Endorsement
Summary / Key Points:			
<ul style="list-style-type: none"> To summarise the role of Senior Independent Director; to consider establishing such a post at UHL; and to consider the appointment of Ms J Wilson, Non-Executive Director to the post. 			
Recommendations:			
To establish a post of Senior Independent Director and appoint Ms J.Wilson, Non-Executive Director to the role.			
Strategic Risk Register		Performance KPIs year to date	
N/A		N/A	
Resource Implications (eg Financial, HR)			
N/A			
Assurance Implications			
N/A			
Patient and Public Involvement (PPI) Implications			
N/A			
Equality Impact			
N/A			
Information exempt from Disclosure			
N/A			
Requirement for further review ? Further report to Trust Board January 2013.			

UNIVERSITY HOSPITALS OF LEICESTER NHS TRUST

REPORT TO: TRUST BOARD

DATE: 29 NOVEMBER 2012

**REPORT BY: CHAIRMAN AND DIRECTOR OF CORPORATE AND
LEGAL AFFAIRS**

SUBJECT: SENIOR INDEPENDENT DIRECTOR

1. INTRODUCTION

- 1.1 This report explains the role of Senior Independent Director, a role in the NHS which has been introduced as part of the evolution of governance arrangements in NHS Foundation Trusts.
- 1.2 This report also invites the Board to consider establishing a post of Senior Independent Director formally at this Trust; and to appoint Ms J Wilson, Non-Executive Director to the role.

2. MONITOR'S NHS FOUNDATION TRUST CODE OF GOVERNANCE

- 2.1 The role of Senior Independent Director in the NHS was first given expression in Monitor's NHS Foundation Trust Code of Governance, an updated version of which was published in March 2010.

The relevant Code provisions are as follows:-

"The Board of Directors should appoint one of the independent Non-Executive Directors to be the Senior Independent Director, in consultation with the Board of Governors. The Senior Independent Director should be available to members and Governors if they have concerns which contact through the normal channels of Chairman, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate. The Senior Independent Director could be the Deputy Chairman" (paragraph A3.3)

"The Board of Governors should establish a policy for engagement with the Board of Directors for those circumstances when they have concerns about the performance of the Board of Directors, compliance with the terms of authorisation or other matters relating to the general wellbeing of the NHS Foundation Trust. The Board of Governors should consider the advantages of there being a Senior Independent Director on the Board of Directors" (paragraph B1.7)

"The Board of Governors, which is responsible for the appointment and re-appointment of Non-Executive Directors, should take the lead on agreeing a process for the evaluation of the Chairman and the Non-Executives, with the Chairman and the Non-Executives. The outcomes

of the evaluation of the Chairman and the Non-Executive Directors should be agreed by the Governors. The Governors should bear in mind the desirability of using the Senior Independent Director to lead the Non-Executive Directors in an evaluation of the Chairman” (paragraph D2)

“The Chairman should ensure that the views of Governors and members are communicated to the Board as a whole. The Chairman should discuss the affairs of the NHS Foundation Trust with Governors. Non-Executive Directors should be offered the opportunity to attend meetings with Governors and should expect to attend them if requested by Governors. The Senior Independent Director should attend sufficient meetings with Governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of Governors” (paragraph G1.3)

- 2.3 At paragraph 1.2, the Code states that it is making a ‘recommendation’ for the need for a Senior Independent Director. However, more generally, the Code makes clear (at paragraph 1.30) that:-

“This Code is best practice advice. It is not mandatory guidance and accordingly non-compliance with the provisions of the Code will not in itself give rise to a breach of condition 5 (2) of the terms of authorisation (duty to comply with the principles of best practice on corporate governance). NHS Foundation Trusts are, however, strongly encouraged to take full account of the best practice provisions described in this Code”.

- 2.4 Finally, schedule A to the Code (disclosure of corporate governance arrangements) includes reference to the Senior Independent Director as one of the key functions in the Trust where the incumbent must be identified by name in the FT’s annual report.

3. SUMMARY OF THE SENIOR INDEPENDENT DIRECTOR ROLE

- 3.1 The information below summarises the Senior Independent Director’s role:-

- **available to members and Governors** if they have concerns which contact through the normal channels of Chairman, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate;
- lead a meeting of the Non-Executive Directors, without the Chairman present, at least annually, to **appraise the Chairman’s performance** (taking into account the views of the Executive Directors);
- available for **confidential discussions with other Non-Executive Directors** who may have concerns which they believe have not been properly considered by the Board as a whole;

- **attend sufficient meetings with Governors** to listen to their views in order to help develop a balanced understanding of the issues and concerns of Governors;

4. DEPARTMENT OF HEALTH ASSURANCE FRAMEWORK FOR ASPIRANT FOUNDATION TRUSTS

- 4.1 The Trust Board has recently conducted a self-assessment against the requirements of the Board Governance Memorandum element of the Assurance Framework for Aspirant Foundation Trusts. Section 1.1, good practice point 3, probes whether the Board has a Senior Independent Director in place. A 'red flag' must be declared if a Trust does not have a Senior Independent Director in place.

5. CONSIDERATION OF ESTABLISHING THE SENIOR INDEPENDENT DIRECTOR ROLE PRIOR TO ATTAINING FOUNDATION TRUST STATUS

- 5.1 The suggested considerations about whether or not to adopt the role of a Senior Independent Director prior to UHL attaining Foundation Trust status may be summarised as follows:

In Favour

- demonstrates a proactive approach by the applicant Trust towards adopting a mechanism applicable under FT status;
- theoretically available for confidential discussions with other Non-Executive Directors who may have concerns which they believe have not been properly considered by the Board as a whole (but see below).

Against

- cannot yet have a formal role in any issues concerning the performance of the Chairman, since this is still a matter formally for the SHA and the NHS Trust Provider Development Authority;
- arguable whether it would be appropriate for the role to be currently open to representations from 'members' since, technically, these individuals are 'applicant members' who do not become formal members until day one of FT status and thus (in its current legal form) UHL does not have formal 'members';
- unable to be open to representations from Governors, because the latter will not be identified (on present trajectory) until later in 2013;
- unable to attend meetings of the Council of Governors until such exist;
- role in relation to confidential discussions with other Non-Executive Directors would have to be understood in the context of using (pre FT) roles (ie existing Chairman and Vice Chairman roles);

- given the requirement for the Council of Governors to be consulted on the appointment of the Senior Independent Director, any 'existing Senior Independent Director' incumbent at the start of UHL FT would have to be subject to formal process.

5. RECOMMENDATIONS

- 5.1 Having regard to the arrangements set out in paragraph 4 above, the Chairman **recommends** that the Board establish the post of Senior Independent Director.
- 5.2 Further, having taken soundings amongst both Executive and Non-Executive Director Board members, the Chairman **recommends** the appointment of Ms J Wilson, Non-Executive Director as UHL's Senior Independent Director.
- 5.3 The Trust Board is invited to consider and support the Chairman's recommendations set out above.
- 5.4 Subject to the Trust Board's consideration and adoption of the recommendations set out above, a further report will then be submitted by the Chairman, Senior Independent Director and Director of Corporate and Legal Affairs to the Trust Board early in 2013 setting out a proposed role description for the post of Senior Independent Director, and clarifying the remit of the role prior to FT authorisation.

Martin Hindle
Trust Chairman

Stephen Ward
Director of Corporate and Legal Affairs

22nd November 2012