



# North East Ambulance Service NHS Foundation Trust

## Constitution

*Version 09 – 2019*



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## 1. Interpretations and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012

Reference in this Constitution to legislation includes all amendments, replacements or re-enactments made, and all regulations, statutory guidance or directions.

Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa

“the <b>2006 Act</b> ”	is the National Health Service Act 2006.
“the <b>2012 Act</b> ”	is the Health and Social Care Act 2012.
“the <b>Accounting Officer</b> ”	is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
“ <b>Board of Directors</b> ”	means the Trust Board of Directors as defined in section 22 of this Constitution
“ <b>Chairperson</b> ”	means the person who is Chair of the Board of Directors and the Council of Governors
“ <b>Chief Executive</b> ”	means the person appointed as Chief Executive of the Trust in accordance with this Constitution
“ <b>class</b> ”	means a category (class) of membership within the Staff Constituency
“ <b>Constitution</b> ”	means this constitution and all annexes to it
“ <b>Council of Governors</b> ”	this is the collective body that binds the Trust to its patients, service users, staff and stakeholders
“ <b>Deputy Chair</b> ”	a Non-Executive Director appointed as Deputy Chair in accordance with the provisions of this Constitution who will preside over a meeting of the Board of Directors when the Chairperson is absent or when the Chairperson declares a conflict of interest which precludes him / her from presiding as Chair at that meeting
“ <b>Director</b> ”	means a member of the Board of Directors. Both Executive and Non-Executive Directors are

	collectively accountable for the exercise of their powers and for the performance of the Trust
<b>“Executive Director”</b>	members of the Board of Directors who are responsible for managing the Trust
<b>“financial year”</b>	the period from 1 April to 31 March represents the financial year
<b>“Governor”</b>	means a public or staff member elected or a person appointed as a member of the Council of Governors
<b>“member”</b>	a person who forms part of the membership of the Foundation Trust
<b>“Monitor”</b>	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act. Monitor became part of NHS Improvement in April 2016.
<b>“NHS Improvement”</b>	the body responsible for the regulation, scrutiny and oversight of NHS foundation trusts
<b>“Non-Executive Director”</b>	members of the Board of Directors who are responsible for challenging the Executive Directors in decision-making and on the Trust’s strategy
<b>“Partnership Governor”</b>	means a Governor appointed by one of the partnership / stakeholder organisations specified within this Constitution
<b>“public constituencies”</b>	means those constituencies referred to in Annex 1
<b>“Public Governor”</b>	means a Governor elected by the members of one of the public constituencies
<b>“Secretary”</b>	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary
<b>“staff constituency”</b>	means that part of the Trust’s membership consisting of the staff of the Trust and which is divided into the classes as provided by Annex 2 of this Constitution
<b>“terms of the Licence”</b>	refers of the terms of the licence which Monitor issued to the Trust to govern its operation
<b>“the Trust”/“the Foundation Trust”</b>	means North East Ambulance Service NHS Foundation Trust
<b>“Trust Board”</b>	means the Board of Directors as previously defined
<b>2. Name</b>	

The name of the Foundation Trust is North East Ambulance Service NHS Foundation Trust (the Foundation Trust / the Trust).

### **3. Principal purpose**

- 3.1.** The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2.** The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3.** The Trust may provide goods and services for any purposes related to:
  - 3.3.1.** the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
  - 3.3.2.** the promotion and protection of public health.
- 3.4.** The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

### **4. Powers**

- 4.1.** The powers of the Trust are set out in the 2006 Act.
- 4.2.** All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3.** Any of these powers may be delegated to a committee of Directors or to an Executive Director.

### **5. Membership and constituencies**

The Trust shall have members, each of whom shall be a member of one of the following constituencies:

- 5.1.** A public constituency; and
- 5.2.** A staff constituency

### **6. Application for membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust.

### **7. Public Constituency**

- 7.1. An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Foundation Trust.
- 7.2. Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 7.3. The minimum number of members in each Public Constituency is specified in Annex 1.

## **8. Staff Constituency**

- 8.1. An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
  - 8.1.1. He / she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months;  
or
  - 8.1.2. He / she has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2. Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.3. The Staff Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.4. The minimum number of members in each class of the Staff Constituency is specified in Annex 2

## **9. Automatic membership by default – staff**

- 9.1. An individual who is:
  - 9.1.1. eligible to become a member of the Staff Constituency; and
  - 9.1.2. invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency without an application being made, unless he /she informs the Trust that he / she does not wish to do so.

## **10. Restrictions on membership**

- 10.1. An individual who is 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.
- 10.2. 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.
- 10.3. An individual must be at least 16 years old to become a member of the Trust.
- 10.4. Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 – Further Provisions.
- 10.5. All membership is individual and there shall be no facility for corporate membership.

#### **11. Annual Members' Meeting**

- 11.1. The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 11.2. Further provisions about the Annual Members' Meeting are set out in Annex 8.

#### **12. Council of Governors – composition**

- 12.1. The Trust is to have a Council of Governors which shall comprise both elected and appointed Governors.
- 12.2. The composition of the Council of Governors is specified within Annex 3.
- 12.3. The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.
- 12.4. More than half of the Council of Governors must be from the Public Constituency.

#### **13. Council of Governors – election of Governors**

- 13.1. Elections for elected members of the Council of Governors shall be



conducted in accordance with the Model Election Rules, as may be varied from time to time by NHS Providers or its successor body. The process or part of that process may be conducted by electronic means.

- 13.2.** The Model Election Rules as published from time to time by NHS Providers or its successor body form part of this constitution. The Model Election Rules are attached at Annex 4.
- 13.3.** A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of the Constitution (amendment of the Constitution). For the avoidance of doubt, the Trust cannot amend the Model Election Rules.
- 13.4.** An election, if contested, must be by secret ballot.
- 13.5.** Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:
- 13.5.1. not be obliged to send any information or photographs unless received by the Trust from the candidate.
  - 13.5.2. not be in breach of any obligation to include in any communication, or otherwise provide, information, which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow.
  - 13.5.3. have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements, which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive or libellous.
- 13.6.** Members of a Public Constituency may stand for election as a Public Governor for that Public Constituency. A member of a Public Constituency standing for election as a Public Governor must make a declaration as to his/her eligibility in accordance with the 2006 Act. Under Section 60 of the 2006 Act, it is an offence to knowingly or recklessly make a declaration which is false in a material particular.
- 13.7.** Members of the Staff Constituency may stand for election as a Staff Governor. A member of the Staff Constituency standing for election as a Staff Governor must make a declaration as to his/her eligibility in accordance with the 2006 Act.

#### **14. Council of Governors – tenure**

- 14.1.** An elected Governor may hold office for a period of up to 3 years.

- 14.2. An elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he / she was elected.
- 14.3. An elected Governor shall be eligible for re-election at the end of his / her term but may not serve more than three consecutive terms or nine years, whichever is the less.
- 14.4. An appointed Governor may hold office for a period of up to 3 years.
- 14.5. An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him / her.
- 14.6. An appointed Governor shall be eligible for re-appointment at the end of his / her term but may not serve more than three consecutive terms or nine years, whichever is less.
- 14.7. Appointed and elected Governors will be deemed to have held successive periods of office for more than nine years if they are elected for three successive terms of three years, whether or not they serve the full term and whether or not one of those terms was as a Governor of another Constituency or class within a Constituency.

