

**Proposed Amendments to Trust Constitution**

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**Revised during July 2013**

**Revised Constitution submitted to the Council of Governors for approval on 16th August 2013**

**Revised Constitution submitted to the Annual Members' and Public Meeting for approval on 23rd September 2013**

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**Public Constituency**

An individual who lives in any of the following public constituency areas as detailed below may become or continue as a member of the Foundation Trust.

Borough of Blackpool  
Borough of Fylde  
Borough of Wyre  
Lancashire and South Cumbria  
~~North Lancashire~~  
North of England

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**Council of Governors – Composition**

**Seventeen** Public Governors from the following areas of the Public Constituency:

Borough of Blackpool – Eight Public Governors  
Borough of Fylde – Three Public Governors  
Borough of Wyre – Four Public Governors  
Lancashire and South Cumbria - One Public Governor  
~~North Lancashire – One Public Governor~~  
North of England – One Public Governor

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**Council of Governors – Composition**

Ten Partnership Governors to be appointed by partnership organisations:-

- Blackpool Borough Council
- Lancashire County Council
- Blackpool, Wyre & Fylde Council for Voluntary Services
- Lancashire Care NHS Foundation Trust
- University of Central Lancashire
- University of Liverpool
- Two PCT Governors (subsequently NHS Blackpool and NHS North Lancashire)  
**(TO BE REPLACED)**
- Blackpool Youth Council  
**(TO BE REPLACED)**
- North and Western Lancashire Chamber of Commerce  
**(TO BE REPLACED)**

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#### **b) Council of Governors - Tenure for Appointed Governors**

An Appointed Governor who replaces a Governor whose terms of office has not expired will be eligible to serve **for a maximum of nine years** ~~the remainder of that term of office i.e. will be eligible for re-election for two terms, i.e. six years, and will not be eligible for re-election in the future~~

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#### **Council of Governors - Conflicts of Interest of Governors**

The exceptions which shall not be treated as interests or material interests for the purposes of these provisions are as follows:

An employment contract with a **CCG held by a PCT Governor**;

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#### **Board of Directors - Conflicts of Interest of Directors**

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.
- **Shall withdraw from the meeting and play no part in the relevant discussion or decision; and**
- **Shall not vote on the issue (and, if by inadvertence they do remain and vote, their vote shall not be counted).**

Details of any such interest shall be recorded in the Register of Interests of the Directors.

Any Director who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a Non-Executive Director) by a majority of the Council of Governors.

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

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

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.

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### **Amendment of the Constitution**

~~Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor'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.~~

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### **Mergers and Significant Transactions**

“Significant transaction” means “any transactions with ratios that are greater than 25% of the income of the NHS Foundation Trust. ~~Under the Compliance Framework,~~ ~~Monitor defines a number of ratios~~ are used to determine if a transaction is ‘material’ or ‘significant’” ~~as identified in Annex 8.~~

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### **Interpretation and Definitions**

~~“PCT Governor”~~

~~Means a Governor appointed by a Primary Care Trust for which the Foundation Trust provides goods or services;~~

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## **ANNEX 2 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

### **Appointed Governors**

~~The Secretary, having consulted NHS Blackpool and NHS North Lancashire, is to adopt a process for agreeing the appointment of PCT Governors with those Primary Care Trusts~~

## Tenure for Elected Governors

~~Further provisions as to tenure for Governors are set out in Annex 2.~~

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## DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

The provisions relating to the formal declaration of interests by Directors (~~namely direct or indirect pecuniary and other interests~~) (which are relevant and material to the business of the Foundation Trust) and the register of such interests maintained by the Foundation Trust are set out in the Constitution.

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## AMENDMENTS TO STANDING ORDERS

These Standing Orders may only be amended if:

- The variation proposed does not contravene a statutory provision; and
- At least two-thirds of the Directors are present; and
- No fewer than half the total of the Foundation Trust's Non-Executive Directors vote in favour of amendment; and
- ~~Amendments have been approved by Monitor.~~

## ANNEX 8 – THRESHOLDS FOR REPORTING INVESTMENTS OR DIVESTMENTS / CATEGORIES FOR MAJOR INVESTMENTS/DIVESTMENTS

If a transaction meets any one of these criteria, the Foundation Trust should report this transaction to Monitor.

		Reporting Requirements	
Ratio	Description	Non-Healthcare/International	UK Healthcare
<b>Assets</b>	The gross assets* subject to the transaction, divided by the gross assets of the Foundation Trust	>5%	>10%
<b>Income</b>	The income attributable to: * the assets; or * the contract Associated with the transaction, divided by the income of the Foundation Trust	>5%	>10%
<b>Consideration to total NHS Foundation Trust capital</b>	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	>5%	>10%

\*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

If a transaction meets any one of these criteria, the Foundation Trust should report this transaction to Monitor.

		Reporting Requirements	
Ratio	Description	Non-Healthcare/International	UK Healthcare
<b>Assets</b>	The gross assets** subject to the transaction, divided by the gross assets of the Foundation Trust	>10%	>25%
<b>Income</b>	The income attributable to: * the assets; or * the contract Associated with the transaction, divided by the income of the Foundation Trust	>10%	>25%
<b>Consideration to total NHS Foundation Trust capital</b>	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	>10%	>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