



# Trust Constitution

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## Version Control Sheet

This must be completed and form part of the document appendices each time the document is updated and approved

Date dd/mm/yy	Version	Author	Reason for changes
14/05/19	12	Matthew Burrow, Head of Corporate Assurance	Minor updates

Version	Approved by Council of Governors	Approved by Board of Directors	Approved by Members	Submitted to NHS Improvement
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Version	Approved by Council of Governors	Approved by Board of Directors	Approved by Members	Submitted to NHS Improvement
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Consultation / Acknowledgements with Stakeholders		
Name	Designation	Date Response Received
	Board of Directors	07/05/2019
Mrs Patricia Roche	Governor	9 <sup>th</sup> April 2019
Mrs Heather O'Hara	Governor	9 <sup>th</sup> April 2019
Miss Tina Daniels	Governor	9 <sup>th</sup> April 2019
Mrs Sue Crouch	Governor	9 <sup>th</sup> April 2019
Mr George Holden	Governor	9 <sup>th</sup> April 2019
Mr Pearse Butler	Chair	9 <sup>th</sup> April 2019
Mrs Wendy Swift	Chief Executive	9 <sup>th</sup> April 2019

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**Constitution of  
Blackpool Teaching Hospitals NHS Foundation Trust  
  
(A Public Benefit Corporation)**

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## 1 Introduction / Purpose

### Name and Status

1. The name of the Foundation Trust is Blackpool Teaching Hospitals NHS Foundation Trust (“the Foundation Trust”). The Foundation Trust is a public benefit corporation authorised under the National Health Service Act 2006.
2. The Foundation Trust’s Head Office is at Trust Headquarters, Victoria Hospital, Whinney Heys Road, Blackpool, FY3 8NR, or such other place as the Board of Directors shall decide.

### Principle Purpose

3. The principal purpose (Principal Purpose) of the Foundation Trust is the provision of goods and services for the purposes of the health services in England.
4. 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 services in England is greater than its total income from the provision of goods and services for any other purposes.
5. The Trust may provide goods and services for any purposes related to:
  - 5.1. the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 5.2. the promotion and protection of public health.
6. 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 to better carry on its Principal Purpose.

### Dissolution

7. The Foundation Trust may not be dissolved except by order of the Trust Secretary of State for Health, in accordance with the 2006 Act.
8. The profits or surpluses of the Foundation Trust are not to be distributed either directly or indirectly in any way at all among members of the Foundation Trust.

## 2 General Principles / Target Audience

9. The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this Constitution and the Foundation Trust’s authorisation. The members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this Constitution.

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10. The powers of the Foundation Trust are set out in the 2006 Act subject to any restrictions in the Provider Licence.
11. The powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.
12. Any of these powers may be delegated to a committee of Directors or to an Executive Director.
13. Members of the Council of Governors and the Board of Directors and the Trust Secretary 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 Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors and the Board of Directors and the Trust Secretary.

### 3 Definitions and Abbreviations

**“The Accountable Officer”**

The person who from time to time discharges the functions specified in Paragraph 25(5) of Schedule 7 of the 2006 Act  
 He/she will be responsible and accountable for funds entrusted to the Trust and will be responsible for ensuring the proper stewardship of public funds and assets.  
 For this Trust, the Accountable Officer is the Chief Executive.

**“Appointed Governors”**

Those Governors appointed by the appointing organisations

**“Appointing Organisations”**

Those organisations named in this Constitution who are entitled to appoint Governors

**“Authorisation Date”**

The date that the Trust’s initial authorisation as an NHS Foundation Trust took effect

**“Board”** The Board of Directors of the Foundation Trust.

**"Board of Directors"**

The Chair and Non-Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the Remuneration Committee.

**“Budget”** A resource, expressed in financial terms, proposed by the Board of Directors for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

**CCG** Clinical Commissioning Group

**“Chair”** The person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole.

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**“Chief Executive”**

The Chief Officer and Accounting Officer of the Trust.

**“Committee”**

A committee appointed by the Board of Directors.

**“Committee Members”**

Persons formally appointed by the Board of Directors to sit on or to chair specific committees.

**“Constitution”**

This document including Annexes.

**“Council”** The Council of Governors of the Foundation Trust.

**“Deputy Chair”**

The person appointed by the Council of Governors to deputise in the absence of the Chair of the Trust.

**“Director”** A person appointed as a director in accordance with the Constitution.

**“Director of Finance”**

The Chief Finance Officer of the Trust.

**“Elected Governors”** Those Governors elected by the Public constituency and the classes of the Staff Constituency.

**“Financial Year”**

- (a) The period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and
- (b) Each successive period of twelve months beginning with 1 April.

**“Foundation Trust”**

Blackpool Teaching Hospitals NHS Foundation Trust.

**“Funds Held On Trust”**

Those funds which the Trust holds at its date of incorporation.

**Independence Criteria**

Those criteria set out at paragraph 21.4 above.

**“Local Authority Governor”**

A Governor appointed by one or more local authorities whose area includes the whole or part of one of an area for a public constituency of the Foundation Trust.

**“Meeting”** A duly convened meeting.

**“Member”** A member of the Foundation Trust.

**“Members Meeting”**

Annual Members and Public Meeting.

**“NHS Improvement”**

The corporate body, known as NHS Improvement, as provided by Section 61 of the 2012 Act.

**“Motion”** A formal proposition to be discussed and voted on during the course of a meeting.

**“NED”** Non-Executive Director

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- “Nominated Officer”  
An officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
- “Officer” An employee of the Trust.
- “Partner” A member of the same household living together as a family unit, provided that this does not include parents and children.
- “Partnership Governor”  
A Governor appointed by a partnership organisation.
- “Predecessor Trust”  
Blackpool Victoria Hospital Trust.
- “Provider Licence”  
The main tool used by NHS Improvement to regulate providers of NHS services.
- “Public Constituency”  
Means all those individuals who live in the areas specified in Annex 9.
- “Public Governor”  
A Governor elected by the members of one of the areas of the Public Constituency.
- “Questions On Notice”  
A question from a Governor or Governors (notice of which has been given) about a matter over which the Council has powers or duties or which affects the services provided by the Foundation Trust.
- “SFIs” Standing Financial Instructions.
- “SID” Senior Independent Director
- “SOs” Standings Orders.
- “Staff Constituency”  
Those individuals who are eligible for membership of the Trust as specified in Annex 9.
- “Staff Governor”  
A Governor elected by the members of one of the classes of the Staff Constituency.
- “The 2006 Act” Means the National Health Service Act 2006
- “The 2012 Act” Means the Health and Social Care Act 2012
- “Trust” Blackpool Teaching Hospitals NHS Foundation Trust.
- “Trust Secretary”  
The Secretary of the Foundation Trust or any other person appointed to perform the duties of the Trust Secretary, including a joint, assistant or deputy Trust Secretary, hereinafter referred to as the Trust Secretary.
- “Voluntary Organisation”  
Is a body other than a public or local authority the activities of which are not carried on for profit

