



Royal College of
General Practitioners

Background Note on Proposal to moving Chair of Audit and Risk to Trustee from Observer on Board

In reference to proposal in Special Resolution 4
presented to members at the Annual General
Meeting to be held on 13 November 2024



Commitment to good governance in Charter

The RCGP Supplemental Charter commits the College to, and the Trustee Board is tasked with: 'ensuring that the best principles of corporate governance, as set out in the UK Code on Corporate Governance and associated guidance...are followed within the College'
RCGP Supplementary Charter, Article 15A

The wording in the Supplemental Charter which were approved by RCGP Members at the time of its drafting in 2003.

Trustee Board and Board Effectiveness Review (BER)

As part of the Trustee Board's duties to ensure good corporate governance practices regular Board Effectiveness Reviews (BER) are undertaken. The purpose of a BER is to evaluate people, information architecture, structures and processes and group dynamics to ensure the Board in in the best shape to ensure effective decision making. This is done via confidential surveys and interviews with Trustees and staff who participate in Board meetings; review of Board papers and documents; benchmarking against good corporate governance practices and relevant codes; and a Board observation exercise.

This is in line with the UK Corporate Governance Code 2018 (Principle L, Provisions 20 and 21) and the Charity Governance Code (Principles 5.5, 5.8.2). The code recommends this is periodically done with the assistance of external facilitation.

In 2023 Trustee Board instructed RSM, the College's internal auditors, to assist the Board in their evaluation.

The RSM report evaluated the self-selected skills defined by Trustees through a survey and identified areas of weakness including commercial, internal audit and controls, and digital; and recommended areas of weakness by considered in any future appointments.

The report recognised that fellow Trustees believed that 'independent trustees were seen as valuable in giving viewpoints from outside medicine' and that 'that external advice should be more readily sought'.

The review also noted the College's obligations regarding good corporate governance and application of the UK Corporate Governance Code, and noted Principle G of the code:



'The board should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the board's decision making.'

RSM highlighted the imbalance in the Board between member and independent Trustees. As part of the desk review, RSM looked at organisations that were of a similar size to the College, taken from a list of the top 100 membership organisations; and noted 'the preference of the organisations in a similar position to the College to try to balance the board' and this would align the College more closely with the requirements of Principle G of the UK Corporate Governance, a commitment to follow which is enshrined in the College's Supplementary Charter (Article 15A).

RSM recommended the Board investigate the composition of the Board with a view to creating a more balanced Board; and noted

'This could either be done by appointing further lay members or reducing the number of Council appointed trustees ... whichever is more expedient.... It is in line with the benchmarking that we have done.'

Trustee Board tasked the Nominations Committee to review and report back to Trustee Board in line with both the report and as part of best practice as per the Charity Governance Code (Principle 5.6).

Nominations Committee

This committee comprises an independent trustee, a member Trustee, two College members, and two independent members.

They noted the specialist skills and knowledge that independent Trustees bring to complement members Trustees, who bring both a professional context and a member view.

The benefits of a balanced Board in improved decision making were noted; as was the principle contained in the UK Corporate Governance Code, which the College is committed to following, to a balanced Board.

However, the committee also acknowledged that:


- That there was a strong desire from the membership to have a member majority Board and that principle should be respected.

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- That the issue of a member vs independent Chair had been deliberated in 2021 in several fora including Governance Committee, Trustee Board and Council, and should not be revisited.

The committee discussed the role of the Chair of Audit and Risk Committee¹, which is currently a permanent observer on the Board. This permanent observer status was viewed by members of the committee as irregular and inappropriate. They believed the role should be a full Trustee role as:

1. The role contains important responsibilities around financial and audit control, which are central to the legal and constitutional responsibilities of the Board (see, for example, RCGP Supplementary Charter, Article 15A (g, i); UK Corporate Governance Code Principles M and O; Charity Governance Code 4.7 and 4.8).
2. They should be accountable to Trustee Board as full Trustee for these responsibilities.
3. There has in the past been a misconception that this role acts as a ‘independent scrutineer’, separate from the Board. This is inaccurate both constitutionally and legally. The responsibilities remain that of the Board and they are accountable for ensuring compliance.
4. This is a specialist position, requiring relevant financial experience/qualifications (Provision 24, UK Corporate Governance Code 2018).
5. The status of ‘permanent Observer’ is a peculiar term and not enshrined in the constitutional documents. Not only does this lack accountability, but there is also a potential legal risk this individual would be viewed as a legal Trustee under the definition contained in the Charities Act 2011, given how integrated they are into Board meetings (they are always present and routinely speak across the agenda on matters of risk and internal financial and non-financial control and compliance). The alternative option of the Chair not attending Board meetings would not be either effective or appropriate as there would be no accountability for the responsibility delegated to the Audit and Risk Committee, which, despite being