#### **15. Council of Governors – disqualification and removal**

- 15.1. The following may not become or continue as a member of the Council of Governors:
  - 15.1.1. he/she was not at least 16 years of age at the date he/she was nominated for election or appointment;
  - 15.1.2. he/she is an Executive Director or Non-Executive of the Trust or an Executive Director, Non-Executive Director or Governor of another NHS Foundation Trust; though this does not apply to anyone who is appointed as a Partnership Governor of this Trust by the NHS Foundation Trust of which he/she is an Executive Director, Non-Executive Director or Governor. Partnership Governors may serve as partnership Governors at more than one Trust provided they are appointed to represent the same organisation;
  - 15.1.3. he/she has been adjudged bankrupt or his/her estate has been sequestrated and in either case, he/she has not been discharged;
  - 15.1.4. he/she has been made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;

- 15.1.5. he/she has within the preceding five years been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her;
  - 15.1.6. he/she has in the preceding two years been dismissed by the Trust or its predecessor on any grounds, or in the case of another organisation, on any grounds other than redundancy or ill health; or
  - 15.1.7. he/she has verbally or physically abused any member of NHS staff, patient, carer or registered volunteers, or has been issued with a Personal Safety and Security Warning Letter by the Trust.
- 15.2.** Where a person appointed as a Governor becomes disqualified from serving in that capacity by virtue of paragraph 15.1. he/she shall notify the Secretary in writing without delay.
- 15.3.** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.
- 15.4.** This Constitution makes provisions for the termination of office and removal of Governors which are set out in Annex 5.

## **16. Council of Governors – duties of Governors**

- 16.1.** The general duties of the Council of Governors are –
- 16.1.1. to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
  - 16.1.2. to represent the interests of the members of the trust as a whole and the interests of the public.
- 16.2.** The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

## **17. Council of Governors – meetings of Governors**

- 17.1.** The Chairperson of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraphs 24 and 25) or, in his / her absence the Deputy Chairperson (appointed in accordance with the provisions of paragraph 26 below), shall preside at meetings of the Council of Governors.

**17.2.** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting for confidential or special reasons including:

17.2.1. during the consideration of any material or discussion in relation to a named person employed by or proposed to be employed by the Trust;

17.2.2. during the consideration of any material or discussion in relation to a named person who is or has been or is likely to become a patient of the Trust;

17.2.3. during the consideration of any matter which, by reason of its nature, the Council is satisfied should be dealt with on a confidential basis. This includes commercial matters, legal matters and actual or anticipated litigation; or

17.2.4. those matters which would be deemed to be confidential for the purposes of the Freedom of Information Act 2000.

**17.3.** The Chair of the Council of Governors may exclude any members of the public from a meeting if they are interfering with or preventing proper conduct of the meeting.

**17.4.** For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

**17.5.** The Council of Governors shall meet at least four times per financial year.

## **18. Council of Governors – standing orders**

**18.1.** The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

## **19. Council of Governors – conflicts of interest of Governors**

**19.1.** If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of

a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

## **20. Council of Governors – travel expenses**

- 20.1.** The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust.

## **21. Council of Governors – further provisions**

- 21.1.** Further provisions with respect to the Council of Governors are set out in Annex 5.

## **22. Board of Directors – composition**

- 22.1.** The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 22.2.** The Board of Directors is to comprise:
- 22.2.1. A Non-Executive Chairman;
  - 22.2.2. 5 to 7 other Non-Executive Directors; and
  - 22.2.3. 5 to 7 Executive Directors.
- 22.3.** All current Directors and future appointments must clearly satisfy and continue to meet the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.
- 22.4.** At least half of the Board of Directors, excluding the Chair, shall be Non-Executive Directors.
- 22.5.** One of the Executive Directors shall be the Chief Executive.
- 22.6.** The Chief Executive will be the Accounting Officer.
- 22.7.** One of the Executive Directors shall be the Finance Director.
- 22.8.** One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dentist (within the meaning of the Dentists Act 1984).
- 22.9.** One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.

**22.10.** Each Director shall be able to exercise one full vote.

**22.11.** The Trust shall have a Trust Secretary who shall be neither a Governor nor a Director but a senior manager who is accountable to the Board of Directors and reports to the Chief Executive. The appointment and removal of the Trust Secretary shall be a matter for the Chief Executive and Chair jointly.

**22.12.** It is for the Board of Directors to decide any changes to the title or function of the posts designated as Executive Directors, subject to Section 16 of Schedule 7 of the 2006 Act.

**22.13.** The Board of Directors reserves the right to appoint Associate Non-Executive Directors. Associate Non-Executive Directors are not Board Members (and therefore do not have the associated rights and responsibilities of Board Members). They do not have a vote at Board meetings and do not count for the purposes of quorum.

### **23. Board of Directors – general duty**

**23.1.** The general duty of the Board of Directors and of each director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

### **24. Board of Directors – qualification for appointment as a Non-Executive Director**

**24.1.** A person may be appointed as a Non-Executive Director only if:

24.1.1. He / she is a member of the Public Constituency;

24.1.2. He / she is not disqualified by virtue of paragraph 29 below; and

24.1.3. He/she meets the fit and proper persons requirements outlined within Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.

### **25. Board of Directors – appointment and removal of the Chairperson and other Non-Executive Directors**

**25.1.** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairperson of the Trust and the other Non-Executive Directors.

**25.2.** Removal of the Chairperson or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

**25.3.** Further provisions for the appointment and removal of the Chairperson and other Non-Executive Directors are set out in Annex 5.

**26. Board of Directors - appointment of Deputy Chair**

**26.1.** The Council of Governors, at a general meeting of the Council of Governors, shall appoint one of the Non-Executive Directors as Deputy Chair for such a period as they may specify (not to exceed the remainder of his/her term as a Non-Executive Director).

**27. Board of Directors - appointment of Senior Independent Directors**

**27.1.** The Board of Directors may appoint one of the Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director could be the Deputy Chair.

**28. Board of Directors – appointment and removal of the Chief Executive and other Executive Directors**

**28.1.** The Non-Executive Directors shall appoint or remove the Chief Executive. All appointments must satisfy the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.

**28.2.** The appointment of the Chief Executive shall require the approval of the Council of Governors.

**28.3.** A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors. All appointments must satisfy the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.

**28.4.** On termination of his/her contract of employment, an Executive Director (including the Chief Executive) shall cease to be a member of the Board of Directors.

**28.5.** If an Executive Director is suspended from his/her contract of employment or is (or is expected to be) absent for any long-term period (long-term illness, maternity leave, secondments and sabbaticals for example), the Chair and Non-Executive Directors in the case of the Chief Executive, and the Chief Executive in the case of other Executive Directors, may appoint another person as Executive Director in an acting capacity in his/her place and such acting Director shall be disregarded for the purposes of paragraphs 22.2.3

and 22.4 above. Upon the Executive Director's return to his/her post, the appointment of the acting Director as a Director of the Trust shall immediately and automatically terminate.

- 28.6.** If an Executive Director post is vacant ("Vacant Position"); and the Board of Directors agree that the Vacant Position needs to be filled by an interim post-holder pending appointment of a permanent post-holder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a Director as an interim Director ("Interim Director") to fill the Vacant Position pending appointment of a permanent post-holder. The appointment of the interim director as a Director of the Trust shall immediately and automatically terminate on the appointment of a permanent post-holder or, if earlier, the date on which the person entitled to appoint him/her under this paragraph notifies him/her that he/she is no longer to act as an Interim Director.