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## 4 Policy

### Membership and Constituencies

14. The Foundation Trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 14.1. A Public Constituency; and
  - 14.2. A Staff Constituency
15. The members of the Trust are those individuals whose names are entered in the register of members.
16. Members may attend and participate at members meetings, stand for election to the Council of Governors, vote in elections to the Council of Governors and take such other part in the affairs of the Foundation Trust as is provided in this Constitution.
17. The Trust has a Membership Committee, approved by the Council of Governors, whose remit includes ensuring that the membership is representative of the population.

### Application for Membership

18. An individual who is eligible to become a member of the Foundation Trust may do so on application to the Foundation Trust.
19. Subject to this Constitution, membership is open to any individual who is entitled under this Constitution to be a member of the Public Constituency or the Staff Constituency and who (unless they are a member of the Staff Constituency) completes a membership application form in whatever form the Trust Secretary specifies.

### Automatic Membership by Default – Staff

20. An individual who is:
  - 20.1. Eligible to become a member of the Staff Constituency, and
  - 20.2. Invited by the Foundation Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency, shall become a member of the Foundation Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he/she informs the Foundation Trust that he/she does not wish to do so.
21. The Trust will include within the appointment letter that the individual will automatically be a staff member of the Foundation Trust unless he / she decides to opt out.

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22. The Trust will include within the termination form that the individual will automatically become a public member of the Foundation Trust unless he / she decides to opt out or unless he / she has been dismissed under the Trust's disciplinary procedure, refer to Section 7.

## Public Constituency

23. An individual who is 12 years old or over and who lives in any of the following Public Constituency areas as detailed below may become or continue as a member of the Foundation Trust.
- i) Borough of Blackpool
  - ii) Borough of Fylde
  - iii) Borough of Wyre
  - iv) North West Counties
24. Those individuals who live in the area specified for a Public Constituency are referred to collectively as a Public Constituency.
25. The minimum number of members in the Public Constituency (comprising (i) to (iv) listed above) is four.
26. A breakdown of the areas within the individual Public Constituencies is provided in Annex 3.
27. An individual who is under 12 years old or who lives outside the catchment areas specified in paragraph 23 may become an affiliate member of the Foundation Trust.

## Staff Constituency

28. An individual who is employed by the Foundation Trust under a contract of employment (which for the avoidance of doubt includes full-time and part-time contracts of employment) with the Foundation Trust may become or continue as a member of the Foundation Trust provided:
- 28.1. He / she is employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 28.2. He / she has been continuously employed by the Foundation Trust and / or the predecessor organisation under a contract of employment for at least 12 months.
29. Individuals who exercise functions for the purposes of the Foundation Trust, other than under a contract of employment with the Foundation Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt this does not include individuals who assist or provide services to the Foundation Trust on a voluntary basis.
30. Those individuals who are eligible for membership of the Foundation Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

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31. The Staff Constituency shall be divided into the following four descriptions of individuals who are eligible for membership of the Staff Constituency.

- Nursing and Midwifery
- Medical and Dental
- Clinical Support
- Non Clinical

Each description of individuals specified is referred to as a class within the Staff Constituency, as determined by Electronic Staff Record.

32. The minimum number of members in each class of the Staff Constituency is four.

33. The Chief Executive shall make a final decision about the class of which an individual is eligible to be a member.

### **Restriction on Membership**

34. An individual who is a member of a constituency, or of a class within a constituency, may not, whilst membership of that constituency or class continues, be a member of any other constituency or class.

35. 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 of the Trust.

### **Disqualification from Membership**

36. An individual may not become a member of the Foundation Trust if:

36.1 They are under 12 years of age; or

36.2 Within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against any registered volunteer.

36.3 He/she has been a vexatious complainant. For the purposes of this paragraph a vexatious complainant is an individual who is found by the Trust (applying the relevant Trust policy) to have abused or used inappropriately the Trust's or the Predecessor Trust's complaints procedure.

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## Termination of Membership

37. A member shall cease to be a member if:
- 37.1. They resign by notice to the Trust Secretary;
  - 37.2. They die;
  - 37.3. They are expelled from membership under this Constitution;
  - 37.4. They cease to be entitled under this Constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency;
  - 37.5. It appears to the Trust Secretary that they no longer wish to be a member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Foundation Trust.
38. A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a Formal Meeting. The following procedure is to be adopted.
- 38.1. Any member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.
  - 38.2. 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:
    - 38.2.1. dismiss the complaint and take no further action; or
    - 38.2.2. for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this Constitution;
    - 38.2.3. arrange for a resolution to expel the member complained of to be considered at the next Formal Meeting of the Council of Governors.
  - 38.3. If a resolution to expel a member is to be considered at a formal 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.
  - 38.4. At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
  - 38.5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

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39. 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.
40. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of three-quarters of the Council of Governors present and voting at a Formal Meeting.

## Members Meeting

41. The Foundation Trust shall hold an Annual Meeting of its members (“Annual Members’ and Public Meeting”) within nine months of the end of each financial year. The Members’ Meeting shall be open to members of the public.
42. All Members Meetings other than the Annual Members and Public Meeting are called Special Members Meetings.
43. Members Meetings are open to all members of the Foundation Trust, Governors and Directors, and representatives of the auditor. The Board of Directors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a Members Meeting.
44. All Members Meetings are to be convened by the Trust Secretary by order of the Board of Directors.
45. The Board of Directors may decide where a members meeting is to be held and may also for the benefit of members:
  - 45.1. Arrange for the Annual Members and Public Meeting to be held in different venues each year:
  - 45.2. Make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Board of Directors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
46. At the Annual Members’ and Public Meeting:
  - 46.1. The Board of Directors shall present to the members:
    - 46.1.1. The Annual Accounts;
    - 46.1.2. Any report of the auditor;
    - 46.1.3. Any report of any other external auditor of the Foundation Trust’s affairs; and
    - 46.1.4. Forward planning information for the next financial year