¹ The Audit and Risk Committee is a Trustee Board committee, which undertakes work on behalf of the Board and reports to it. The committee (a) reviews the annual report and accounts and the Audit Findings Report and both provides the Board with assurance on this and/or raises any concerns; (b) reviews the strategic risk register before submission to the Board and provides assurance that risks have been identified and mitigated and managed appropriately; (c) undertakes a programme of internal audits to provide assurance that financial and governance controls and processes are in place and working effectively; (d) monitors potential and active legal risks to the College and report to the Board; and (e) provides assurance to the Board that the College is undertaken its agreed legal and compliance responsibilities around health and safety, complaints and whistleblowing. For the avoidance of doubt, it conducts its work on behalf of the Board and is part of the Board, not separate from it; nor does it exercise any scrutiny function.



delegated, the Board and its Trustees remain legally and constitutionally responsible and accountable for.

Therefore, it was recommended that an additional independent Trustee position be created to allow the Chair of Audit and Risk to be a full Trustee.

The committee believed there to be skills gaps that should be filled by independent experts, whilst still maintaining a member majority Board, and recommended a further independent trustee and appropriate skills should be identified using a skills audit as per the Charity Governance Code (Principle 5.7.2).

This second proposal would lead to a Trustee Board of fourteen members (vs the current twelve members plus one permanent observer). This was felt to be at the upper end of a workable size of Board. However, it was agreed that there would be no appetite to consider any reduction in member Trustees and this should not be considered.

Discussion of Recommendations at Trustee Board


Trustee Board considered the proposals from the Nominations Committee at their meeting in October 2024.

The Board agreed that despite the UK Corporate Governance Code's provision for a balanced Board, there is a strong desire among the membership for the Board to be both member led and member majority and that this principle is both acknowledged and should be the parameter for any proposals put to members.

Transitioning Chair of Audit and Risk from Observer to Full Trustee

The Board accepted that it was irrational for the Chair of Audit and Risk to be an observer rather than full Trustee. The permanent observer status poses potential legal risks regarding uncertainty as to legal trusteeship, and being a full trustee brings both legal certainty to the position and postholder, but also it was recognised that the post should be accountable as a trustee given the work of the committee on behalf of Trustee Board.

The Board also noted the specialist skills and experience required for the role, including the requirements in the UK Corporate Governance Code for relevant experience, which required the role to be independent rather than member.



The Board discussed the implications on the size of the Board. If enacted, the proposal would result in a thirteen-person Board, rather than the current twelve plus one permanent Observer. The Board considered a thirteen- person Board to be workable and effective and noted the following:

- Although the current Board size is twelve, with the Chair of Audit and Risk being a permanent observer, meetings operate as thirteen members in reality and there would in effect be no change.
- The composition would continue to be a member majority Board, with eight members and five independents. The Board would continue to be chaired by a member. Although it should also be noted that formal votes are extremely rare at Board meetings, with almost all decisions take on the basis of arriving at a considered consensus. Unlike other fora, the Board discussed papers and business cases, and not motions.
- Although the Charity Governance Code notes a recommend optimal size of Board of twelve at the upper end, there is (a) no appetite to consider a reduction in the number of member Trustees; and (b) the UK Corporate Governance Code calls for a 50/50 balanced Board; which the College has accepted is not the desire of the membership. The Board needs to balance both aspects of good corporate governance with a composition which reflects the desire of being a member majority Board, no desire to reduce member membership of the Board, and ensuring there is an adequate number of independent Trustees to deliver the specialist skills and experience they bring and the work they undertake on behalf of the Board and the College members.


Potential additional Independent Trustee

The Board considered the Nominations Committee's proposal to consider a second additional independent Trustee. However, the Board decided not to pursue that proposal because (a) it would create a fourteen-person Board; and (b) it would too radical a change in composition between member and independent Trustees.

Conclusion

Trustee Board decided not to agree the recommendation of Nominations Committee to grow the Trustee Board by two independent members.

Instead, it agreed to a resolution of a single additional Trustee to enable the transition of Chair of Audit and Risk from permanent observer to full Trustee.



Additional Context: SEA Report 2021

It is worth members being aware of the Significant Event Analysis Report (SEA) September 2021 (presented to Council) into the resignation on 14 May 2021 of its former Chair of Trustees. This paper co-drafted by a former President of the College and an external solicitor recommended – as part of improved governance of the College – ‘that Council should in future consider appointing one of the Lay Trustees as the TB Chair’ and that ‘it would be helpful if the Chair of TB were a Lay Trustee’ to reduce the risk of college politics playing out in the Trustee Board.

Following this report, consideration was given to proposals for either an appointed lay/independent Chair of Trustee Board or hybrid option where the Chair could be either a member or lay/independent Chair, as elected from Council from time to time. Ultimately, neither proposal received Trustee Board or Council support