## **29. Board of Directors – disqualification**

- 29.1.** A person may not become or continue as a member of the Board of Directors if:

- 29.1.1. he/she has been adjudged bankrupt or his/her estate has been sequestrated and (in either case) he/she has not been discharged;
- 29.1.2. he/she has made a composition or arrangement with, or granted a Trust deed for, his/her creditors and he/she has not been discharged in respect to it;
- 29.1.3. he/she has, within the preceding five years, been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him/her;
- 29.1.4. in the case of the Chair and Non-Executive Directors, he/she does not meet the requirements of Section 16 of Schedule 7 to the 2006 Act;
- 29.1.5. he/she is a person whose tenure of office as Chair or as a Director of a Health Service Body has been terminated on the grounds that his/her appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 29.1.6. he/she has failed to declare an interest in accordance with Standing Orders or, contrary to Standing Orders, has voted at a meeting on a matter on which he/she has an interest, or, has failed to declare any interests to the Secretary as required by this Constitution or the



Standing Orders and in this sub-paragraph, interest includes a pecuniary and a non-pecuniary interest, in either case whether direct or indirect;

- 29.1.7. he/she has become a member of the Council of Governors;
- 29.1.8. he/she has resigned from office by giving notice;
- 29.1.9. in the case of a Non-Executive Director, he/she is no longer a member of the Public Constituency;
- 29.1.10. in the case of the Chair, he/she has been appointed as a Chair of another NHS Trust or NHS Foundation Trust.
- 29.1.11. the person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland;
- 29.1.12. the person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986(1);
- 29.1.13. the person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;
- 29.1.14. The person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment; or
- 29.1.15.
- 29.1.16. A person who is unable or unwilling to sign an annual declaration that they continue to meet the Care Quality Commission's Fit and Proper Persons regulations.

### **30. Board of Directors – meetings**

- 30.1.** The Chair of the Trust is to preside at meetings of the Board of Directors. In the absence of the Chair, a Non-Executive Director appointed by the Council of Governors as Deputy Chair of the Board of Directors will preside at meetings.
- 30.2.** Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons. Members of the public may be excluded from a meeting if they are interfering

with or preventing the proper conduct of the meeting or for other special reasons.

- 30.3.** Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 30.4.** Joint meetings between the Council of Governors and the Board of Directors may be held. The Chair of the Trust shall preside at joint meetings or in the absence of, or at the request of the Chair due to a conflict of interest affecting the Chair, the Deputy Chair will preside. Joint meetings of the Council of Governors and Board of Directors will not be open to the public, unless the Board determines otherwise. Decisions made at joint meetings will be formally recorded.

### **31. Board of Directors – standing orders**

- 31.1.** The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7. The proceedings shall not be invalidated by any vacancy in its membership or any defect in a Director's appointment.

### **32. Board of Directors – conflicts of interest of Directors**

- 32.1.** The duties that a director of the trust has by virtue of being a director include in particular:
- 32.1.1. A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- 32.1.2. A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 32.2.** The duty referred to in sub-paragraph 32.1.1 is not infringed if:
- 32.2.1. The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 32.2.2. The matter has been authorised in accordance with the Constitution.
- 32.3.** The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

**32.4.** In sub-paragraph 32.1.2, “third party” means a person other than:

32.4.1. The Trust, or

32.4.2. A person acting on its behalf.

**32.5.** If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.

**32.6.** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

**32.7.** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

**32.8.** This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

**32.9.** A Director need not declare an interest:

32.9.1. If it cannot reasonably be regarded as likely to give rise to a conflict of interest;

32.9.2. If, or to the extent that, the directors are already aware of it;

32.9.3. If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered

32.9.4. By a meeting of the Board of Directors, or

32.9.5. By a committee of the Directors appointed for the purpose under the Constitution.

**32.10.** Further provisions in relation to conflicts of interest are set out in the Standing Orders for the Board of Directors.

### **33. Board of Directors – remuneration and terms of office**

**33.1.** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairperson and the other Non-Executive Directors.

- 33.2.** The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

#### **34. Registers**

- 34.1.** The Trust shall have:

- 34.1.1. a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 34.1.2. a register of members of the Council of Governors;
- 34.1.3. a register of interests of Governors;
- 34.1.4. a register of Directors; and
- 34.1.5. a register of interests of the Directors.

- 34.2.** The Trust Secretary shall be responsible for compiling and maintaining the registers and will in accordance with the provisions of this Constitution, update the registers with new or amended information as soon as it is practical through a regular review of the registers.

#### **35. Registers – inspection and copies**

- 35.1.** The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

- 35.2.** The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, unless specific permission to release this information has been granted by the member.

- 35.3.** So far as the registers are required to be made available:

35.3.1. they are to be available for inspection free of charge at all reasonable times; and

35.3.2. a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

- 35.4.** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **36. Documents available for public inspection**

**36.1.** The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

- 36.1.1. a copy of the current Constitution,
- 36.1.2. a copy of the latest annual accounts and of any report of the auditor on them, and
- 36.1.3. a copy of the latest annual report

**36.2.** The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

- 36.2.1. a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration) or 65LA (Trusts to be dissolved) of the 2006 Act
- 36.2.2. a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 36.2.3. a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act
- 36.2.4. a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 36.2.5. a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 36.2.6. a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor / NHS Improvement's decision), 65KB (Secretary of State's response to Monitor / NHS Improvement's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 36.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 36.2.8. a copy of any final report published under section 65I (administrator's final report).

36.2.9. a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

36.2.10. a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

**36.3.** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

**36.4.** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **37. Auditor**

**37.1.** The Trust shall have an auditor.

**37.2.** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors. The Trust's external auditors must be licenced by the Institute of Chartered Accountants in England and Wales to undertake public audit and the appointment must be compliant with the Local Audit and Accountability Act 2014.

**37.3.** The appointed auditor must be a member of one or more of the bodies referred in paragraph 23(4) of Schedule 7 of the 2006 Act.

**37.4.** The auditor is to carry out duties in accordance with Schedule 10 of the 2006 Act and in accordance with directions given by Monitor / NHS Improvement on standards, procedures and techniques to be adopted.

**37.5.** The Council will formally reappoint the auditor at a general meeting of the Council of Governors.

### **38. Audit Committee**

**38.1.** The Trust shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

**38.2.** The Audit Committee will act as a Group Audit Committee for the Trust and any subsidiary companies.

### **39. Accounts**

**39.1.** The Trust must keep proper accounts and proper records in relation to the accounts.

- 39.2. Monitor / NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 39.3. The accounts are to be audited by the Trust's auditor.
- 39.4. The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor / NHS Improvement may with the approval of the Secretary of State direct
- 39.5. The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

#### **40. Annual report, forward plans and non-NHS work**

- 40.1. The Trust shall prepare an Annual Report and send it to Monitor / NHS Improvement.
- 40.2. The Trust shall give information as to its forward planning in respect of each financial year to Monitor / NHS Improvement.
- 40.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 40.4. In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 40.5. Each forward plan must include information about –
  - 40.5.1. the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 40.5.2. the income it expects to receive from doing so.
- 40.6. Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1, the Council of Governors must –
  - 40.6.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
  - 40.6.2. notify the Directors of the Trust and its determination.
- 40.7. A Trust which proposes to increase by 5% or more the proportion of its total

income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England may implement the proposal only if more than half of the members of Council of Governors of the Trust voting approve its implementation.

#### **41. Presentation of the annual accounts and reports to the Governors and members**

**41.1.** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

41.1.1. the annual accounts

41.1.2. any report of the auditor on them

41.1.3. the annual report.