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- 46.2. The Council of Governors shall present to the members a report on:
- 46.2.1. Steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
  - 46.2.2. The progress/changes of the Membership Strategy; and
  - 46.2.3. Any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors
- 46.3. The results of the election and appointment of Governors and the appointment of Non-Executive Directors will be announced.
47. Notice of a members meeting is to be given:
- 47.1. By notice to all members;
  - 47.2. By notice prominently displayed at the head office and at all of the Foundation Trust's places of business; and
  - 47.3. By notice on the Foundation Trust's website at least 14 clear days before the date of the meeting. The notice must:
    - 47.4. Be given to the Council of Governors and the Board of Directors, and to the auditor;
    - 47.5. State whether the meeting is an annual or special members meeting;
    - 47.6. Give the time, date and place of the meeting; and
    - 47.7. Indicate the business to be dealt with at the meeting.
48. Before a members meeting can do business there must be a quorum present. Except where this Constitution says otherwise a quorum is one member present from each of the Foundation Trust's constituencies.
49. The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
50. It is the responsibility of the Board of Directors, the Chair of the meeting and the Trust Secretary to ensure that at any members meeting:
- 50.1 The issues to be decided are clearly explained;
  - 50.2 Sufficient information is provided to members to enable rational discussion to take place.
51. The Chair of the Foundation Trust, or in their absence the Deputy Chair of the Board of Directors, shall act as chair at all members meetings of the Foundation Trust. If

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neither the Chair nor the Deputy Chair of the Board of Directors is present, the members of the Council of Governors present shall elect one of their members to be Chair and if there is only one Governor present and willing to act they shall be Chair.

52. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board of Directors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
53. A resolution put to the vote at a members meeting shall be decided upon by a show of hands unless a poll is requested by the Chair of the meeting.
54. Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second and casting vote.
55. The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

### **Council of Governors**

56. The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this Constitution and the Foundation Trust's Provider Licence, are:

At a Formal Meeting of the Council of Governors:

- 56.1. To appoint or remove the Chair and the other Non-Executive Directors;
- 56.2. To approve an appointment (by the Non-Executive Directors) of the Chief Executive;
- 56.3. To decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
- 56.4. To appoint or remove the Foundation Trust's auditor;
- 56.5. To appoint or remove any other external auditor appointed to review and publish a report on any other aspect of the Foundation Trust's affairs;
- 56.6. To be presented with the Annual Accounts, any report of the auditor on them and the annual report;
- 56.7. To provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;

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- 56.8. To respond as appropriate when consulted by the Board of Directors in accordance with this Constitution;
- 56.9. To undertake such functions as the Board of Directors shall from time to time request;
- 56.10. To prepare and from time to time review the Foundation Trust's Membership Strategy and its policy for the composition of the Council of Governors and of the Non-Executive Directors and when appropriate to make recommendations for the revision of this Constitution.

### **Council of Governors – Composition**

- 57. The Foundation Trust is to have a Council of Governors, which shall comprise Public, Staff and Appointed Governors.
- 58. The composition of the Council of Governors shall be as follows: -.
  - 58.1. The aggregate number of Public Governors is to be half of the total number of members of the Council of Governors.
  - 58.2. The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
    - The interests of the community served by the Foundation Trust are appropriately represented;
    - The level of representation of the Public Constituency, the classes of the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs; and to this end, the Council of Governors:
  - 58.3. Shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
  - 58.4. Shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
  - 58.5. When appropriate shall propose amendments to this Constitution.
- 59. The Governors on the Council of Governors, other than the Appointed Governors, 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 below.
  - 59.1. Sixteen Public Governors from the following areas of the Public Constituency:
    - Borough of Blackpool – Eight Public Governors

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- Borough of Fylde – Three Public Governors
- Borough of Wyre – Four Public Governors
- North West Counties - One Public Governor

59.2. Five Staff Governors from the following classes;

- Nursing and Midwifery – Two Staff Governors
- Medical and Dental – One Staff Governor
- Clinical Support – One Staff Governor
- Non Clinical Support (Administrative, Clerical, Estates and Facilities) – One Staff Governor

59.3. Nine Partnership Organisations, however only Seven Partnership Governors to be appointed by the partnership organisations:-

- Blackpool Council
- Lancashire County Council
- Lancashire Care NHS Foundation Trust
- University of Central Lancashire \*
- University of Liverpool \*
- University of Buckinghamshire \*
- Lancaster University \*
- Local School / College representative
- and one organisation to be determined by the Trust Chair in conjunction with the Council of Governors.

\* 2 of the 4 four medical/dental university providers will be full Council of Governors members and the remaining 2 will receive information. This arrangement will be reviewed every three years.

### **Council of Governors – Eligibility**

60. A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so, if:

- 60.1. they are a Director of the Foundation Trust or a director of an NHS body (unless they are appointed by an appointing organisation which is an NHS body);
- 60.2. they are the father, mother, child, grandchild, brother, sister, aunt, uncle, cousin, nephew or niece of the member, their spouse or partner living together of the Board of Directors of the Foundation Trust;

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- 60.3. they are a member of a local authority's Scrutiny Committee covering health matters;
- 60.4. they are a member of Blackpool Healthwatch or Lancashire Healthwatch or Blackburn with Darwin Healthwatch unless Blackpool Healthwatch or Lancashire Healthwatch or Blackburn with Darwin is a partnership organisation which has appointed them as a Partnership Governor;
- 60.5. they have been previously removed as a Governor pursuant to paragraph 62.
- 60.6. being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the Trust Secretary of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Council of Governors;
- 60.7. they are subject to a sex offender order;
- 60.8. they have within the preceding three years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
- 60.9. they are a person whose tenure of office as the Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
61. A person holding office as a Governor shall immediately cease to do so if:
- 61.1. they resign by notice in writing to the Trust Secretary;
- 61.2. they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:
- the absences were due to reasonable causes; and
  - they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable;
- 61.3. they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
- 61.4. they have failed to sign and deliver to the Trust Secretary a statement in the form required by the Trust Secretary confirming acceptance of the code of conduct for Governors;
- 61.5. they are removed from the Council of Governors under the following provisions.

