



# **Bolton NHS Foundation Trust**

## **Constitution**

## Version Control

January 2021	9	<ul style="list-style-type: none"> <li>Major review</li> </ul>
October 2016	8	<ul style="list-style-type: none"> <li>Change to areas of the public constituency</li> <li>Reduction in number of governors from 39 to 35</li> <li>Change references to the regulator Monitor to NHS Improvement</li> <li>Update to model election rules to include electronic voting</li> </ul>
November 2015	7	<ul style="list-style-type: none"> <li>Membership age reduced to 14</li> </ul>
Nov 2013	6	<ul style="list-style-type: none"> <li>Addition of version control section</li> <li>Removal of reference to PCT</li> <li>Change CRB to DBS</li> <li>Removal of clauses to establish initial COG and Board</li> <li>Removal of reference to the Audit commission</li> <li>Monitor panel</li> <li>Approval of significant transactions</li> <li>Change to Constitution approval</li> </ul>
Sept 2012	5	<ul style="list-style-type: none"> <li>The continuation of the body corporate known as Monitor;</li> <li>Change from the 'Board of Governors' to the 'Council of Governors';</li> <li>Requirement for the principal purpose (i.e. provision of goods and services for the health service in England) to be stated in the constitution;</li> <li>Introduction of the new legal duty to ensure that income of NHS funded goods and services is greater than income from other sources;</li> <li>Introduction of additional oversight and scrutiny by the Council of Governors over activities generating non-NHS income;</li> <li>Replacement of HM Treasury with Secretary of State as regards giving guidance over FT accounts</li> </ul>
2011	4	<ul style="list-style-type: none"> <li>Name changed to Bolton NHS Foundation Trust</li> <li>Reduced number of out of area governors from four to three</li> </ul>
2010	3	<ul style="list-style-type: none"> <li>Change to allow flexibility to the number of Directors</li> <li>Change to limit the number of elections to one per year</li> <li>temporary addition of Community staff governor</li> </ul>
2009	2	<ul style="list-style-type: none"> <li>Addition of a Governor to represent LINK</li> <li>Change to quorum requirement for AMM</li> </ul>
2008	1	<ul style="list-style-type: none"> <li>approved on authorisation 1st October 2008</li> </ul>

# **BOLTON NHS FOUNDATION TRUST CONSTITUTION**

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## **1. Name**

The name of the foundation trust is Bolton NHS Foundation Trust (the trust).

## **2. Principal purpose**

- 2.1. The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.
- 2.2. The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 2.3. The trust may provide goods and services for any purposes related to –
  - 2.3.1. the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 2.3.2. the promotion and protection of public health.
- 2.4. The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## **3. Powers**

- 3.1. The powers of the trust are set out in the 2006 Act.
- 3.2. The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 3.3. Any of these powers may be delegated to a committee of directors or to an executive director.

## **4. Membership and constituencies**

- 4.1. The trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 4.1.1. the Public Constituencies
  - 4.1.2. the Staff Constituency
- 4.2. The members of the trust are those individuals whose names are entered in the register of members.

- 4.3. Members may attend and participate at members meetings, vote in elections for, and stand for election to the Council of Governors, and take such other part in the affairs of the trust as is provided in this constitution.
- 4.4. The Trust shall hold members meetings in accordance with the provisions of Annex 8

## **5. Application for membership**

- 5.1. An individual who is eligible to become a member of the trust may do so on application to the trust.
- 5.2. Subject to this constitution, membership is open to any individual who is entitled under this constitution to be a member of one of the Public Constituencies or one of the classes of the Staff Constituency, and who (unless they are a member of one of the classes of the Staff Constituency) completes a membership application form in whatever form the Secretary specifies.

## **6. Public Constituencies**

- 6.1. An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 6.2. Those individuals who live in an area specified as an area for any public constituency are referred to collectively as a Public Constituency.
- 6.3. The minimum number of members in each Public Constituency is specified in Annex 1.

## **7. Staff Constituency**

- 7.1. Subject to paragraph 7.3 below an individual who is employed by the trust under a contract of employment (which for the avoidance of doubt includes full and part time contracts of employment) with the trust may become or continue as a member of the trust provided:
  - 7.1.1. they are employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months;  
or
  - 7.1.2. they have been continuously employed by the trust under a contract of employment for at least 12 months.
- 7.2. Subject to paragraph 7.3 below individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the 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.

- 7.3. For the avoidance of doubt, the eligibility to be a member of the Staff Constituency described at paragraph 7.2 above does not include those who assist or provide services to the trust on a voluntary basis.
- 7.4. Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.5. The Staff Constituency shall be divided into four (4) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.6. The Trust Secretary shall make a final decision about the class of which an individual is eligible to be a member.
- 7.7. The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

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

- 7.8. An individual who is:
  - 7.8.1. eligible to become a member of the Staff Constituency, and
  - 7.8.2. invited by the 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 trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless they inform the trust that they do not wish to do so.

#### **8. Restriction on membership**

- 8.1. An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class of the trust.
- 8.2. An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3. A member of any constituency must be fourteen (14) years of age or over
- 8.4. An individual who:

8.4.1. has threatened, harassed, harmed or abused staff, patients and/or visitors of the trust or the Predecessor Trust; or

8.4.2. 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

shall be refused membership of the trust or where an existing member shall have their membership of the trust withdrawn.

8.5. Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8.

### **8A Annual Members' Meeting**

8A.1 The trust shall hold an annual members' meeting. The annual members' meeting shall be open to the public.

8A.2 Further provisions for the annual members' meeting are set out in Annex 8.

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

9.1. The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

9.2. The composition of the Council of Governors is specified in Annex 3.

9.3. The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

### **10. Council of Governors – election of governors**

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 on the basis of [single transferable vote (STV)] polling and the Model Rules for Elections shall be construed accordingly

10.1. The Model Rules for Elections, as published from time to time by NHS Providers, form part of this constitution. The Model Rules for Elections current at the date of their adoption under this constitution are attached at Annex 4.

10.2. A subsequent variation of the Model Rules for Elections by the Department of Health or NHS Providers or a successor body shall not



constitute a variation of the terms of this constitution. For the avoidance of doubt, the trust cannot amend the Model Rules for Elections.

10.3. An election, if contested, shall be by secret ballot.

## **11. Council of Governors - tenure**

11.1. An elected governor may hold office for a period of up to 3 years following each election that resulted in their election as a governor.

11.2. An elected governor shall cease to hold office if they cease to be a member of the constituency or class or area of the constituency by which they were elected, or if they are disqualified for any of the reasons set out in this Constitution. For the avoidance of doubt, this includes a Public Governor moving their principal residence from one Public Constituency to another.