**41.2.** The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

**41.3.** The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.

#### **42. Indemnity**

**42.1.** Members of the Council of Governors, members of the Board of Directors, the Secretary and other officers who act honestly and in good faith will not have to meet, out of their personal resources, any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall maintain insurance arrangements for this purpose.

**42.2.** On behalf of the Directors and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity

#### **43. Instruments**

**43.1.** The Trust shall have a seal.

**43.2.** The seal shall not be affixed except under the authority of the Board of Directors.

#### **44. Amendment of the Constitution**

**44.1.** The trust may make amendments of its Constitution only if:



- 44.1.1. More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
- 44.1.2. More than half of the members of the Board of Directors of the Trust voting approve the amendments
- 44.2. Amendments made under paragraph 43.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 44.3. Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
  - 44.3.1. At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 44.3.2. The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4. If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 44.5. Amendments by the Trust of its Constitution are to be notified to Monitor / NHS Improvement. For the avoidance of doubt, Monitor / NHS Improvement's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.
- 44.6. Save as permitted by law, at any meeting of the Trust, the Chair shall be the final authority on the interpretation of the Constitution and Standing Orders (on which he/she should be advised by the Chief Executive and Secretary).

#### **45. Mergers and significant transactions**

- 45.1. The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 45.2. The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

**45.3.** The Trust understands and defines a significant transaction as:

- 45.3.1. A Joint Venture
- 45.3.2. Social Enterprise arrangement
- 45.3.3. Setting up of a company – including acquisition of an existing company
- 45.3.4. Divestment of an organisational function (including outsourcing of same)
- 45.3.5. Acquisition / subsuming other NHS services i.e., urgent care centre
- 45.3.6. Diversification – acquiring services outside current scope; and

where relevant, that fall within the categories below:

		Categories* Significant Transaction
Ratio	Description	
Assets	The gross assets** subject to the transaction, divided by the gross assets of the foundation trust	>25%
Income	The income attributable to: <ul style="list-style-type: none"> <li>• The assets; or</li> <li>• The contract</li> </ul> Associated with the transaction, divided by the income of the foundation trust	>25%
Consideration to total NHS foundation trust capital	The gross capital*** of the company or business being acquired/divested, divided by the total capital**** of the foundation trust following completion, or the effects on the total capital of the foundation trust resulting from a transaction.	>25%

\*For non-healthcare/international transactions the thresholds will be reduced by 50% for investments only

\*\* Gross assets is the total of fixed assets and current assets

\*\*\* Gross capital equals the market value of the target's shares and debt securities, plus the excess of current liabilities over current assets

\*\*\*\* Total capital of the foundation trust equals taxpayers' equity

## Annex 1 – the Public Constituencies

### (Paragraphs 7.1 to 7.3)

1) The below table illustrates the four Public Constituencies.

Name of Constituency	Areas defined by electoral districts	Number of Governors	Minimum Number of Members
North of Tyne	Northumberland		
	Newcastle upon Tyne		
	North Tyneside		
		<b>6</b>	<b>600</b>
South of Tyne	Gateshead		
	South Tyneside		
	Sunderland		
		<b>5</b>	<b>500</b>
Durham	Chester-le-Street		
	City of Durham		
	Darlington		
	Derwentside		
	Easington		
	Sedgefield		
	Teesdale		
	Wear Valley		
		<b>5</b>	<b>500</b>
Teesside	Hartlepool		
	Middlesbrough		
	Redcar and Cleveland		
	Stockton-on-Tees		
		<b>5</b>	<b>500</b>

- 2) The Trust's volunteers may become members of this Constituency by application to the Trust in accordance with the Constitution.
- 3) The Trust will aim to achieve a minimum of 4,200 public constituency members irrespective of the minimum numbers stated above in each constituency which will be maintained at all times.
- 4) Should an individual area within the Public Constituency fail to achieve the minimum number of members specified above, no election shall take place in that area until such time as the minimum number is reached. An election within that individual area will then take place within a time period determined jointly by the Council of Governors and the Board of Directors.
- 5) In the case of dispute, the Trust Secretary, in conjunction with the Chair and Chief Executive, will have the final decision about the Constituency of which an individual is eligible to be a member.

## Annex 2 – the Staff Constituency

(Paragraphs 8.1 to 8.4)

- 1) Staff membership will be constructed via an ‘opt out’ process and will be broken down into the following role definitions or classes. The table below illustrates how the Trust’s role structure relates to the staff classes. The Staff Constituency shall have four staff classes with one Governor elected by the staff from each class:

Staff Class	Number of Governors	Minimum number of Members
<b>Unscheduled Care</b> (staff and managers)	1	300
<b>Scheduled Care</b> (staff and managers)	1	300
<b>Emergency Operations Centre</b> (staff and managers)	1	50
<b>Support Services</b> (staff and managers not included in one of the other classes above)	1	100

- 2) The Trust will aim to achieve a minimum of 1,000 staff members irrespective of the minimum numbers stated above in each class which will be maintained at all times.
- 3) Should an individual class within the Staff Constituency fail to achieve the minimum number as specified above, no election shall take place in that class until such time as the minimum number is reached. An election within that class will then take place within a time period determined jointly by the Council of Governors and the Board of Directors.
- 4) In the case of dispute, the Trust Secretary, in conjunction with the Chair and Chief Executive, will have the final decision about the class of which an individual is eligible to be a member.

### Annex 3 – Composition of the Council of Governors

#### (Paragraphs 12.1 – 12.3)

1) The composition of the Council of Governors shall comprise:

Constituency	Area / class	Number of Governors
Public	North of Tyne	6
	South of Tyne	5
	Durham	5
	Teesside	5
Staff	Unscheduled Care	1
	Scheduled Care	1
	Emergency Operations Centre	1
	Support Services	1
Appointed (partnership Governors)	<b>Commissioning body</b> (as agreed by the Trust Secretary, Chair and Chief Executive)	1
	<b>Local Authority Governor</b> – to be appointed by the Association of North East Councils in liaison with the local authorities within the Trust’s operational area. The Local Authority Governors should represent rural, semi-rural and urban communities across the North East.	4
	<b>University of Teesside</b> in consultation with: University of Northumbria, Newcastle University, Sunderland University and Durham University	1
	<b>Local Resilience Forum</b> – in consultation with the Local Resilience Fora in the North East region that comprise emergency services	1
	<b>Northumbria Healthcare NHS FT</b> – in consultation with all other acute trusts within the Trust’s operational area	1
	<b>Tees, Esk and Wear Valley NHS FT</b> – in consultation with the other mental health trust in the operational area, Cumbria, Northumberland, Tyne and Wear NHS FT	1
	<b>Voluntary Organisations Network North East (VONNE)</b> as the umbrella network and in consultation with the following organisations, including: British Red Cross, St John’s Ambulance, Mountain Rescue and Great North Air Ambulance Service	1
		<b>34</b>

- 2) The process for the appointment of the appointed Governors (referred to as partnership Governors under sub-paragraph 9(7) of Schedule 7 of the NHS Act 2006) will be agreed by the Trust Secretary, in conjunction with the Chair and Chief Executive.
- 3) At least one member shall be appointed by a qualifying Local Authority; pursuant to a process agreed with the Secretary, in conjunction with the Chair and with the organisations concerned.
- 4) If and to the extent that a partnership organisation referred to above fails to make an appointment within three months of being invited to do so by the Trust, the Trust may seek an appointment from an alternative organisation which in the Trust’s

opinion has similar objectives or provides similar services to the organisation for which it shall stand in substitution.