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62. A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:
- 62.1. they have committed a serious breach of the code of conduct; or
  - 62.2. they have acted in a manner detrimental to the interests of the Foundation Trust; and
  - 62.3. the Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.
  - 62.4. they fail to comply with the Fit & Proper Person Test.

### **Council of Governors - Election of Public and Staff Governors**

63. Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time. The Board of Directors will decide which of the two voting methods set out in the Model Rules for Elections is to be used. (Annex 1).
64. The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached in Annex 1.
65. A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Foundation Trust cannot amend the Model Rules.
66. An election, if contested, shall be by secret ballot (Annex 1, Part 5).
67. The Trust will ensure that, where vacant Governor positions arise, elections will be expedited as speedily as possible.
68. The Trust will ensure that there is consistent communication around the whole election process with regard to results, amounts of votes cast, etc.

### **Council of Governors – Voting / Appointment**

69. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
70. Where the vacancy arises amongst the appointed Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
71. Where the vacancy arises amongst the Public and Staff Governors, the Council of Governors shall be at liberty either:
- 71.1. to call an election within three months to fill the seat for the remainder of that term of office; or

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- 71.2. to invite the next highest polling candidate in that Constituency at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and will be subject to election for any unexpired period of the term of office; or
- 71.3. if the unexpired period of the term of office is less than six months, to leave the seat vacant until the next elections are held.

## Public Governors

- 72. A member of the Public Constituency may not vote at an election for a Public Governor unless they have made a declaration that they are qualified to vote as a member of the relevant area of the Public Constituency in accordance with the Model Rules for Election. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

## Staff Governors

- 73. A member of the Staff Constituency may not vote at an election for a Staff Governor unless they have made a declaration that they are qualified to vote as a member of the relevant area of the Staff Constituency in accordance with the Model Rules for Election. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

## Appointed Governors

- 74. The Appointed Governors are to be appointed by the partnership organisations, having consulted with the Trust Secretary.

## Council of Governors – Tenure

### Tenure for Public Governors

- 75. A Public Governor may hold office for a period of three years following each election that resulted in their election as a Governor.
- 76. A Public Governor shall cease to hold office if he/she ceases to be a member of the constituency by which he/she was elected.
- 77. A Public Governor shall be eligible for re-election at the end of his/her three year term.
- 78. A Public Governor may not hold office for more than nine consecutive years and shall not be eligible for re-election if he/she has already held office for more than six consecutive years.
- 79. For the purposes of these provisions concerning terms of office for Public Governors, “year” means a period commencing immediately after the conclusion of the Annual Members’ and Public Meeting, and ending at the conclusion of the next Annual

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Members' and Public Meeting provided that a Public Governor may not hold office for more than three calendar years.

80. If, at the termination of office, the elections have not been held / completed, the Governors will be invited to become observers but will not be able to contribute to discussions or have any voting powers.
81. If a Public Governor resigns or is removed from office then any individual who is appointed to replace him/her will be eligible to serve for the remainder of the term of office of the Governor that he/she replaces. At the expiry of that term of office, and any subsequent term of office, the relevant Governor shall be eligible for re-election subject to paragraph 78 above.
82. In the event that a vacancy arises for a Public Governor, for any reason other than expiry of term of office, then the Foundation Trust Secretary shall endeavour to fill that vacancy by appointing the next highest polling candidate in that constituency who accepts the appointment. Failing this, the Foundation Trust Secretary shall call an election within three months of the vacancy arising in accordance with the Model Rules for Election unless, with the agreement of the Council of Governors, the vacancy is held over to the next round of planned elections in order to ensure best value is obtained in the expenditure of public monies.

### **Tenure for Staff Governors**

83. A Staff Governor may hold office for a period of three years following each election that resulted in their election as a Governor.
84. A Staff Governor shall cease to hold office if he/she ceases to be a member of the class by which he/she was elected.
85. A Staff Governor shall be eligible for re-election at the end of his/her three year term.
86. A Staff Governor may not hold office for more than nine consecutive years and shall not be eligible for re-election if he/she has already held office for more than six consecutive years.
87. For the purposes of these provisions concerning terms of office for Staff Governors, "year" means a period commencing immediately after the conclusion of the Annual Members' and Public Meeting, and ending at the conclusion of the next Annual Members' and Public Meeting provided that a Staff Governor may not hold office for more than three calendar years.
88. If, at the termination of office, the elections have not been held / completed, the Governors will be invited to become observers but will not be able to contribute to discussions or have any voting powers.
89. If a Staff Governor resigns or is removed from office then any individual who is appointed to replace him/her will be eligible to serve for the remainder of the term of office of the Governor that he/she replaces. At the expiry of that term of office, and

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any subsequent term of office, the relevant Governor shall be eligible for re-election subject to paragraph 78 above.

90. In the event that a vacancy arises for a Staff Governor, for any reason other than expiry of term of office, then the Foundation Trust Secretary shall endeavour to fill that vacancy by appointing the next highest polling candidate in that class who accepts the appointment. Failing this, the Foundation Trust Secretary shall call an election within three months of the vacancy arising in accordance with the Model Rules for Election unless, with the agreement of the Council of Governors, the vacancy is held over to the next round of planned elections in order to ensure best value is obtained in the expenditure of public monies.

### **Tenure for Appointed Governors**

91. An Appointed Governor shall normally hold office for a period of three years commencing on the date of his/her appointment.
92. An Appointed Governor shall cease to hold office if the appointing organisation which appointed him/her terminates the appointment.
93. An Appointed Governor shall be eligible for re-appointment at the end of his/her three year term;
94. An Appointed Governor may not hold office for more than nine consecutive years.

### **Council of Governors - Disqualification and Removal**

95. The following may not become or continue as a member of the Council of Governors:
  - 95.1. A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 95.2. A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - 95.3. A person who within the preceding five years has been convicted in the British Isles 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.
96. It is a condition of service that those holding Governor posts within the Trust provide confirmation in writing, on appointment and thereafter on demand, of their fitness to hold such a position through the Fit and Proper Person Test.
97. Governors are required to sign a declaration confirming that they do not fall within the definition of an “unfit person” or any other criteria set out below and that they are not aware of any pending proceedings or matters which may call such a declaration into question.

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98. Governors must be at least 16 years of age at the date they are nominated for election or appointment.
99. In the event of any conflict or inconsistency between this Constitution and/or the Licence and the Standing Orders, the Constitution and/or Licence (as applicable) shall prevail. In the event of any conflict or inconsistency between this Constitution and the provisions of the NHS Act 2006, the provisions of the NHS Act 2006 shall prevail.