11.3. An elected governor shall be eligible for re-election at the end of their term.

11.4. An elected governor may not, if re-elected for more than a single term of office hold office for more than nine (9) consecutive years in total.

11.5. The trust shall conduct annual elections for elected governors during each year (being a period of 12 months commencing on an anniversary of the Authorisation Date) in respect of each governor whose term of office shall expire at the end of that year, with any governors elected pursuant to such an annual election taking office on the next anniversary of the Authorisation Date following such election.

11.6. An Appointed Governor shall hold office for a period up to three years.

11.7. An Appointed Governor shall be eligible for re-appointment after the end of that period; subject to paragraph 11.8 below;

11.8. An Appointed Governor may not hold office for longer than nine consecutive years.

11.9. An Appointed Governor shall cease to hold office if the appointing organisation terminates their appointment or if they are disqualified for any of the reasons set out in this Constitution.

11.10. For the purposes of this paragraph 11 years of office are consecutive unless there is a break of at least 12 months between them.

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

12.1. The following may not become or continue as a member of the Council of Governors:

- 12.1.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 12.1.2. A person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 12.1.3. a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 12.1.4. 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 them.
- 12.2. Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 12.3. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

## **12A Council of Governors – duties of Governors**

12A.1 The general duties of the Council of Governors are:

12A.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and

12A.1.2 to represent the interests of the members of the trust as a whole and the interests of the public.

12A.2 The trust must take steps to secure that the Council of Governors are equipped with the skills and knowledge they require in their capacity as such.

12A.3 Further provision as to the roles and responsibilities of the Council of Governors is set out in Annex 5.

## **13. Council of Governors – meetings of governors**

- 13.1. The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 20.1 or paragraph 21.1 below) or, in their absence the Deputy Chair (appointed in accordance with the provisions of paragraph 22 below), shall preside at meetings of the Council of Governors.

- 13.2. Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting for special reasons.
- 13.3. the Council of Governors may require one or more of the directors to attend a meeting 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),
- 13.4. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

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

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

#### **15. Council of Governors - conflicts of interest of governors**

- 15.1. If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as they become aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.
- 15.2. Further provisions on disclosure of interests are listed in Annex 6.

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

The trust may pay travelling and other expenses to members of the Council of Governors as determined by the trust.

#### **17. Council of Governors – referral to the Panel**

- 17.1. 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 —
  - 17.1.1. to act in accordance with its constitution, or
  - 17.1.2. to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

- 17.2. A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

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

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

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

- 19.1. The trust is to have a Board of 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) which shall comprise both executive and non-executive directors.
- 19.2. The Board of Directors is to comprise:
- 19.2.1. a non-executive Chair
  - 19.2.2. a minimum of five (5) non-executive directors; and
  - 19.2.3. a minimum of five (5) executive directors.
  - 19.2.4. The number of executive directors will not exceed the number of non-executive directors excluding the Chair.
- 19.3. One of the executive directors shall be the Chief Executive.
- 19.4. The Chief Executive shall be the Accounting Officer.
- 19.5. One of the executive directors shall be the finance director.
- 19.6. One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 19.7. One of the executive directors is to be a registered nurse or a registered midwife.

## **19A Board of Directors – general duty**

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.

## **20. Board of Directors – qualification for appointment as Chair or another non-executive director**

- 20.1. A person may be appointed as the Chair or another non-executive director only if – they are a member of the Public Constituency, and they are not disqualified by virtue of paragraph 24 below.

- 20.2. The Chair must on appointment for each and every term of office meet the Independence Criteria and may not have previously served as the chief executive of the trust.
- 20.3. Every other non-executive director must on appointment and throughout their term of office meet the Independence Criteria.
- 20.4. 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 their term of office should;
  - 20.4.1. not have been an employee of the trust within the last five (5) years;
  - 20.4.2. not have, or have had within the last three (3) years a material interest in any matter within the meaning of paragraph 5.3 of Annex 7;
  - 20.4.3. not receive or have received additional remuneration from the trust (apart from a director's fee), participate in the trust's performance-related pay scheme (if any) or be or have been a member of the trust's pension scheme;
  - 20.4.4. not have any close family tie with any director, senior employee or professional advisor to the trust;
  - 20.4.5. not have any significant business link with any other director of the trust including through any involvement in any company or body; or
  - 20.4.6. not have served on the trust Board of Directors for more than nine (9) years from the date of their first appointment.

**21. Board of Directors – appointment and removal of Chair and/or other non-executive directors**

- 21.1. The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the trust and/or the other non-executive directors.
- 21.2. Appointment of the Chair or of a non-executive director shall require the approval of a majority of the members of the Council of Governors.
- 21.3. Removal of the Chair or any other non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

- 21.4. The procedures for the appointment and removal of the Chair and other Non-Executive Directors are set out in Annex 7.

## **22. Board of Directors – appointment of deputy Chair**

The Council of Governors at a general 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 their office as Chair of the trust, the Deputy Chair shall be acting Chair of the trust.

## **23. Board of Directors - appointment and removal of the Chief Executive and other executive directors**

- 23.1. The Chair and the other non-executive directors shall appoint or remove the Chief Executive.
- 23.2. The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 23.3. A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors. The Chair shall act as Chair of such committee.

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

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

- 24.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 24.1A A person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 24.2. a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 24.3. 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 them;
- 24.4. a person who is a member of the Council of Governors or a governor of another NHS foundation trust;
- 24.5. a person who is the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the trust;

- 24.6. a person who is a member of a committee which has, any role on behalf of a local authority to scrutinise and review health matters including a local authority's Overview and Scrutiny Committee covering health matters;
- 24.7. a person who is the subject of an unexpired disqualification order made under the Company Directors Disqualification Act 1986;
- 24.8. a person whose tenure of office as a Chair or as an officer or director of a health service 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 nondisclosure of a pecuniary interest;
- 24.9. a person who has within the preceding five (5) years been lawfully dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 24.10. in the case of a non-executive director, a person who has:
  - 24.10.1. refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
  - 24.10.2. refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.
- 24.11. on the basis of disclosures obtained through an application to the Disclosure and Barring Service (DBS), they are not considered suitable by the Trust Secretary in consultation with the trust's director responsible for Human Resources on the grounds that this would adversely affect public confidence in the trust or otherwise bring the trust into disrepute;
- 24.12. they are a person who has had their name removed or been suspended from any list (including any performers list maintained by a Clinical Commissioning Group) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had their name included in such a list or had their suspension lifted or qualification reinstated.
- 24.13. they have within the preceding five (5) years been:
  - 24.13.1. made subject to a Hospital Order under section 37 of the MHA whether or not subject to restrictions under section 41:
  - 24.13.2. made subject to an interim Hospital Order under section 38 of the MHA;

24.13.3. made subject to a transfer direction under section 48 of the MHA whether or not subject to restrictions under section 49; and/or

24.13.4. made subject to an order under the Criminal Procedure (Insanity) Act 1964 as amended

24.14. they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation.