**Annex 4 – Conduct of Elections**

**(Paragraph 13.1 to 13.4)**

**Model Election Rules**

**Comment [JB1]:** Insert here at the end of the process

## **Annex 5 – Additional Provisions – Council of Governors**

### **Eligibility criteria**

1. A person may not be a candidate in an election to the Council of Governors or become a member of the Council of Governors, and if already holding such office will immediately cease to do so, if:
  1. They are incapable by reason of mental illness or injury of managing or administering their property and affairs;
  2. They have within the preceding 2 years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body.
  3. They have been disqualified from membership of their profession by the professional or regulatory body.
  4. They have previously been removed from office as a Governor of the Trust.
  5. On the basis of disclosures obtained through an application to the Disclosure and Barring Service, is not considered suitable by the Trust's Executive Director who is responsible for advising the Trust on such matters.
  6. Has had his/her name removed from any list maintained under regulations pursuant to Sections 91, 106, 123 or 146 of the 2006 Act., and has not subsequently had his/her name included in such a list, and due to the reason(s) for such removal, he/she is not considered suitable by the Executive Director responsible for advising the Trust on such matters, after due enquiry.
  7. They are a person who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.
  8. They are not a fit and proper person to be a Governor of a Foundation Trust in accordance with the Licence.
  9. They are a vexatious complainant of the Trust, as defined by Trust policy.
  10. They are an Executive or Non-Executive Director of the Trust or a group company, or a Non-Executive Director, Chairperson, Chief Executive or Director of another NHS organisation.
  11. They are the spouse, partner, parent or child of a member of the Council of Governors or Board of Directors of the Trust.
  12. They are under the age of 16.
  13. They are a member of a Local Authority's Overview and Scrutiny Committee covering health matters.



14. They bring the Trust into disrepute, their actions are detrimental to the interests of the Trust or are not in accordance with the Governor Code of Conduct.
15. They have failed to discharge their duties as a Governor and are in breach of the Governor Code of Conduct.
16. They are or become a Governor in another NHS organisation (with the exception of appointed Governors who may serve as appointed Governors representing the same organisation at multiple trusts).
17. In the case of a public Governor they cease to be a member of the Public Constituency by which they were elected.
18. Being a member of one of the Public Constituencies they refuse or fail to sign a declaration, in the form specified by the Council of Governors, giving particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors.
19. They have failed to abide by the terms of any declaration made on nomination or appointment, or of any code of conduct, values and principles which the Trust may publish from time to time.
20. They have failed to declare an interest in accordance with Standing Orders or, contrary to the Standing Orders, has voted at a meeting on a matter on which they have an interest or, has failed to declare any interest to the Secretary as required by this Constitution of the Standing Orders and in this sub-paragraph, interest includes a pecuniary and a non-pecuniary interest, in either case whether direct or indirect;
21. It otherwise comes to the notice of the Secretary at the time that the Governor takes office or later that the Governor is disqualified.
22. They have failed to undertake those training sessions for Governors as recommended by the Trust, unless the Council of Governors is satisfied that the failure was due to reasonable causes and they will be able to undertake the training within such a period as is the Council considers reasonable.
23. They resign by giving notice to the Trust.
24. In the case of a Staff Governor they cease to be employed by the Trust or cease to be a member of the class of the Staff Constituency by which they were elected.
25. In the case of an appointed Governor, the organisation which has appointed them withdraws their appointment of him / her or, if that appointment arises from his/her employment by the appointing organisation, he/she ceases to be employed by the appointing organisation.

26. Consideration will be given to the removal of a Governor if they breach any requirement for attendance at Council of Governor meetings set by the Council of Governors, as outlined within the Governor Code of Conduct.
2. Removal of a Governor will require the approval of three quarters of the Governors present at a General meeting of the Council of Governors.
3. The Council of Governors may, by a resolution, terminate a Governor's tenure of office for reasonable cause if it considers that his/her continuing as a Governor would or would likely to:
  - a. prejudice or impede the ability of the Trust to fulfil its purpose under this Constitution or otherwise discharge its duties or functions
  - b. harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goddess and services
  - c. adversely affect public confidence in the goods or services provided by the Trust
  - d. otherwise bring the Trust into disrepute
4. The Governor concerned will be eligible to make representation to the Council of Governors but not to vote on any resolution relating to his removal or any associated issues.
5. Where there is disagreement about whether a proposal to remove a Governor is justified, it shall be referred to an independent assessor agreeable to both parties who will be requested to consider the evidence and conclude upon the matter.

#### **Requirement of Governors to notify the Trust**

1. Where a person has been elected or appointed to be a Governor and becomes disqualified from office under paragraph 15 of this Constitution and the requirements of Annex 5, he/she shall notify the Trust Secretary in writing of such disqualification.

#### **Governor vacancies**

1. The validity of any act of the Trust is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.
2. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
3. Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
4. Subject to the provisions of this section, if there is a vacancy for a Governor for any of the public constituencies or the staff classes an election in accordance with the Model Election Rules to fill the vacancy shall be held unless:

- a. Where an elected Public Governor or Staff Governor ceases to hold office within six months of his/her appointment, the Trust shall offer the candidate who is not currently a Governor and who secured the second highest number of votes in the last election, for the class or Constituency in which the vacancy has arisen ('the Reserve Candidate'), the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that Reserve Candidate does not accept the invitation to fill the vacancy, it will then be offered to the next Reserve Candidate who secured the next highest number of votes until the vacancy is filled. Where candidates have tied votes, lots will be cast to determine the order of the offer as the next Reserve Candidate.
  - b. An elected Governor's seat falls vacant for any reason within six months of their ordinary day of retirement, subject to paragraph 3 below, the seat shall stand vacant until the next annual election.
5. The day of election to fill a vacancy in any office mentioned in 4 above shall be fixed by the Chairperson, in consultation with the Trust Secretary.
6. Paragraph 4b above shall not apply and an election shall be held to fill the vacancy if the Chairperson considers that there is a reasonable possibility that during the six month period the total number of unfilled vacancies of public Governors would mean that the public Governors are not in the majority on the Council of Governors.
7. A person elected under paragraph 4 or 6 or a "Reserve Governor" invited under paragraph 4a shall hold office to fill the casual vacancy until the date upon which the person whose seat he/she is elected/invited to fill would have regularly retired.

#### **Roles and responsibilities of Governors**

1. The duties of the Council of Governors are set out in paragraph 16 of the Constitution.
2. In particular the Council of Governors is to:
  - a. Hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors.
  - b. Represent the interests of members as a whole and of the public.
  - c. Approve at a General meeting, the remuneration and allowances and other terms and conditions of the office of the Chair and Non-Executive Directors.
  - d. Appoint or remove at a General meeting the Chair and other Non-Executive Directors.
  - e. At a General meeting, to appoint the Trust's Auditors for a period of time which allows the auditor to develop a strong understanding of the NHS Foundation Trust.