### **Council of Governors - Duties of Governors**

100. The general duties of the Council of Governors are:-
- 100.1. to hold the Non-Executive Directors (NEDs) individually and collectively to account for the performance of the Board of Directors and
- 100.2. to represent the interest of the members of the Trust as a whole and the interests of the public.
101. The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

### **Council of Governors – Meetings of Governors**

102. The Chair of the Foundation Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 132 or paragraph 135) or, in his/her absence the Deputy Chair (appointed in accordance with the provisions of paragraphs 144 to 146) or, in his/her absence, one of the Non-Executive Directors, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Council of Governors shall appoint one of the Public Governors to chair that part of the meeting.
103. Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. Members of the public may be excluded from a meeting (whether for the whole or part of such meeting) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons arising from the nature of that business following appropriate resolution by the Council of Governors. The Chair may exclude any member of the public from a meeting of the Council of Governors if he/she is interfering with, or preventing, the proper conduct of the meeting or for other special reasons.
104. 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.

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## Council of Governors – Standing Orders

105. The Council of Governors is to meet at least three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors together with an agenda and any supporting papers to all Governors. Notice will be served by the Foundation Trust on the Foundation Trust’s website.
106. Meetings of the Council of Governors may be called by the Trust Secretary, or by the Chair, or by ten Governors (including at least two elected Governors and two appointed Governors) who give written notice to the Trust Secretary specifying the business to be carried out. The Trust Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Trust Secretary shall call a meeting on at least fourteen but not more than twenty-eight days’ notice to discuss the specified business. If the Trust Secretary fails to call such a meeting then the Chair or ten Governors, whichever is the case, shall call such a meeting.
107. Eight Governors including not less than six Public Governors, not less than one Staff Governor and not less than one appointed Governor shall form a quorum.
108. The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Council of Governors.
109. The Council of Governors have agreed that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
110. Subject to the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 111.1. In case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.
- 111.2. No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
111. The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Trust Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
112. All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

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## Council of Governors – Declaration – Referral to the Panel

113. In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:-

114.1 to act in accordance with its Constitution, or

114.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

114. A Governor may refer a question to the Panel only if three-quarters of the members of the Council of Governors voting at the meeting approve the referral.

## Council of Governors – Declaration of a Conflict of Interest

115. Members of the Council of Governors shall disclose to the Council of Governors any material interests (as defined below) held by a Governor, their spouse or partner, which shall be recorded in the Register of Interests of Governors.

116. Subject to the exceptions below a material interest is:

116.1. Any directorship of a company;

116.2. Any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Foundation Trust;

116.3. Any interest in an organisation providing health and social care services to the National Health Service;

116.4. A position of authority in a charity or voluntary organisation in the field of health and social care;

116.5. Any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

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

117.1. Shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;

117.2. An employment contract with the Foundation Trust held by a Staff Governor;

117.3. An employment contract with a Clinical Commissioning Group (CCG) (if the contract is held by a Governor appointed by a CCG);

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- 117.4. An employment contract with a Local Authority held by a Local Authority Governor;
- 117.5. An employment contract with or other position of authority within a partnership organisation held by a Partnership Governor.
118. Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or his/her spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:
- 118.1. Shall withdraw from the meeting and play no part in the relevant discussion or decision; and
- 118.2. Shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
119. Details of any such interest shall be recorded in the Register of Interests of Governors.
120. Any Governor 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 Governors.

### **Council of Governors –Travel Expenses**

121. The Foundation Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Foundation Trust.

### **Board of Directors**

122. The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this Constitution.

### **Board of Directors – Composition**

123. The Foundation Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors, to manage the business of the Trust and to exercise all powers of the Trust (subject to any contrary provisions in the 2006 Act and/or this Constitution).
124. The Board of Directors is to comprise; a Non-Executive Chair, not less than four but not more than seven other Non-Executive Directors; and not less than four but not more than seven Executive Directors;
125. The number of Executive Directors will not exceed the number of Non-Executive Directors (excluding the Chair).
126. One of the Executive Directors shall be the Chief Executive.

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127. The Chief Executive shall be the Accounting Officer.
128. One of the Executive Directors shall be the Finance Director.
129. One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dentist (within the meaning of the Dentists Act 1984).
130. One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.

**Board of Directors – General Duty**

131. 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.

**Board of Directors – Qualification for Appointment as Chair / NED**

132. A person may be appointed as a Chair / Non-Executive Director only if he/she:-
- is a member of the Public Constituency and is not disqualified by virtue of paragraph 152 to 154
- or
- where any of the Foundation Trust’s hospitals includes a medical or dental school provided by a university, he/she exercises functions for the purposes of that university.
133. The Chair must, on appointment for each and every term of office, meet the Independence Criteria.
134. Every other Non-Executive Director must, on appointment and throughout his/her term of office, meet the Independence Criteria.
135. The Independence Criteria are that the Chair, on appointment for each and every term of office, and every other Non-Executive Director, on appointment and throughout his/her term of office, should;
- 135.1. not have been an employee of the Trust within the last five (5) years;
- 135.2. not have, or have had, a material interest within the last three (3) years;
- 135.3. not have any close family tie with any director, senior employee or professional advisor to the Trust;
- 135.4. not have any significant business link with any other director of the Trust including through any involvement in any company or body; or

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- 135.5. not have served on the Trust Board of Directors for more than six (6) years from the date of their first appointment (including any tenure as a director of the Predecessor Trust).

### **Board of Directors – Tenure for Non-Executive Directors**

136. A Non-Executive Director shall normally hold office for three years, at the end of which they will be eligible for re-appointment. A Non-Executive Director shall not be eligible to hold office as a director of the Foundation Trust for more than six consecutive years other than in exceptional circumstances where, at the request of the Nominations Committee, there will be the option to extend the term of office for a further twelve months (seven years in total) to assist with transition arrangements, subject to satisfactory appraisal, approval by the Nominations Committee and ratification by the Council of Governors.
137. If a Non-Executive Director is willing to be considered for re-appointment at the conclusion of their first term of office, the Council of Governors is not obliged to follow the procedures below for the appointment of Non-Executive Directors.

### **Board of Directors – Appointment and Removal of Chair / NEDs**

138. The Council of Governors at a formal meeting of the Council of Governors shall appoint or remove the Chair of the Foundation Trust and the other Non-Executive Directors.
139. Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the total members of the Council of Governors.