#### **24A Board of Directors – meetings**

24A.1 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.

24A.2 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.

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

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

#### **26. Board of Directors - conflicts of interest of directors**

26.1. The duties that a director of the trust has by virtue of being a director include in particular:

26.1.1. a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.

26.1.2. a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

26.2. The duty referred to in paragraph 26.1.1 is not infringed if:

26.2.1. the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

26.2.2. the matter has been authorised in accordance with the Constitution.



- 26.3. The duty referred to in paragraph 26.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 26.4. In paragraph 26.1.2, “third party” means a person other than:
- 26.4.1. the trust; or
  - 26.4.2. a person acting on its behalf.
- 26.5. If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 26.6. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 26.7. Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 26.8. This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 26.9. A director need not declare an interest:
- 26.9.1. if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 26.9.2. if, or to the extent that, the directors are already aware of it;
  - 26.9.3. if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered:
    - 26.9.3.1. by a meeting of the Board of Directors; or
    - 26.9.3.2. by a committee of the directors appointed for the purpose under the Constitution.
- 26.10. Further provisions as to conflicts of interests are in Annex 7.

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

- 27.1. The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.

- 27.2. The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.
- 27.3. The trust may reimburse executive directors' travelling and other costs and expenses incurred in carrying out their duties as the remuneration committee of non-executive directors decides. These are to be disclosed in the annual report.
- 27.4. The remuneration and allowances for directors are to be disclosed in bands in the annual report.

## **28. Registers**

The trust shall have:

- 28.1. a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes or areas within it, the class or area to which they belong;
- 28.2. a register of members of the Council of Governors;
- 28.3. a register of interests of governors;
- 28.4. a register of directors; and
- 28.5. a register of interests of the directors.

## **29. Admission to and removal from the registers**

- 29.1. The 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.
- 29.2. The 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.

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

- 30.1. The trust shall make the registers specified in paragraph 28 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 30.2. The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.
- 30.3. So far as the registers are required to be made available:

- 30.3.1. they are to be available for inspection free of charge at all reasonable times; and
- 30.3.2. a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 30.4. If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

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

- 31.1. The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 31.1.1. a copy of the current constitution;
  - 31.1.2. a copy of the latest annual accounts and of any report of the auditor on them;
  - 31.1.3. a copy of the latest annual report; and
  - 31.1.4. a copy of the latest information as to its forward planning.
- 31.2. The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
  - 31.2.1. A copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
  - 31.2.2. A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 31.2.3. A copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 31.2.4. A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 31.2.5. A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 31.2.6. A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's

decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;

31.2.7. A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;

31.2.8. A copy of any final report published under section 65I (administrator's final report);

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

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

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

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

### **32. Auditor**

32.1. The trust shall have an auditor and is to provide the auditor with every facility and all information, which they may reasonably require for the purposes of their functions under Schedule 10 of the 2006 Act.

32.2. A person may only be appointed as the auditor if they (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 to the 2006 Act.

32.3. The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

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

### **33. Audit committee**

The trust shall establish a committee of non-executive directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

### **34. Accounts**

- 34.1. The trust must keep proper accounts and proper records in relation to the accounts.
- 34.2. NHS Improvement may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.
- 34.3. The accounts are to be audited by the trust's auditor.
- 34.4. The trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.
- 34.5. The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 34.6. In preparing its annual accounts, the Accounting Officer shall require the trust to comply with any directions given by NHS Improvement with the approval of the Secretary of State as to:
  - 34.6.1. the methods and principles according to which the accounts are to be prepared; and
  - 34.6.2. the information to be given in the accounts.
- 34.7. The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a meeting of the Council of Governors.
- 34.8. The trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to NHS Improvement.

### **35. Annual report and forward plans**

- 35.1. The trust shall prepare an Annual Report and send it to NHS Improvement.
- 35.2. Each Annual Report is to contain:
  - 35.2.1. information on any steps taken by the trust to secure that (taken as a whole) the actual membership of its Public Constituencies and of the classes of the Staff Constituency are representative of those eligible for such membership; andany other information NHS Improvement requires.
- 35.3. The trust is to comply with any decision NHS Improvement makes as to:
  - 35.3.1. the form of Annual Reports;

- 35.3.2. when the reports are to be sent to it;
- 35.3.3. the periods to which the Annual Reports are to relate.
- 35.4. The trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.
- 35.5. The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 35.6. In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 35.7. Each forward plan must include information about –
  - 35.7.1. 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
  - 35.7.2. the income it expects to receive from doing so.
- 35.8. Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 35.7.1 the Council of Governors must –
  - 35.8.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and
  - 35.8.2. notify the directors of the trust of its determination.
- 35.9. 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 proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

### **36. Meeting of Council of Governors to consider annual accounts and reports**

- 36.1. The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
  - 36.1.1. the annual accounts
  - 36.1.2. any report of the auditor on them

36.1.3. the annual report.

36.2. The documents shall also be presented to the members of the trust at the annual members' meeting by at least one member of the Board of Directors in attendance.

36.3. The trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 36.1 with the annual members' meeting.

### **37. Instruments**

37.1. The trust shall have a seal.

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

37.3. 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.

### **37A Amendments to the Constitution**

37A.1 The trust may make amendments of this Constitution only if:

37A.1.1 more than half of the members of the Council of Governors of the trust voting approve the amendments; and

37A.1.2 more than half of the members of the Board of Directors of the trust voting approve the amendments.

37A.2 Amendments made under paragraph 37A.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as this Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

37A.3 Where an amendment is made to this 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):

37A.3.1 at least one member of the Council of Governors must attend the next annual members' meeting and present the amendment; and

37A.3.2 the trust must give the members an opportunity to vote on whether they approve the amendment.

37A.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.

37A.5 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 this Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

### **38. Indemnity**

The trust may provide an indemnity to any member of the Council of Governors, the Board of Directors or the Secretary that if any such person acts honestly and in good faith such person will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the trust. The trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors and the Secretary.