- f. To receive a report from the Trust Audit Committee in relation to the performance of any existing External Auditor, including detail such as the quality and value of work and the timeliness of reporting and fees, to enable the Council of Governors to consider their reappointment.
- g. Approve the appointment of the Chief Executive.
- h. Be presented with and consider the Annual Accounts, Auditors' report and the Annual Report.
- i. Canvass the opinion of their members and, for appointed / staff Governors, the body / staff group they represent, on matters of significance, including the NHS Foundation Trust's forward plans, objectives, priorities and strategy and to represent the interests of members.
- j. Taking account of the opinion of their membership, provide the views of the Council of Governors to the Board of Directors for the purposes of preparation, by the Board of Directors, of the document containing the information as to the Trust's forward planning in respect of each financial year to be given to Monitor / NHS Improvement.
- k. Where a proposal is included in a forward plan for non-NHS funded services the Council of Governors must consider whether it is satisfied that it will not, to any significant extent, interfere with the fulfilment of the FTs primary purpose and inform the Board of Directors of its decision.
- l. More than half of the members of the Council of Governors of the Trust voting, must approve implementation of proposals to increase by 5% or more, the proportion of the Trust's total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England.
- m. Appoint as necessary, committees or sub-committees consisting of Governors to advise and assist the Council of Governors in carrying out its functions e.g., a Nominations and Remuneration Committee.
- n. Nominate a Lead Governor through whom the Council of Governors should communicate directly with Monitor / NHS Improvement if the Foundation Trust is at risk of significantly breaching the terms of its Licence and if these concerns cannot be satisfactorily resolved. Monitor / NHS Improvement will contact the Lead Governor where it has concerns as to Board leadership. The role and responsibilities of the Lead Governor will include the relevant provisions set out in the NHS Foundation Trust Code of Governance.
- o. Require one or more Directors to attend a meeting of the Council to obtain information on the performance of the Trust.
- p. Respond to any matter as appropriate when consulted by the Board of Directors.
- q. Such other duties as may be agreed with the Directors from time to time.

3. The Council of Governors may appoint advisors to assist it. The advisors may not be designated as Governors and may not be given voting rights. The appointment of advisors to the Council of Governors must be approved by the Board of Directors.

### **Appointment of Non-Executive Directors (including the Chairperson and Deputy Chair)**

1. Provisions for the appointment and removal of the Non-Executive Directors and Chairperson are set out in section 25 of the Constitution.
2. The Council of Governors shall establish a committee to assist in the process of the appointment of Non-Executive Directors. The committee shall consist of a majority of Governors and may have an independent assessor in attendance if appropriate who shall not be a member of, or have a vote, on the committee. The committee shall be chaired by the Chairperson.
3. On expiry of a Non-Executive Director's term of appointment, the Committee shall consider whether to recommend to the Council of Governors, that the Council of Governors reappoint the retiring Non-Executive Director, or Chair, or Deputy Chair.
4. The Committee must satisfy itself that all appointments and reappointments meet the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.
5. Where exceptional circumstances exist Non-Executive Directors may serve longer than six years (e.g. two three-year terms), subject to annual re-appointment by the committee.
6. Removal of the Chairperson or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
7. Removal of the Chair or another Non-Executive Director shall require a resolution to be submitted by one Governor which must be seconded by not fewer than ten Governors including at least two Elected Governors and two Appointed Governors, and requires the resolution in question to be approved by three-quarters of the members of the Council of Governors.
8. The Governor sponsoring the resolution mentioned in paragraph 7 above shall provide written reasons in support of the resolution to the Chair or Non-Executive Director in question and who shall be given the opportunity to respond to such reasons.
9. The Chair or another Non-Executive Director can be suspended while a decision to remove them is made.
10. In order to determine the proper level of remuneration and allowances that should be paid to the Chair and other Non-Executive Directors, the Council of Governors may, from time to time, and at least every three years shall, consult at the Trust's expense, with external professional advisers recommended by the Secretary and the Executive Director with responsibility for advising the Trust on such matters.

**Staff constituency – time taken out of normal working hours to perform Council of Governors' duties**

1. Leave from Trust duties to carry out Council of Governor duties will be dealt with in accordance with the Trust's Special Leave Policy. Special leave to undertake obligations for the Council of Governors will be considered alongside any other special leave previously or subsequently granted to staff.

**Provision of training and development for Governors**

1. The Trust shall make available any reasonable resources required by the Council of Governors to ensure Governors are equipped with the skills and knowledge they require in their capacity as such.

## **Annex 6 – Standing Orders for the Practice and Procedure of the Council of Governors**

### **1. Purpose**

- 1.1. The purpose of the Council of Governors' Standing Orders is to ensure that the highest standard of Corporate Governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance.
- 1.2. The Council of Governors will conduct its business in an open a way as possible and will observe the Nolan principles of Public Life.
- 1.3. Everything that the Trust does should be able to stand the test of scrutiny, public judgement on propriety and professional codes of conduct. All business shall be conducted in the name of the Trust.
- 1.4. A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal or civil liability which is incurred in the execution or purported execution of his or her function as a Governor save where the Governor has acted recklessly. On behalf of the Council, and as part of the Trust's overall insurance arrangements, the Board shall put in place appropriate insurance provision to cover such indemnity.

### **2. Composition and role of the Council of Governors**

- 2.1. The composition and role of the Council of Governors are set out in sections 12 and 16 of the Constitution, as well as Annex 5.

### **3. Meetings of the Council of Governors**

- 3.1. Meetings of the Council of Governors shall be held at least four times each year, inclusive of an Annual General Meeting, at times and places that the Council of Governors may determine.
- 3.2. A general meeting shall be held prior to 31st October each year at which the Council of Governors is to be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report.
- 3.3. The Council may invite the Chief Executive of the Trust and other members of the Board of Directors, to attend any meeting of the Council of Governors and enable members of the Council of Governors to raise questions about the affairs of the Trust.
- 3.4. A meeting of the Council shall be open to the public except to the extent that they are excluded by resolution under 3.4. below.
- 3.5. The Council may by resolution exclude the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of

the business to be transacted or the nature of the proceedings, that there would be disclosure to them of confidential information as defined in paragraph 17.2 of the Constitution.

#### **4. Calling meetings**

- 4.1. Notwithstanding 3.1. above, the Chairman may, in exceptional circumstances, call a meeting of the Council at any time.
- 4.2. In exceptional circumstances, members of the Council of Governors may require a meeting by presenting a request for that purpose, signed by at least one-third of the whole Council of Governors. If the Chair refuses to call a meeting after receipt of a request, or fails to convene a meeting within fourteen days of receipt of a request, the Governors who signed the request may convene a meeting of the Council of Governors in default of the Chair.

#### **5. Notice of meetings**

- 5.1. Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it shall be delivered to every Governor (either by post or electronically), in order to be available to him/her at least five clear days before the meeting. Supporting papers shall accompany the agenda whenever possible but will certainly be despatched no later than three clear days before the meeting, save in emergency.
- 5.2. In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors stating the business to be transacted, and no business shall be transacted at the meeting other than that specified on the notice.
- 5.3. A notice shall be presumed to have been served one day after sending. Lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 5.4. Before each meeting of the Council of Governors, a public notice of the time and place of the meeting, and the public part of the agenda, will be displayed on the Trust's website.

#### **6. Setting the agenda**

- 6.1. The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 6.2. A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairperson at least ten clear working days before the meeting. Requests made less than ten clear days before a meeting may be included on the agenda at the discretion of the Chairperson. The matter shall be included in the agenda for the next general meeting of the Council unless otherwise stated in the request.

#### **7. Chair of the meeting**



- 7.1. At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting (including absence due to a declared conflict of interest), the Deputy Chair shall preside. Otherwise, such member of the Council of Governors as the members of the Council of Governors present shall choose shall preside.