### **Board of Directors- Appointment and Removal of Chair and Other Non-Executive Directors**

140. The Chair and Non-Executive Directors are to be appointed by the Council of Governors using the following procedure.
- 140.1. The Council of Governors will maintain a policy for the composition of the Chair and Non-Executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
- 140.2. The Nominations Committee may work with an external organisation recognised as expert at appointments to identify the skills and experience required for the Chair and Non-Executive Directors.
- 140.3. Appropriate candidates (not more than five for each vacancy) will be identified by the Nominations Committee through a process of open competition, which takes account of the policy maintained by the Council of Governors and the skills and experience required.
- 140.4. The Nominations Committee will comprise the Chair of the Foundation Trust (or, when a Chair is being appointed, the Committee Chair will be one of the

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following unless they are standing for appointment or have a conflict of interest; the Deputy Chair, the Senior Independent Director or another Non-Executive Director), the Lead Governor, the Deputy Lead Governor, three Public Governors, one Appointed Governor and one Staff Governor.

- 140.5 The Nominations Committee's Appointments Panel for the interview will comprise of all the Governor members on the Nominations Committee and the Chair of the Foundation Trust (or when the Chair is being appointed, the Committee Chair will be one of the following unless they are standing for appointment or have a conflict of interest: the Deputy Chair, the Senior Independent Director or another Non-Executive Director).
- 140.6 For the appointment of the Trust Chair the voting members of the Nominations Committee and the Nominations Committee's Appointments Panel will be only the Governors.
- 140.7 For the appointment of the Non-Executive Directors the voting members of the Nominations Committee and the Nominations Committee's Appointments Panel will be the Governors and the Chair of the Foundation Trust (or Deputy Chair, the Senior Independent Director or another Non-Executive Director).

141. The removal of the Chair or another Non-Executive Director shall be in accordance with the following procedures.

- 141.1 Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two Public Governors and two appointed Governors.
- 141.2 Written reasons for the proposal shall be provided to the Non-Executive Director in question, who shall be given the opportunity to respond to such reasons.
- 141.3 In making any decision to remove a Non-Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chair.
- 141.4 If any proposal to remove a Non-Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-Executive Director based upon the same reasons within 12 months of the meeting.

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## **Board of Directors – Appointment and Removal of Senior Independent Director**

142. The Senior Independent Director (SID) shall be appointed from amongst the Non-Executive Directors in consultation with the Nominations Committee of the Council of Governors. The Senior Independent Director shall be available to members and governors if he/she has concerns which contact through normal channels has failed to resolve or for which such contact is inappropriate. They will also have a key role in the appraisal process for the Chair of the Trust. The Senior Independent Director may be the Deputy Chair.
143. Any Non-Executive Director appointed as Senior Independent Director in accordance with the Constitution may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. A new Senior Independent Director shall thereupon be appointed in accordance with paragraph 142.

## **Board of Directors – Appointment of Deputy Chair**

144. The Council of Governors at a formal meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Deputy Chair. If the Chair is unable to discharge his/her office as Chair of the Foundation Trust the Deputy Chair of the Board of Directors shall be acting Chair of the Foundation Trust.
145. A Non-Executive Director appointed as Deputy Chair in accordance with the Constitution may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. A new Deputy Chair shall thereupon be appointed in accordance with paragraph 144.
146. Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his/her duties, as the case may be; and references to the Chair in this Constitution shall, where there is no Chair able to perform those duties, be taken to include references to the Deputy Chair.

## **Board of Directors - Appointment and Removal of the Chief Executive and Executive Directors**

147. The Non-Executive Directors shall appoint or remove the Chief Executive.
148. The appointment of the Chief Executive shall require the approval of the Council of Governors.
149. The Remuneration Committee, comprising the Chair and Non-Executive Directors, shall appoint or remove the Executive Directors and, for this purpose, the Chief Executive shall be co-opted onto the Committee.
150. The Chief Executive shall appoint one of the Executive Directors as Deputy Chief Executive, subject to the approval of the Board of Directors.

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## Board of Directors – Disqualification

151. The following may not become or continue as a member of the Board of Directors:-

- 151.1 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 151.2 A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 151.3 A person who within the preceding five years has been convicted in the British Isles 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.

## Board of Directors – Fit and Proper Persons Test

152. It is a condition of employment that those holding Director and Director-equivalent posts within the Trust provide confirmation in writing, on appointment and thereafter on demand, of their fitness to hold such posts.

153. Directors, and those holding Director-equivalent posts, are required to sign a declaration confirming that they do not fall within the definition of an “unfit person” or any other criteria set out below and that they are not aware of any pending proceedings or matters which may call such a declaration into question.

154. A person may also not become or continue as a Director of the Foundation Trust if:

- 154.1 They are a member of the Council of Governors or a governor or (unless the Board of Directors so approves) a director of an NHS body;
- 154.2 They are a member of Blackpool Healthwatch or Lancashire Healthwatch or Blackburn with Darwin Healthwatch.
- 154.3 They are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
- 154.4 They are a member of a local authority’s Scrutiny Committee covering health matters;
- 154.5 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 154.6 They are a person whose tenure of office as a Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 154.7 They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;

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154.8 In the case of a Non-Executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or

154.9 They have refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

154.10 They have any significant business link through any company or body.

### **Board of Directors – Meetings**

155. 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.

156. 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.

### **Board of Directors – Standing Orders**

157. The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time by the Board of Directors, are detailed in the Standing Orders for the Board of Directors.

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

158. The duties that a Director of the Trust has by virtue of being a Director include in particular:-

158.1 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.

158.2 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.

159. The duty referred to in sub-paragraph 158.1 is not infringed if:-

159.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

159.2 The matter has been authorised in accordance with the Constitution.

160. The duty referred to in sub-paragraph 158.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

161. In sub-paragraph 158.2, “third party” means a person other than:-

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- 162.1 The Trust, or
- 162.2 A person acting on its behalf.
162. 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:-
- 162.1 Must declare the nature and extent of that interest to the other Directors.
- 162.2 Shall withdraw from the meeting and play no part in the relevant discussion or decision; and
- 162.3 Shall not vote on the issue (and, if by inadvertence they do remain and vote, their vote shall not be counted).
163. Details of any such interest shall be recorded in the Register of Interests of the Directors.
164. Any Director who fails to disclose any interest required to be disclosed under these provisions must permanently vacate their office if required to do so by three-quarters of the remaining Directors and (in the case of a Non-Executive Director) by three-quarters of the total members of the Council of Governors.
165. If a declaration proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
166. Any declaration required must be made before the Trust enters into the transaction or arrangement.
167. A Director need not declare an interest:-
- 167.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 167.2. if, or to the extent that, the Directors are already aware of it;
- 167.3. If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:-
- 167.3.1. By a meeting of the Board of Directors, or
- 167.3.2. By a committee of the Directors appointed for the purpose under the Constitution.