### **39. Not used**

### **40. Mergers etc. and significant transactions**

- 40.1. The trust may only apply for a Statutory Transaction with the approval of more than half of the members of the Council of Governors.
- 40.2. The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the trust voting approve entering into the transaction.
- 40.3. For the purposes of paragraph 40.2, "Significant transaction" means amounts equal to or greater than 25% of:-
  - 40.3.1. in relation to assets, the gross assets (being the sum of fixed assets and current assets) subject to the transaction whether contingent or not, divided by the gross assets of the foundation trust
  - 40.3.2. in relation to income, the income attributable to the assets or the contract associated with the transaction whether contingent or not, divided by the income of the foundation trust
  - 40.3.3. in relation to acquisitions or divestments whether contingent or not, the gross capital (being the market value of the target's shares and debt securities plus the excess of current liabilities over current assets) of the company being acquired or divested, divided by the total capital (being the total taxpayers' equity) of the trust following completion, or the effects on the total capital of the trust resulting from a transaction.
- 40.4. In assessing the value of any contingent liability for the purposes of paragraph 40.3, the directors:



40.4.1. Must have regard to all circumstances that Directors know, or ought to know, affect or may affect, the value of the contingent liability; and

40.4.2. May rely on estimates of the contingent liability that are reasonable in the circumstances; and

40.4.3. May take account of the likelihood of the contingency occurring.

40.5. A Statutory Transaction under paragraph 40.1 is not a significant transaction for the purposes of paragraph 40.2.

#### **41. Validity of actions**

No defect or deficiency in the appointment or composition of the members or the Council of Governors or the Board of Directors shall affect the validity of any decision or action taken by them.

#### **42. Interpretation and definitions**

42.1. 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 2006 Act.

the **2006 Act** is the National Health Service Act 2006.

the **2012 Act** is the Health and Social Care Act 2012.

the **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

**Appointed Governor** means the Local Authority Governors and the Partnership Governors

**Authorisation Date** means the date that the trust's initial authorisation as an NHS Foundation Trust took effect.

**Board of Directors** means the Board of Directors as constituted in accordance with this Constitution and "Board" shall be construed accordingly.

**Chair** is the Chair of the Board of Directors appointed in accordance with paragraph 21 of this Constitution, interchangeable with the term Chairman.

**Chief Executive** means the Chief Executive and Accounting Officer of the Trust appointed in accordance with paragraph 23 of this Constitution.

**Constituencies** means the Public Constituencies and the Staff Constituency.

**Constitution** means this Constitution of Bolton NHS Foundation Trust and all annexes to it.

**Council of Governors** means the Council of Governors of the trust as constituted in accordance with this Constitution.

**Financial Year** means: (a) the period beginning with the date on which the trust is authorised as a Foundation Trust and ending with the next 31 March; and (b) each successive period of twelve (12) months beginning with 1 April.

the **Independence Criteria** means those criteria set out at paragraph 20.4 above

**Local Authority Governor** means a governor appointed by one or more local authorities in accordance with the provisions of this Constitution and as specified in Annex 3.

the **MHA** means the Mental Health Act 1983.

**Model Rules for Elections** means the model form rules for the conduct of elections published from time to time by NHS Providers.

**Monitor** is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act, which operates with the National Health Service Trust Development Authority as NHS Improvement.

**NHS Improvement** is the operating name of Monitor and the National Health Service Trust Development Authority operating as a single body, and references in this constitution to NHS Improvement shall be construed as references to Monitor.

**NHS Foundation Trust Code of Governance** means the Code of Governance published by Monitor in July 2014 or such similar or further guidance as Monitor may publish from time to time.

**Partnership Governor** means a governor appointed by a Partnership Organisation.

**Partnership Organisation** means those organisations that may appoint Partnership Governors as listed at paragraph 1.4 of Annex 3

**Public Constituency** means all those individuals who live in an area specified as an area for a public constituency in Annex 1.

**Public Governor** means a member of the Council of Governor elected by the members of a Public Constituency.

**Secretary or Trust Secretary** means the secretary of the trust or any other person appointed by the trust pursuant to paragraph 2.1 of Annex 7 to perform the duties of the secretary

**Secretary of State** means the Secretary of State for Health and Social Care.

**Staff Constituency** means that part of the Trust's membership consisting of the staff of the Trust and other persons as more particularly provided for in paragraph 7 of this Constitution and which is divided into the Staff Classes as specified in Annex 2;

**Staff Governor** means a member of the Council of Governor elected by the members of one of the classes of the Staff Constituency.

**Statutory Transaction** means a merger under section 56 of the 2006 Act, an acquisition under section 56A of the 2006 Act, a separation under section 56B of the 2006 Act, and dissolution under section 57A of the 2006 Act.

**Trust** means Bolton NHS Foundation Trust.

**voluntary organisation** is a body, other than a public or local authority, the activities of which are not carried on for profit.

- 42.2. Save as otherwise permitted by law, the Chair shall be the final authority for all purposes on the interpretation of this constitution (on which they should be advised by the Trust Secretary).

## ANNEX 1 - THE PUBLIC CONSTITUENCIES

(Paragraphs 6.1 and 6.3)

<b>Areas comprising a Public Constituency</b>	<b>Electoral Wards</b>	<b>Minimum number of Members</b>	<b>Number of Governors to be elected</b>
Bolton North East	Astley Bridge Bradshaw Breightmet Bromley Cross Crompton Halliwell Tonge with the Haulgh	250	6
Bolton South East	Farnworth Great Lever Harper Green Hulton Kearsley Little Lever & Darcy Lever Rumworth	250	6
Bolton West	Atherton Heaton & Lostock Horwich & Blackrod Horwich North East Smithills Westhoughton North & Chew Moor Westhoughton South	250	6
Out of Area	All electoral divisions in England not falling within an area detailed above in this table as being a Public Constituency	100	2

## ANNEX 2 - THE STAFF CONSTITUENCY

<b>Staff Class</b>	<b>Minimum number of Members</b>	<b>Number of Governors to be elected</b>
Nurses and midwives who are registered with their regulatory body to practise	20% of the total number of employees who are eligible for membership of the class	2
Doctors and dentists who are registered with their regulatory body to practise	20% of the total number of employees who are eligible for membership of the class	1
Allied health professionals and scientists who are registered with their regulatory body to practise in a clinical capacity	20% of the total number of employees who are eligible for membership of the class	1
All other staff	20% of the total number of employees who are eligible for membership of the class	2

### **ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS**

- 1 The Council of Governors shall comprise thirty four (34) governors composed as set out below and as illustrated in the following table:
  - 1.1 Twenty (20) Public Governors which must be more than half the total membership of the Council of Governors elected by members of the trust from the Public Constituencies as set out in Annex 1.
  - 1.2 Six (6) Staff Governors elected by the Staff Classes set out in Annex 2.
  - 1.3 Two (2) Local Authority Governors appointed by Bolton Metropolitan Borough Council or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituencies set out at Annex 1.
  - 1.4 Six (6) Partnership Governors:
    - (a) Two (2) Governors appointed by educational institutions from the further and/or higher education sector which shall be: one (1) governor appointed by the University of Bolton and one (1) by Salford University.
    - (b) Two (2) Partnership Governors appointed by voluntary organisations which shall be appointed by the Council for Voluntary Services (CVS).or a successor organisation
    - (c) One (1) Partnership Governor appointed by the Bolton LMC (Local Medical Committee), who must be a practising GP.
    - (d) One (1) Partnership Governor appointed by Bolton Healthwatch or a successor organisation
  - 1.5 Members of the Public Constituencies may elect any of their number to be a Public Governor and members of the Staff Classes may elect any of their number to be a Staff Governor.