## **8. Notices and motions**

- 8.1. A member of the Council of Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the Meeting to the Chair, who shall insert in the agenda for the Meeting. It must also be seconded by another Governor. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 5 of these Standing Orders.
- 8.2. A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 8.3. Notice of a motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the members of the Council of Governors who give it and also the signature of four other members of the Council. When any such motion has been disposed of by the Council of Governors it shall not be competent for any member of the Council of Governors, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.
- 8.4. The mover of the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 8.5. When a motion is under discussion or immediately prior to discussion, it shall be open to a member of the Council of Governors to move:
- a. An amendment to the motion
  - b. the adjournment of the discussion or the meeting.
  - c. the appointment of an ad hoc Committee to deal with a specific item of business
  - d. that the meeting proceed to the next business\*
  - e. that the motion shall be now put\*
- 8.6. In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a member who has not previously taken part in the debate and who is eligible to vote.
- 8.7. Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion

shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

- 8.8. A motion to remove the Chair or Non-Executive Director must be seconded by ten members of the Council of Governors including at least two Elected Governors and two Appointed Governors, and requires the resolution in question to be approved by three-quarters of the members of the Council of Governors.
- 8.9. Subject to the agreement of the Chair, a member of the Council of Governors may give written notice of an emergency motion after the issue of the notice of the meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared at the commencement of the business of the meeting as an additional agenda item included in the agenda. The Chair's decision to include the item is final.

### **9. Chairperson's ruling**

- 9.1. Statements of members of the Council of Governors made at the meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

### **10. Voting**

- 10.1. A question at a meeting may be determined, at the discretion of the Chair, by a majority of the votes of those Governors present and voting on the question. In the case of the number of votes for and against a motion being equal, the Chair or the person presiding, shall have a second or casting vote.
- 10.2. All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 10.3. If at least one-third of Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor voted or abstained.
- 10.4. If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than a paper ballot).
- 10.5. In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

### **11. Record of attendance**

- 11.1. The names of the members of the Council of Governors present at the meeting shall be recorded in the minutes. Governors should make every effort to attend meetings of the Council where appropriate and practicable.

### **12. Minutes**

- 12.1. The Chair will ensure that all matters of significance in the meeting are recorded and maintained as a public record. They will be submitted for agreement at the next meeting.
- 12.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 12.3. The wider circulation of the minutes shall be in accordance with the members of the Council of Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded in accordance with section 3 of these Standing Orders.

### **13. Quorum**

- 13.1. No business shall be transacted at a meeting of the Council of Governors unless at least one third of the Governors are present; the majority of which must be Public Governors.
- 13.2. If a member of the Council of Governors has been disqualified from participating in the discussion of any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

### **14. Committees**

- 14.1. The Council of Governors may agree, from time to time, to ask its committees, sub-committees or joint-committees which it has formally constituted in accordance with the Constitution, terms of the Licence issued by Monitor / NHS Improvement and statutory provisions, and individual Governors, to support the Council of Governors by undertaking tasks to assist the Council in performing its statutory role.
- 14.2. Save as stipulated in this Constitution, terms of the Licence or statutory provisions, the Council of Governors may and, if directed, shall appoint committees of the Council, consisting wholly of persons who are member of the Council of Governors. Non-members of the Council of Governors may attend such committees if appropriate under the committee's Terms of Reference but they shall have no vote.
- 14.3. A committee so appointed may appoint sub-committees consisting wholly of persons who are members of the Council of Governors. Where committees are authorised to establish sub-committees, they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.
- 14.4. These Standing Orders, as far as they are applicable, shall apply also, with the appropriate alteration, to meetings of any committees or sub-committees established by the Council.

- 14.5. Each committee or sub-committee shall have such Terms of Reference and powers and be subject to such conditions (as to reporting back to the Council) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 14.6. The Council of Governors shall approve the membership of all committees and sub-committees that it has formally constituted and shall determine the Chair of each committee and sub-committee.
- 14.7. Where the Council of Governors is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor / NHS Improvement, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with the regulations.
- 14.8. There is no requirement to hold meetings of committees established by the Council of Governors in public.

#### **15. Confidentiality**

- 15.1. A member of the Council of Governors or an attendee on a committee of the Council shall not disclose a matter dealt with by, or brought before the committee, without its permission or until the committee shall have reported to the Council or shall otherwise have concluded the matter.
- 15.2. A member of the Council of Governors or a non-member of the Council of Governors, in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

#### **16. Declaration of interests**

- 16.1. Members of the Council of Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council. All members of the Council of Governors should declare such interests on appointment and annually thereafter and on any subsequent occasion when a conflict arises.
- 16.2. Interests regarded as 'relevant and material' are:
  - a. Directorships, including non-executive directorships held in private companies or Public limited companies (with the exception of those of dormant companies)
  - b. Ownership of, part-ownership of, or employment with private companies businesses or consultancies likely or possibly seeking to do business with the NHS
  - c. Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS

- d. A position of authority in a charity or voluntary organisation in the field of health and social care
  - e. Any connection with a voluntary or other organisation contracting for NHS services
  - f. Any other commercial interest in the issue before the meeting
  - g. Ministerial appointments made by or on behalf of Ministers
  - h. Positions in elected public office, for example as a District or County Councillor, MP
  - i. Public appointments, for example as a Non-Executive Director of a Police Authority
- 16.3. Any Governor of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her has any pecuniary interest, direct or indirect, shall declare their interest by giving notice in writing of such fact to the Chair or the Secretary as soon as practicable.
- 16.4. If a member of the Council of Governors has any doubt about the relevance of an interest, he/she should discuss it with the Chair or Secretary who shall advise him/her whether or not to disclose the interest.
- 16.5. At the time members of the Council of Governors' interests are declared, they should be recorded in the Council of Governors' minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.
- 16.6. Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published on the register available for public inspection.
- 16.7. During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall disclose the fact and withdraw from the meeting and play no part in the relevant discussion or decision.
- 16.8. The interests of Governors' spouses and cohabiting partners should also be regarded as relevant and should also be disclosed.

### **17. Register of interests**

- 17.1. The Secretary will ensure that a Register of Interests is established to formally record declarations of interests of the Council of Governors.
- 17.2. Details of the Register will be kept up to date and reviewed annually.
- 17.3. The Register will be available for public inspection in accordance with the Constitution.

## **18. Resolution of disputes with the Board of Directors**

- 18.1. The Council of Governors and the Board of Directors must be committed to develop and maintain a constructive and positive relationship. The aim at all times should be to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.
- 18.2. If, through informal efforts, the Chair cannot achieve resolution of a disagreement or conflict, the Chair will follow the dispute resolution procedure described in Annex 8. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve resolution.

## **19. Changes to Standing Orders**

- 19.1. The Council of Governors shall review its Standing Orders at least every three years. These Standing Orders shall be amended only if:
  - 19.1.1. A notice of motion has been given.
  - 19.1.2. no fewer than half the total of the Governors vote in favour of amendment.
  - 19.1.3. at least two-thirds of the Council of Governors are present; and
  - 19.1.4. the variation proposed does not contravene anything in the Constitution, Authorisation or statutory provisions.
- 19.2. Should the Council be unable to achieve an attendance of two-thirds on two consecutive occasions (and hence unable to consider the proposed amendments), at the discretion of the Chairperson the attendance requirements should be lowered to half the sitting Council being present on the third occasion.

## **Annex 7 – Standing Orders for the Practice and Procedure of the Board of Directors**

Please note that the Board's Standing Orders require Board approval and are therefore not included in this version to avoid confusion.