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## Board of Directors – Remuneration and Terms of Office

168. The Council of Governors at a formal meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.
169. The Foundation 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.

## Board of Directors – Expenses

170. The Foundation Trust may reimburse Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of Non-Executive Directors decides. These are to be disclosed in the Annual Report.
171. The remuneration and allowances for Directors are to be disclosed in bands in the Annual Report.

## Trust Secretary

172. The Foundation Trust shall have a Trust Secretary who shall be an employee of the Trust but not a member of the Board of Directors or the Council of Governors.
173. The Trust Secretary's functions shall include:-
- 173.1 Acting as Trust Secretary to the Council of Governors and the Board of Directors and their committees;
  - 173.2 Summoning and attending the Annual Members and Public Meeting, Special Members Meetings, Council of Governors meetings and Board of Directors meetings, and taking minutes of those meetings;
  - 173.3 Maintaining the register of members and other registers and books required by this Constitution to be kept;
  - 173.4 Having charge of the Foundation Trust's Seal;
  - 173.5 Publishing to members in appropriate form information which they should have about the Foundation Trust's affairs;
  - 173.6 Preparing and sending to NHS Improvement and any other statutory body all returns which are required to be made.
174. Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be presented at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

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175. The Trust Secretary is to be appointed and removed by the Board of Directors, in consultation with the Council of Governors.

## Registers

176. The Foundation Trust shall have:

176.1 A Register of Members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes within it, the class to which he/she belongs;

176.2 A Register of Members of the Council of Governors;

176.4 A Register of Interests of Governors;

176.5 A Register of Directors; and

176.6 A Register of Interests of the Directors.

## Admission to and Removal from the Registers

177. The Trust Secretary shall add to the Register of Members the name of any individual who is accepted as a member of the Trust under the provisions of this Constitution.

178. The Trust Secretary shall remove from the Register of Members the name of any member who ceases to be entitled to be a member under the provisions of this Constitution.

## Registers – Inspection and Copies

179. The Foundation Trust shall make the registers specified in paragraph 176 available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

180. The Foundation 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 Foundation Trust, if the member so requests.

181. So far as the registers are required to be made available:

181.1 They are to be available for inspection free of charge at all reasonable times; and

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

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

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## Documents Available for Public Inspection

183. The Foundation Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times and shall be available on the Foundation Trust's website:
- 183.1. A copy of the current Constitution,
  - 183.2. A copy of the current Provider Licence;
  - 183.3. A copy of the latest Annual Accounts and any report of the Auditor on them, and
  - 183.4. A copy of the latest Annual Report.
  - 183.5. A copy of the latest Annual Plan.
184. 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:
- 184.1 a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Trust Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - 184.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
  - 184.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
  - 184.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 184.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
  - 184.6 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 (NHS Improvement's decision), 65KB (Trust Secretary of State's response to NHS Improvement's decision), 65KC (action following Trust Secretary of State's rejection of final report) or 65KD (Trust Secretary of State's response to re-submitted final report) of the 2006 Act.
  - 184.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 184.8 a copy of any final report published under section 65I (administrator's final report),

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

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

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

186. 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.

### **Auditor**

187. The Foundation Trust shall have an Auditor and shall provide the Auditor with every facility and all information which he may reasonably require for the purposes of his functions under Schedule 10 of the 2006 Act.

188. A person may only be appointed as the Auditor if he/she (or, in the case of a firm, each of its members) is a member of one or more of the bodies referred to in Paragraph 23 (4) of Schedule 7 of the 2006 Act.

189. The Council of Governors shall appoint or remove the Auditor at a formal meeting of the Council of Governors.

190. The Auditor shall be required to carry out their duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHS Improvement on standards, procedure and techniques to be adopted.

191. Further provisions as to the auditor and other external auditors are set out below.

192. An officer of the Audit Commission may be appointed as auditor with the agreement of the Audit Commission. Where an officer of the Audit Commission is appointed as auditor, the Commission is to charge the Foundation Trust such fees for their services as will cover the full cost of providing them.

193. The Board of Directors may resolve that external auditors be appointed to review and publish a report on any other aspect of the Foundation Trust's performance. Any such auditors are to be appointed by the Council of Governors.

### **Audit Committee**

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

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## Annual Accounts

195. The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
196. NHS Improvement may, with the approval of the Trust Secretary of State, give directions to the Trust as to the content and form of its accounts.
197. The accounts are to be audited by the Foundation Trust's auditor.
198. The Foundation Trust shall prepare, in respect of each Financial Year, Annual Accounts in such form as NHS Improvement may, with the approval of the Trust Secretary of State, direct.
199. The functions of the Foundation Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
200. Further provisions as to accounts are set out below.
201. The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 201.1. The accounts;
  - 201.2. Any records relating to them; and
  - 201.3. Any report of the auditor on them.
202. In preparing its Annual Accounts, the Accounting Officer shall cause the Foundation Trust to comply with any directions given by NHS Improvement with the approval of the Treasury as to:
  - 202.1. The methods and principles according to which the accounts are to be prepared;
  - 202.2. The information to be given in the accounts;
203. And shall be responsible for the functions of the Foundation Trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.
  - 203.1. The Accounting Officer shall cause the Foundation Trust to:

Lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
  - 203.2. Once it has done so, send copies of those documents to NHS Improvement.

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## Annual Report, Annual Plans and Non-NHS Work

204. The Foundation Trust shall prepare an Annual Report and send it to NHS Improvement.
205. The Annual Reports are to give:
- 205.1. Information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership; and
- 205.2. Any other information NHS Improvement requires.
206. The Foundation Trust is to comply with any decision NHS Improvement makes as to:
- The form of the reports;
  - When the reports are to be sent to it;
  - The periods to which the reports are to relate.
207. The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to NHS Improvement.
208. The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
209. In preparing the document, the Directors shall have regard to the views of the Council of Governors.
210. Each forward plan must include information about:
- 210.1 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
- 210.2 the income it expects to receive from doing so.
211. Where a forward plan contains a proposal that the Trust continues an activity of a kind mentioned in sub-paragraph 210.1, the Council of Governors must:
- 211.1 determine whether it is satisfied that the continuation 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
- 211.2 notify the Directors of the Trust and its determination.
212. 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 the health service in England may implement the

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proposal only if three-quarters of the members of the Council of Governors of the Trust voting at the meeting approve its implementation.