## Composition of the Council of Governors:

### **Public Constituency**

	<b>Number of seats</b>
Bolton West	6
Bolton North East	6
Bolton South East	6
Out of Area	2

**Sub Total    20**

### **Staff Constituency**

	<b>Number of seats</b>
Nurses and midwives who are registered with their regulatory body to practise	2
Doctors and dentists who are registered with their regulatory body to practise	1
Allied health professionals and scientists who are registered with their regulatory body to practise in a clinical capacity	1
All other staff	2

**Sub Total    6**

### **Appointed Governors Constituency**

	<b>Number of seats</b>
Bolton Metropolitan Borough Council	2
University of Bolton	1
Salford University	1
Council for Voluntary Services	2
Bolton Local Medical Committee	1
Bolton Healthwatch	1

**Sub Total    8**

**TOTAL        34**





## **ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

### **1 Roles and responsibilities of the Council of Governors**

- 1.1 The statutory duties of the Council of Governors are provided in paragraph 12A of the constitution.
- 1.2 Each governor shall act in the best interests of the trust at all times and with proper regard to the provisions of the NHS Foundation Trust Code of Governance and the Code of Conduct for Governors.
- 1.3 All governors shall comply with the Code of Conduct for Governors, as agreed by the Board of Directors and the Council of Governors.

### **2 Appointed Governors**

#### Local Authority Governors

- 2.1 The Trust Secretary, having consulted with Bolton Metropolitan Borough Council or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency, is to adopt a process for agreeing the appointment of Local Authority Governors with that local authority.

#### Partnership Governors

- 2.2 The Partnership Governors are to be appointed by the partnership organisations, in accordance with a process agreed with the Trust Secretary

#### General Provisions

- 2.3 Appointed Governors:
  - 2.3.1 shall normally hold office for a period of three (3) years commencing on the date such election is to have effect;
  - 2.3.2 are eligible for re-appointment subject to paragraph 2.3.3;
  - 2.3.3 may not where reappointed hold office for longer than nine (9) consecutive years

### **3 Eligibility to be a Governor**

- 3.1 A person may not become a governor of the trust, and if already holding such office will immediately cease to do so, if:
  - 3.1.1 they are a director of the trust, or a governor of another foundation trust or a director (or equivalent) of a health service organisation (unless

- they are an appointed governor appointed by the health service organisation for which they are a governor or director);
- 3.1.2 they are the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the trust;
  - 3.1.3 they are a member of a committee which has, any role on behalf of a local authority to scrutinise and review health matters including a local authority's Overview and Scrutiny Committee covering health matters;
  - 3.1.4 being a member of the Staff Constituency they have a current and unexpired written warning which has been imposed following disciplinary action by the trust arising out of their employment with the trust. if a Staff Governor is suspended from duties for any reason they will also be suspended from their role as a Staff Governor for the duration of their suspension. Whilst a Staff Governor is under suspension, the Staff Governor cannot attend meetings of the Council of Governors as a member of the Council of Governors, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of paragraph 4.1.2 of this Annex 5. Spent disciplinary warnings will not preclude eligibility to be a Governor;
  - 3.1.5 they refuse to sign a declaration in the form specified by the Secretary that they are a member of a Public Constituency or the Staff Constituency as the case may be and that they are not prevented from being a member of the Council of Governors;
  - 3.1.6 they are a vexatious complainant within the meaning of paragraph 8.4.2;
  - 3.1.7 on the basis of disclosures obtained through an application to the Disclosure and Barring Service, they are not considered suitable by the Trust Secretary and the trust's director responsible for Human Resources;
  - 3.1.8 they have within the preceding five (5) years been lawfully dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service organisation;
  - 3.1.9 they are a person whose tenure of office as the Chair or as a member or director of a health service organisation 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;
  - 3.1.10 they are a person who has had their name removed or been suspended from any list (including any performers list maintained by a primary care trust) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently

had their name included in such a list or had their suspension lifted or qualification reinstated;

3.1.11 they have within the preceding five (5) years been:

- (i) made subject to a Hospital Order under section 37 of the MHA whether or not subject to restrictions under section 41;
- (ii) made subject to an Interim Hospital Order under section 38 of the MHA;
- (iii) made subject to a transfer direction under section 48 of the MHA whether or not subject to restrictions under section 49; and/or
- (iv) made subject to an order under the Criminal Procedure (Insanity) Act 1964 as amended.

3.1.12 they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation;

3.1.13 any of the grounds contained in paragraph 12 of the Constitution apply to that person;

3.1.14 in the case of an elected Public Governor, they cease to be a member of the Constituency by whom they were elected;

3.1.15 they have previously been removed as a governor of the trust or removed as a governor or expelled from membership of another foundation trust;

3.1.16 in the case of an Appointed Governor, the appointing organisation terminates the appointment, or they leave, retire or are suspended from their employment. If an Appointed Governor is suspended from their duties for any reason by the appointing organisation they will also be suspended from their role as Governor for the duration of their suspension. Whilst an Appointed Governor is under suspension, the Appointed Governor cannot attend meetings of the Council of Governors as a member of the Council of Governors, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of paragraph 4.1.2 of this Annex 5;

3.1.17 they are a person who is not a fit and proper person as defined by regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or condition G4 of the Trust's provider licence;

3.1.18 they are subject to a direction made under the Education Act 2011 or the Safeguarding Vulnerable Groups Act 2006;

- 3.1.19 they have failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act;
  - 3.1.20 their term of office was terminated pursuant to paragraph 4.2 of this Annex 5;
- 3.2 Where a person has been elected or appointed to be a Governor and that person becomes disqualified from that appointment that individual shall notify the Trust in writing of such disqualification as soon as practicable and in any event within fourteen days of first becoming aware of those matters which rendered the individual disqualified.
- 3.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare Governor disqualified and shall give the Governor notice in writing to that effect as soon as practicable.
- 3.4 Upon the giving of notice under paragraphs 3.2 and 3.3 of this Annex, that person's tenure of office as a Governor shall thereupon be terminated and the individual shall cease to be a Governor and the individual's name shall be removed from the Register of Governors.