## Annex 8 – Further provisions

### 1. Disqualification from membership

- 1.1. A person is disqualified from being a member of the Trust if:
- a. he/she is under the age of 16 years;
  - b. as a member of a Public Constituency he/she does not live within an area specified in Annex 1 as an area for a Public Constituency of the Trust;
  - c. he/she has caused harm or causes harm to a NHS staff member, patient, carer or registered volunteer whether that be verbal or physical assault, violence or serious harassment or has been issued with a Personal Safety and Security Warning by the Trust;
  - e. He/she is a vexatious complainant, in that, in the opinion of the Board of Directors, he/she has persistently and without reasonable grounds, made any unjustified complaint the effect of which is to subject the Trust (or any of its staff, agents, patients or carers) to inconvenience, harassment or expense);
  - f. the Council of Governors resolves that he/she would or would be likely to:
    - i. prejudice or impede the ability of the Trust to fulfil its purpose under this Constitution or otherwise discharge its duties or functions;
    - ii. harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;
    - iii. adversely affect public confidence in the goods or services provided by the Trust; or
    - iv. otherwise bring the Trust into disrepute
- 1.2. It is the responsibility of each member, not the Trust, to ensure his/her eligibility. A member who becomes aware of his/her ineligibility shall inform the Trust as soon as practicable and that person shall be removed forthwith from the Register of Members and shall cease to be a member. The Trust Secretary will however, take reasonable steps to verify eligibility from the information collected through membership registrations and where the Trust considers that a member may have ceased to be eligible for membership, the Secretary shall carry out all reasonable enquiries to establish if this is the case.
- 1.3. Where the Trust considers that there may be reasons for concluding that a member or an applicant for membership may be ineligible or be disqualified from membership, the Trust Secretary shall advise that individual of those reasons in summary form and invite representations from the member or applicant within 14 days or such other reasonable period as the Secretary may in absolute discretion determine. Any representations received shall be considered by the Secretary who shall make a decision, in conjunction



with the Chair and/or Chief Executive, on the member or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing within 14 days of the decision being made.

- 1.4. If no representations are received within the period specified in paragraph 3 above the Secretary shall be entitled nonetheless to proceed and make a decision, notwithstanding the absence of any such representations from him/her.
- 1.5. Upon a decision being made under paragraphs 1.3 and 1.4 above, where appropriate the member's name shall be removed from the Register of Members forthwith and he/she shall thereupon cease to be a member. In the event of a dispute, the Secretary shall refer the matter to the Council of Governors.

## **2. Termination of membership**

- 2.1. A member shall cease to be a member if he / she:
  - 2.1.1.1. Resigns by notice to the Secretary;
  - 2.1.1.2. Ceases to fulfil the requirements of public or staff membership (as set out in sections 7 and 8 of the Constitution);
  - 2.1.1.3. Becomes disqualified by reasons set out in this Annex 8; or
  - 2.1.1.4. Is expelled as set out in this Annex 8.
- 2.2. Staff will automatically cease to be eligible for membership of the Staff Constituency upon termination of their employment with the Trust.
- 2.3. Former employees will be eligible to become a member of the Public Constituency if they live within the area of the Trust.

## **3. Expulsion of members**

- 3.1. A member may be expelled by a resolution of the Council of Governors. The following procedure is to be adopted for consideration of such issues and also where the Trust Secretary, in conjunction with the Chairperson and/or Chief Executive, has determined that a member is disqualified or an applicant is ineligible as a member and where a dispute has arisen following the process outlined in the *disqualification from membership* section of this Annex:
- 3.2. Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
- 3.3. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
  - 3.3.1. Dismiss the complaint and take no further action; or
  - 3.3.2. Arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

- 3.4. If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 3.5. At the meeting, the Council of Governors will consider oral and written evidence produced in support of the complaint, and any oral and written evidence submitted for or on behalf of the member about whom complaint has been made.
- 3.6. If the member complained of fails to attend the meeting without due cause, the meeting may proceed in their absence. A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 3.7. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

#### **4. Voting at elections for Governors in a public constituency**

- 4.1. A person may not vote at an election for an elected governor in the Public Constituency unless he has made a declaration in the specified form that he is a member of the Public Constituency.
- 4.2. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.
- 4.3. A person who becomes a member on or before the closing date for the receipt of nominations by the candidates for an election, is eligible to vote in that election.
- 4.4. A person entitled to vote for a Staff Governor shall make a similar declaration to that at paragraph 4.1 above save that paragraph 4.2 will not apply in such a case.

#### **5. Governors and Directors: dispute resolution process**

- 5.1. The Chair, or the Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, shall first endeavour through discussion with members of the Council of Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them to resolve the matter to the reasonable satisfaction of both parties.
- 5.2. Failing resolution under 5.1. above then the Board, or the Council of Governors, as appropriate, shall, at its next formal meeting, to be held in private session, approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 5.3. The Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council of Governors (in private

session to be held in accordance with section 17 of the Constitution). That meeting shall agree the precise wording of a Response to Disputes Statement.

- 5.4. The Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, shall immediately or as soon as is practicable, communicate the outcome to the other party and deliver the Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 5.3. above shall be repeated.
- 5.5. If, in the opinion of the Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, and following the further discussion prescribed in 5.4. there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and the Board accordingly.
- 5.6. On the satisfactory completion of this disputes process the Board shall implement agreed changes.
- 5.7. On the unsatisfactory completion of this disputes process the view of the Board shall prevail.
- 5.8. Where the dispute relates to a proposal to remove a Governor from the Council of Governors and as to whether this is justified, an independent assessor agreeable to both parties should be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise.
- 5.9. Nothing in this procedure shall prevent the Council of Governors, if it so desires, through its nominated Lead Governor, from informing the Independent Regulator of NHS Foundation Trusts that, in the Council of Governors' opinion, the Board has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the terms of the Licence issued by Monitor / NHS Improvement.

## **6. Role of the Trust Secretary**

- 6.1. The NHS Foundation Trust Secretary has a significant role to play in the administration of corporate governance. In particular, the Trust Secretary shall:
  - 6.1.1. ensure good information flows within the Board and its committees and between senior management, Non-Executive Directors and Governors
  - 6.1.2. ensure that Board procedures of both the Board of Directors and the Council of Governors are established and complied with
  - 6.1.3. ensure that the Trust complies with relevant legislation and the terms of the Licence issued by Monitor / NHS Improvement
  - 6.1.4. advise the Board of Directors and the Council of Governors (through the Chair) on all governance matters

- 6.1.5. be available to give advice and support to individual Directors, particularly in relation to the induction of new Directors and assistance with professional development; and
- 6.1.6. ensure that meetings of both the Board of Directors and Council of Governors; and committees and sub-committees thereof, run effectively and efficiently and that they are properly recorded and that Directors and Governors receive appropriate support and guidance.

## **7. Annual Member's Meeting**

- 7.1. The Annual Members' Meeting shall be open to all members of the public and the Foundation Trust will publicise details of its date, time and venue to its Members and stakeholders.
- 7.2. Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors at least one member of the Council of Governors must attend the Annual Members' meeting to present the amendment.
- 7.3. The Foundation Trust members shall formally receive the Annual Report and Annual Accounts and any report of the Auditor which will be presented by a Director of the Foundation Trust.
- 7.4. Any amendment proposed to the Constitution that relate to the powers of duties of Governors will require approval by Members at this meeting and Members will be given an opportunity to vote on whether they approve the amendment(s).