## **Presentation of the Annual Accounts and Reports to the Governors and Members**

213. The following documents are to be presented to the Council of Governors at a formal meeting of the Council of Governors and at the Annual Members' and Public Meeting:

213.1 The Annual Accounts

213.2 Any report of the auditor on them

213.3 The Annual Report.

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

215. The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 213 with the Annual Members and Public Meeting.

## **Instruments**

216. The Foundation Trust shall have a Seal.

217. The Seal shall not be affixed except under the authority of the Board of Directors.

218. A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and unless the contrary is proved, taken to be so executed or signed.

## **Amendment of the Constitution**

219. The Trust may make amendments of its Constitution only if:-

219.1. Three-quarters of the members of the Council of Governors of the Trust voting at the meeting approve the amendments, and

219.2. Three-quarters of the members of the Board of Directors of the Trust voting at the meeting approve the amendments.

220. Amendments made under paragraph 219 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.

221. Where an amendment is made to the Constitution in relation to 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):-

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221.1. At least one member of the Council of Governors must attend the next Annual Members' and Public Meeting and present the amendment, and

221.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

222. If three-quarters of the members voting at the meeting 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.

### **Mergers etc. and Significant Transactions**

223. The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of three-quarters of the total members of the Council of Governors.

224. The Trust may enter into a significant transaction only if three-quarters of the members of the Council of Governors of the Trust voting at the meeting approve entering into the transaction.

225. "Significant transaction" means "any transaction meeting any of the thresholds set out in Annex 2.

### **Notices**

226. Any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

227. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

### **Dispute Resolution Procedures**

228. Every unresolved dispute which arises out of this Constitution between the Foundation Trust and:

228.1. A member; or

228.2. Any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or

228.3. Any person bringing a claim under this Constitution; or

228.4 An office-holder of the Foundation Trust

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228.5. Is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Strategic Health Authority. The arbitrator's decision will be binding and conclusive on all parties.

229. Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Trust Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

## Interpretation and Definitions

230. Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 and the Health and Social Care Act 2012.

231. Headings are for ease of reference only and are not to affect interpretation.

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

233. For full abbreviations, refer to Section 10 (Definitions/Glossary of Terms).

## 5 References and Associated Documents

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## Annex 1: The Model Rules for Elections

<http://www.bfwh.nhs.uk/wp-content/uploads/2015/07/Model-Rules-for-Election-2014.pdf>

## Annex 2: Thresholds For Reporting Investments Or Divestments / Categories For Major Investments / Divestments

		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

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### **Appendix 3: Public Constituencies**

The areas comprising the Public Constituency are as follows:-

Blackpool Constituency – 21 sub-catchment areas.

Fylde Constituency – 21 sub-catchment areas.

North West Counties Constituency – 777 sub-catchment areas.

Wyre Constituency – 26 sub-catchment areas.

Further details are provided on the website.

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Appendix 4: Equality Impact Assessment Form					
Department	Corporate Assurance	Service or Policy	CORP/POL/540	Date Completed:	February 2019
<b>GROUPS TO BE CONSIDERED</b> Deprived communities, homeless, substance misusers, people who have a disability, learning disability, older people, children and families, young people, Lesbian Gay Bi-sexual or Transgender, minority ethnic communities, Gypsy/Roma/Travellers, women/men, parents, carers, staff, wider community, offenders.					
<b>EQUALITY PROTECTED CHARACTERISTICS TO BE CONSIDERED</b> Age, gender, disability, race, sexual orientation, gender identity (or reassignment), religion and belief, carers, Human Rights and social economic / deprivation.					
QUESTION	RESPONSE		IMPACT		
	Issue	Action	Positive	Negative	
What is the service, leaflet or policy development? What are its aims, who are the target audience?	See 'Purpose'				
Does the service, leaflet or policy/ development impact on community safety • Crime • Community cohesion	No				
Is there any evidence that groups who should benefit do not? i.e. equal opportunity monitoring of service users and/or staff. If none/insufficient local or national data available consider what information you need.	No				
Does the service, leaflet or development/ policy have a negative impact on any geographical or sub group of the population?	No				
How does the service, leaflet or policy/ development promote equality and diversity?					
Does the service, leaflet or policy/ development explicitly include a commitment to equality and diversity and meeting needs? How does it demonstrate its impact?					
Does the Organisation or service workforce reflect the local population? Do we employ people from disadvantaged groups	Yes				
Will the service, leaflet or policy/ development i. Improve economic social conditions in deprived areas ii. Use brown field sites iii. Improve public spaces including creation of green spaces?	N/a				
Does the service, leaflet or policy/ development promote equity of lifelong learning?	No				
Does the service, leaflet or policy/ development encourage healthy lifestyles and reduce risks to health?	No				
Does the service, leaflet or policy/ development impact on transport? What are the implications of this?	No				
Does the service, leaflet or policy/development impact on housing, housing needs, homelessness, or a person's ability to remain at home?	No				
Are there any groups for whom this policy/ service/leaflet would have an impact? Is it an adverse/negative impact? Does it or could it (or is the perception that it could exclude disadvantaged or marginalised groups?	No				
Does the policy/development promote access to services and facilities for any group in particular?	No				

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<b>Appendix 4: Equality Impact Assessment Form</b>				
Does the service, leaflet or policy/development impact on the environment	No			
<ul style="list-style-type: none"> <li>• During development</li> <li>• At implementation?</li> </ul>				
<b>ACTION:</b>				
<b>Please identify if you are now required to carry out a Full Equality Analysis</b>		<b>Yes</b>	<b>No</b>	<b>(Please delete as appropriate)</b>
<b>Name of Author:</b>	Matthew Burrow	<b>Date Signed:</b>		February 2019
<b>Signature of Author:</b>				
<b>Name of Lead Person:</b>		<b>Date Signed:</b>		
<b>Signature of Lead Person:</b>				
<b>Name of Manager:</b>		<b>Date Signed:</b>		
<b>Signature of Manager:</b>				

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