#### **4 Termination of office and removal of Governors**

- 4.1 A person holding office as a governor shall immediately cease to do so if:
  - 4.1.1 they resign by notice in writing to the Secretary;
  - 4.1.2 they fail to attend three (3) consecutive meetings, unless the Council of Governors is satisfied that:
    - 4.1.2.1 the absences were due to reasonable causes; and
    - 4.1.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the Council of Governors considers reasonable.
  - 4.1.3 in the case of an elected governor, they cease to be a member of the constituency or class by which they were elected;
  - 4.1.4 in the case of an appointed governor, the appointing organisation terminates the appointment, the appointing organisation ceases to exist or they withdraw themselves as the Appointed Governor representative;
  - 4.1.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake;
  - 4.1.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for governors;
  - 4.1.7 they cease to fulfil the requirements of paragraph 3.1 above;

- 4.2 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 at a meeting of the Council of Governors on the grounds that:
- 4.2.1 They have committed a material breach of the Code of Conduct for Governors; and/or
  - 4.2.2 They have acted in a manner detrimental to the interests of the Trust; and/or
  - 4.2.3 The Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor. Circumstances where it may not be appropriate for an individual to continue as a Governor include the circumstances set out in paragraph 4.3;
- 4.3 The Council of Governors may remove a Governor in accordance with paragraph 4.2.3 where the Council of Governors finds that their continuing as a Governor would or would be likely to:
- 4.3.1 Prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
  - 4.3.2 Prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
  - 4.3.3 Adversely affect public confidence in the goods and services provided by the Trust; or
  - 4.3.4 Otherwise bring the Trust into disrepute or is detrimental to the interest of the Trust; or
  - 4.3.5 Not in the best interests of the Trust for that person to continue in office as a Governor; or
  - 4.3.6 Fail to comply in a material way with the values and principles of the NHS or the Trust.
- 4.4 Upon a Governor resigning under paragraph 4.1.1 of this Annex or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions that Governor shall cease to be a Governor and their name shall be removed from the register of Governors.
- 4.5 The decision of the Council of Governors to terminate the tenure of office of the Governor concerned shall not take effect until the later of:
- 4.5.1 Seven days after the date of decision; or

- 4.5.2 Where the Governor applies for the decision to be referred to an independent assessor, the date on which the independent assessor determines the matter.
- 4.6 The Governor in question will be permitted to appeal any decision of the Council of Governors to terminate that Governor's tenure of office made in accordance with paragraph 4.2 in writing, within 28 days of the date upon which notice of the decision is received, for that decision to be referred to an independent assessor.
- 4.7 On receipt of an application under paragraph 4.6 above the Council of Governors and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on the identity of the independent assessor within twenty-one days of the date upon which the application is received by the Council of Governors, then the Council of Governors shall request the Chartered Institute of Arbitrators to nominate an independent assessor.
- 4.8 The independent assessor will consider the evidence and conclude whether the decision to remove the Governor was reasonable or otherwise.
- 4.9 The independent assessor's decision will be binding on the parties. If the independent assessor finds that the decision of the Council of Governors to remove the Governor was not reasonable, the decision of the Council of Governors will be rescinded.
- 4.10 The Trust shall bear the independent assessor's costs unless the independent assessor determines that such costs shall be shared between the Trust and the Governor.
- 4.11 A Governor:
- 4.11.1 Who resigns or whose tenure of office is terminated under paragraph 4.1 of this Annex shall not be eligible to stand for re-election for a period of six years from the date of their resignation or removal from office; or
  - 4.11.2 Whose tenure is terminated under paragraph 4.2 of this Annex shall not be eligible to stand for re-election for a period of nine years from the date of their removal from office or the date upon which any appeal against their removal from office is disposed of whichever is the later.
  - 4.11.3 Not less than twenty percent of the Governors may, where the process leading to the possible removal of a Governor has been initiated, require the appointment of an independent assessor to consider the evidence and advise as to the appropriateness of removal. It will also be available to the Chair to initiate any such independent assessment at any time.
- 4.12 A Governor may resign from office at any time during the term of office by giving notice in writing to the Trust Secretary save that if in the opinion of the Trust Secretary the Governor's conduct and tenure are or may become subject to

review or investigation which may lead to his or her removal under paragraph 4.2, then any such notice of resignation will not be effective without the agreement of the Chair or (if the Chair is conflicted) the Deputy Chair.

- 4.13 The Chair or (if the Chair is conflicted) the Deputy Chair may suspend a Governor whose conduct and tenure are subject to review or investigation if in the opinion of the Chair or the Deputy Chair such review or investigation may lead to the Governor's removal under paragraph 4.2.

## **5 Vacancies amongst Governors**

- 5.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:

5.1.1 where the vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

5.1.2 where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:

5.1.2.1 to invite the next highest polling candidate for that seat 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 be subject to election for any unexpired period of the term of office of the governor who is being replaced.

5.1.2.3 If there is no other candidate available the governors may choose to leave the seat vacant until the next elections are held unless to do so would mean that there is no longer a majority of public governors on the Council of Governors.

- 5.2 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

## **6 Expenses and Remuneration of Governors**

- 6.1 The trust may reimburse governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.

- 6.2 The trust may at their discretion decide to reimburse the cost and expense of a governor's carer arrangements necessarily and reasonably incurred in such governor carrying out their duties as the Board of Directors decide.

- 6.3 In respect of a Staff Governor who is an employee of the Trust, the Board of Directors shall seek to facilitate such employee's reasonable participation as a Staff Governor during normal working hours to the extent reasonably necessary for the performance of their duties as a Staff Governor (including reasonable time

off from their contracted duties) and shall not make any corresponding deduction from salary.

- 6.4 Governors are not to receive remuneration from the trust otherwise than as set out in paragraphs 6.1 and/or 6.2 and/or 6.3 above of this Annex 5.

## **7 Governors Code of Conduct**

The trust may from time to time publish a governors' code of conduct and each governor shall be required to follow and observe such code of conduct's provisions.



## **ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

### **1 Meetings of the Council of Governors**

#### ***Calling meetings***

- 1.1 The Council of Governors is to meet a minimum of four (4) times in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen (14) days' written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will also be published on the trust's website.
- 1.2 Meetings of the Council of Governors may be called by the Secretary, or by the Chair.
- 1.3 Meetings of the Council of Governors may be called by ten (10) governors (including at least two (2) elected governors and two (2) appointed governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all governors as soon as possible after receipt of such a request.
- 1.4 The Secretary shall call a meeting on at least fourteen (14) but not more than twenty eight (28) days' notice.
- 1.5 If the Secretary fails to call such a meeting following notice pursuant to paragraph 1.3 of Annex 6 above then the Chair or ten (10) governors, whichever is the case, shall call such a meeting.

#### ***Quorum***

- 1.6 Subject to paragraph 1.7 of Annex 6 below, fifteen (15) governors including no fewer than ten (10) Public Governors, no fewer than two (2) Staff Governors and no fewer than one (1) appointed governor shall form a quorum for the Council of Governors.
- 1.7 The Council of Governors shall not be quorate unless a majority of governors present are Public Governors.
- 1.8 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.
- 1.9 The Council of Governors may agree 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.

1.9A A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the Meeting. The meeting must then proceed to the next business.

### ***Voting***

1.10 Except as provided for in this constitution or the 2006 Act and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes of the Governors present and voting on the question.

1.10A At the meeting of the Council of Governors a vote shall be decided on a show of hands, the result being declared by the Chair and recorded in the minutes. The entry in the minutes shall confirm the result without recording the number in favour or against the motion unless a request is made under Standing Order 2.17.

1.10B A paper ballot may be used if a majority of the Governors present so request. If a paper ballot is used, it shall be taken at such time and place and in such a manner as the Chair of the meeting shall direct and the result of the ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. The demand for a ballot shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a ballot has been demanded.

1.10C If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

1.10D No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.

1.11 Not used

### ***Committees***

1.12 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint governors and may invite directors and other persons to serve on such committees. The Council of Governors may, through the Secretary request that external advisors assist them or any committee they appoint in carrying out its duties.

- 1.13 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.

## **2 Disclosure of interests**

- 2.1 Any governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and shall withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue (and if inadvertently they do remain and vote, their vote shall not be counted).
- 2.2 Any governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a not less than two thirds of the remaining governors.

Subject to the exceptions below, a material interest in a matter is where a governor:

- 2.2.1 holds any directorship of a company;
- 2.2.2 holds any interest or position in any firm or company or business;
- 2.2.3 has any interest in an organisation providing health and social care services to the National Health Service; or
- 2.2.4 holds any position of authority in a charity or voluntary organisation in the field of health and social care;
- 2.2.5 receives research funding/grants either as an individual or to their department;
- 2.2.6 holds interests in pooled funds that are under separate management.

and such organisation is, in connection with the matter, trading with the trust or entering into a financial arrangement with the trust, or is likely to be considered as a potential contractor to the trust. In the case of two persons living together as a couple (whether married or not) the interest of one shall be deemed to be also an interest of the other

- 2.3 The exceptions which shall not be treated as material interests are as follows:
- 2.3.1 shares held in any company where the value of those securities does not exceed £10,000 or the number of shares held does not exceed 2% of the total number of issued shares in a company whose shares are listed on any public exchange;
  - 2.3.2 an employment contract with the trust held by a Staff Governor;

- 2.3.3 an employment contract with a local authority held by a Local Authority Governor;
- 2.3.4 an employment contract with a partnership organisation held by a Partnership Governor.

### **3 Declaration**

An elected governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the trust and that they are not prevented from being a member of the Council of Governors. An elected governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected governors.

### **4 Agendas and Papers**

- 4.1 An agenda, copies of any questions on notice and/or motions on notice to be considered at the relevant meeting and any supporting papers shall be sent to each Governor so as to arrive with each Governor normally no later than 7 days in advance of each meeting. Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item.
- 4.2 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 4.3 A Governor desiring a matter to be included on the agenda shall make his request in writing to the Trust Secretary at least 14 days before the meeting. Requests made less than 14 clear days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.4 The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Receipt of such matters via electronic means is acceptable.

### **5 Admission of the Public**

- 5.1 All meetings of the Council of Governors are to be general meetings 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. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 5.2 Nothing in these Standing Orders shall require the Council to allow members of the public or press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceeding as they take place without the prior agreement of the Council of Governors

## **6 Chair of Meetings**

- 6.1 The Chair of the Trust, or in that person's absence, the Deputy Chair is to preside at meetings of the Council of Governors. If the Chair is absent from a meeting or temporarily absent on the grounds of a declared conflict of interest the Deputy Chair shall preside. If the Chair and Deputy Chair are absent from the meeting or absent temporarily on the grounds of a declared conflict of interest, such non-executive director as the Governors present shall choose shall preside.
- 6.2 The Chair of the Trust is not a member of the Council of Governors but the Chair of the Trust or, in their absence, the Deputy Chair of the Trust is to preside over meetings of the Council of Governors.

## **7 Chair's Ruling**

- 7.1 Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- 7.2 Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which that person should be advised by the Trust Secretary).

## **8 Minutes**

- 8.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it. The approved minutes will be conclusive evidence of the events of the meeting and retained by the Trust Secretary.
- 8.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

## **9 Standards of business conduct**

- 9.1 In relation to their conduct as a Governor of the Trust, each Governor must comply with the Constitution, the Code of Conduct for Governors, the NHS Foundation Trust Code of Governance, the requirements of the law and any guidance issued by Monitor.
- 9.2 Governors will confirm their agreement to adhere to the Code of Conduct for Governors by signing a copy annually and returning it to the Trust Secretary.
- 9.3 Canvassing of Directors or Governors or of any members of any committee of the Trust directly or indirectly for any appointment by the Trust shall disqualify the candidate for such appointment.
- 9.4 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but this Standing Order shall not

preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

## **10 Suspension of Standing Orders**

- 10.1 Except where this would contravene any statutory provision or any direction made by Monitor, any one of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present, including one Public Governor and one Staff Governor, and that a majority of those present vote in favour of suspension.
- 10.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 10.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and the members of the Council of Governors.
- 10.4 No formal business may be transacted while Standing Orders are suspended.
- 10.5 The Trust's Audit Committee shall review every decision to suspend Standing Orders.

## **11 Variation and Amendment of Standing Orders**

These Standing Orders may only be amended in accordance with paragraph 37A of the Constitution.

## **12 Review of Standing Orders**

These Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having effect as if incorporated in these Standing Orders.

## **13 Interpretation and definitions**

- 13.1 These Standing Orders are the standing orders referred to in paragraph 14 of the Constitution. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.
- 13.2 Terms defined in the Constitution shall have the same meaning in these Standing Orders.

## **ANNEX 7– STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

## **ANNEX 8 MEMBERSHIP AND MEMBERS MEETINGS**

### **1 Members Meetings**

- 1.1 The trust is to hold a members meeting (called the annual members meeting) within nine (9) months of the end of each Financial Year.
- 1.2 All members meetings other than annual meetings are called special members meetings.
- 1.3 Members meetings are open to all members of the trust, governors and directors, and representatives of the auditor. Annual members meetings are also open to all members of the public who are not members of the trust, but only in the capacity as an observer (which for the avoidance of doubt does not include any right to address the meeting, speak, be heard or vote at such meeting). Special members meetings should not be open to members of the public unless the Council of Governors decides otherwise.
- 1.4 The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the trust to attend a members meeting.
- 1.5 All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 1.6 The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members arrange for the annual members meeting to be held in different venues each year.
- 1.7 The Council of Governors 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 at the annual members meeting.
- 1.8 At each annual members meeting the Board of Directors shall present to the members:
  - 1.8.1 the annual accounts
  - 1.8.2 any report of the auditor on the annual accounts
  - 1.8.3 the annual report
  - 1.8.4 forward planning information for the next financial year
- 1.9 At each annual members meeting the Council of Governors shall present to the members:
  - 1.9.1 a report on steps taken to secure that (taken as a whole) the actual membership is representative of those eligible for such membership;
  - 1.9.2 the progress of the membership strategy



- 1.9.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
- 1.10 At any members meeting the results of the election and appointment of governors and the appointment of non-executive Directors that have occurred since the preceding members meeting will be announced.
- 1.11 Notice of a members meeting is to be given:
  - 1.11.1 by notice to all members;
  - 1.11.2 by notice prominently displayed at the head office and at all of the Trust's places of business; and
  - 1.11.3 by notice on the trust's website at least fourteen (14) clear days before the date of the meeting.
- 1.12 The notice of a members meeting must:
  - 1.12.1 be given to the Council of Governors and the Board of Directors, and to the auditor;
  - 1.12.2 state whether the meeting is an annual or special members meeting;
  - 1.12.3 give the time, date and place of the meeting; and
  - 1.12.4 indicate the business to be dealt with at the meeting.
- 1.13 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is at least ten members present from the public constituencies and at least ten members present from the staff constituency.
- 1.14 The trust may make arrangements for members to vote by post, or by using electronic communications.
- 1.15 It is the responsibility of the Council of Governors, the Chair of the members meeting and the Secretary to ensure that at any members meeting:
  - 1.15.1 the issues to be decided are clearly explained;
  - 1.15.2 sufficient information is provided to members to enable rational discussion to take place.
- 1.16 The Chair of the trust, or in their absence the Deputy Chair of the Board of Directors, or in their absence one of the other non executive Directors shall act as Chair at all members meetings of the trust.
- 1.17 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 Council of Governors 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.

- 1.18 A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 1.19 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 or casting vote.
- 1.20 The result of any vote will be declared by the Chair of the members meeting and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.
- 1.21 The ruling of the Chair on a point of order shall be final.
- 1.22 The agenda shall set out the business to be conducted at the meeting. No business other than that set out in the agenda shall be considered at a Members' meeting unless specifically agreed by the Chair.

## **2 Termination of Membership**

- 2.1 A member shall cease to be a member if:
  - 2.1.1 they resign by notice to the Secretary;
  - 2.1.2 they die;
  - 2.1.3 they are expelled from membership under this constitution;
  - 2.1.4 they cease to be entitled under this constitution to be a member of the Public Constituencies or of any of the classes of the Staff Constituency;
  - 2.1.5 it appears to the Secretary that they no longer wish to be a member of the 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 trust;
  - 2.1.6 they are disqualified from membership by paragraph 8 of the Constitution or paragraph 4 of this Annex 8;
- 2.2 A member may be expelled by a resolution of the majority of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 2.3 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the trust.
- 2.4 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:

- 2.4.1 subject to the disputes procedure set out at Annex 9, paragraph 1 dismiss the complaint and take no further action; or
  - 2.4.2 for a period not exceeding twelve (12) months suspend the rights of the member complained of to attend members meetings and vote under this constitution;
  - 2.4.3 arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.
- 2.5 If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one (1) month before the meeting with an invitation to answer the complaint and attend the meeting.
- 2.6 At the meeting of the Council of Governors 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.
- 2.7 If the member complained of fails to attend the meeting of the Council of Governors without due cause the meeting may proceed in their absence.
- 2.8 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting of the Council of Governors that the resolution to expel them is carried.
- 2.9 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a meeting of the Council of Governors.

### **3 Representative membership**

The Trust shall take steps to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end the Trust shall at all times have in place a membership strategy which shall be approved by the Council of Governors, and which shall be reviewed by them from time to time.

### **4 Disqualification from membership**

A person may not become or continue as a member of the Trust:

- 4.1 If, in the opinion of the Council of Governors, there are reasonable grounds to believe that they are likely to act in a way detrimental to the interests of the trust, or;
- 4.2 If they are subject to a direction made under the Education Act 2011 or the Safeguarding Vulnerable Groups Act 2006;
- 4.3 If they are subject to a Sexual Offenders Order under the Sexual Offences Act 2003 or other relevant legislation; or

- 4.4 If they have been removed as a member of the trust or removed as a member of another NHS foundation trust.

## **ANNEX 9 FURTHER PROVISIONS**

### **1 Dispute Resolution Procedures**

1.1 In the event of any dispute about the entitlement to membership the dispute shall be dealt with as follows:

1.1.1 Where an individual is held by the trust to be ineligible and/or disqualified from membership of the trust and disputes the trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

1.1.2 The Chief Executive (or a nominated representative) shall:

- (a) Review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;
- (b) Then either confirm the original decision or make some other decision as appropriate based on the evidence which the Chief Executive has considered; and
- (c) Communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

1.1.3 Notwithstanding paragraph 2.2 of Annex 8 and paragraph 1.1.2 of this Annex 9 an independent assessor may be appointed (as if it had been a possible removal pursuant to and using the process set out in 1.1.2 of this Annex 9) to consider the evidence and advise on whether this justified disqualification under the terms of the Constitution.

1.1.4 In the event that the independent assessor appointed pursuant to paragraph 1.1.3 advises that the evidence justifies the disqualification, the original decision to disqualify shall stand. If however the independent assessor advises that there is at least reasonable doubt that the evidence justified disqualification, the matter shall be put to the Council of Governors to decide whether to uphold the disqualification or not (such decision requiring support of not less than three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose). If the Council of Governors does not uphold the disqualification, then such disqualification shall not stand and the individual subject to the proposed disqualification shall remain a member of the trust.

1.1.5 Pending a decision of the independent assessor or the Council of Governors as referred to in paragraph 1.1.4, the individual shall

(without prejudice to the outcome of such review process) not be able to exercise any right or powers of member.

- 1.2 In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.
- 1.3 In the event of dispute between the Council of Governors and the Board of Directors:
  - 1.3.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
  - 1.3.2 if the Chair is unable to resolve the dispute they shall refer the dispute to the Trust Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
  - 1.3.3 if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, either constituent may resolve to refer the dispute for resolution by Monitor.
- 1.4 On the satisfactory completion of this disputes process the Board of Directors or Council of Governors, as appropriate, shall implement any agreed actions.
- 1.5 The existence of the dispute shall not prejudice the duty of the Board of Directors in the exercise of the Trust's powers on its behalf.
- 1.6 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors and that the Trust is not meeting the conditions of its provider licence.