



Torbay and South Devon
NHS Foundation Trust

Torbay and South Devon NHS Foundation Trust

Constitution

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1. DEFINITIONS AND INTERPRETATION

1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act. References in this constitution to legislation include all amendments, replacements, or re-enactments made.

1.2 References to legislation include all regulations, statutory guidance or directions. Headings are for ease of reference only and are not to affect interpretation.

1.3 In this Constitution the following definitions apply:

2006 Act	means the National Health Service Act 2006.
Accounting Officer	means the person who from time to time discharges the functions specified in paragraph 25(5) of schedule 7 to the 2006 Act.
Annual Members Meeting	is defined in paragraph 13 of this Constitution.
Annual Report	means the document prepared by the Trust pursuant to paragraph 43 of schedule 7 to the 2006 Act.
Appointed Governor(s)	means a member of the Council of Governors who is not an Elected Governor and who has been appointed in accordance with this Constitution.
Board of Directors	means the Board of Directors of the Trust comprising of the Executive Directors and the Non-Executive Directors.
Chair	means the chairperson of the Trust appointed in accordance with paragraph 27 of this Constitution.
Constitution	means this constitution together with each annex attached.
Council of Governors	means the Council of Governors as constituted in this Constitution in accordance with paragraph 7 of schedule 7 to the 2006 Act.
Director	means a member of the Board of Directors.
Director Code of Conduct	means any code of conduct applicable to all Executive Directors, Non-Executive Directors and such other persons as set out therein, as amended from time to time.
Elected Governor	means a Public Governor or a Staff Governor.

Executive Director	means an executive member of the Board of Directors of the Trust appointed pursuant to paragraph 30 of this Constitution.
Financial Year	means a period beginning on 1 April and finishing on the following 31 March.
Governor	means a member of the Council of Governors.
Governor Code of Conduct	means any code of conduct accepted by and applicable to all Governors, as amended from time to time.
Independence Criteria	means the indicative criteria set out at provision 2.6 of the Provider Code of Governance or such other guidance produced which the Trust must have regard to from time to time.
Lead Governor	means the governor appointed by the Council of Governors as Lead Governor in accordance with Annex 4.
Member	means a member of the Trust.
Model Election Rules	means the rules for the conduct of elections for a member of Council of Governors of Trust published by NHS Providers and set out at Annex 8.
NHS Body	means an NHS foundation trust and any body set out in section 9(4) of the 2006 Act.
NHS England	means the body corporate known as NHS England, established under section 1H of the 2006 Act.
NHS Provider Licence	means provider licence number: 110102 issued to the Trust by NHS England (as amended).
Non-Executive Director	means a non-executive member of the Board of Directors of the Trust appointed pursuant to paragraph 27 of this Constitution.
Principal Purpose	means the purpose set out in Section 43(1) of the 2006 Act and paragraph 3 of this Constitution.
Provider Code of Governance	means the "Code of governance for NHS provider trusts" published by NHS England, as may be amended from time to time.
Public Constituency	is defined in paragraph 9 of this Constitution.
Public Governor	means a member of the Council of Governors elected by the members of one of the Public Constituencies.

Secretary	means the secretary of Trust or any other person appointed to perform the roles and responsibilities as set out in any role description issued by the Trust, this Constitution and Appendix A of the Provider Code of Governance.
Staff Constituency	is defined in paragraph 10 of this Constitution.
Staff Governor	means a member of the Council of Governors elected by the members of the Staff Constituency.
Trust	is defined in paragraph 2 of this Constitution.
Trust Headquarters	Torbay Hospital, Lowes Bridge, Torquay TQ2 7AA
Vice Chair	means the vice chairperson of the Trust appointed in accordance with paragraph 28 of this Constitution.

2. **NAME**

The name of the foundation trust is Torbay and South Devon NHS Foundation Trust (the **Trust**).

3. **PRINCIPAL PURPOSE**

3.1 The Principal Purpose of the Trust is the provision of goods and services for the purposes of the health service in England.

3.2 The Trust does not fulfil its Principal Purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

3.3 The Trust may provide goods and services for any purposes related to:

3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry on activities other than those mentioned in paragraph 3.3 above for the purpose of making additional income available in order to better carry on its Principal Purpose.

4. **POWERS**

4.1 The Trust is to have all the powers of an NHS foundation trust set out in the 2006 Act.

4.2 In the exercise of its powers the Trust shall have regard to:

4.2.1 section 63A of the 2006 Act (duty to have regard to wider effect of decisions), also referred to as the “Triple Aim”;

4.2.2 section 63B of the 2006 Act (duties in relation to climate change); and

4.2.3 guidance published by NHS England.

4.3 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

4.4 Subject to any restriction contained in this Constitution or in the 2006 Act, any of these powers may be delegated to a committee of Directors or to an Executive Director.

5. JOINT WORKING WITH RELEVANT BODIES

5.1 The Trust may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the relevant bodies set out in Section 65Z5(1) of the 2006 Act.

5.2 Where a function is exercisable jointly, the relevant bodies may arrange for the function to be exercised by joint committee as set out in section 65Z6 of the 2006 Act.

6. JOINT FINANCIAL OBJECTIVES

6.1 The Trust must:

6.1.1 seek to achieve any financial objectives set under section 223L of the 2006 Act;

6.1.2 exercise their functions with a view to ensuring that, in respect of each Financial Year, limits specified by NHS England are not exceeded as set out in section 223M of the 2006 Act;

6.1.3 comply with any NHS England directions pursuant to section 223N of the NHS Act; and

6.1.4 comply with section 223LA with regard to expenditure limits, if and when that section comes into force.

7. MEMBERSHIP AND CONSTITUENCIES

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

7.1.1 a Public Constituency; or

7.1.2 a Staff Constituency.

8. APPLICATION FOR MEMBERSHIP

8.1 Subject to paragraph 12, an individual who is eligible to become a member of the Trust may do so on application to the Trust.

9. PUBLIC CONSTITUENCY

- 9.1 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.
- 9.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 9.3 The minimum number of members in each Public Constituency is specified in Annex 1.

10. STAFF CONSTITUENCY

- 10.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member provided that they:
 - 10.1.1 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
 - 10.1.2 have been continuously employed by the Trust under contract of employment for at least 12 months.
- 10.2 For the purposes of this paragraph 10, Chapter 1 of Part XIV of the Employment Rights Act 1996 (Continuous Employment) shall apply when determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the Trust.
- 10.3 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.
- 10.4 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 10.5 The Staff Constituency shall be divided into 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.
- 10.6 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.
- 10.7 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

11. **AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF**

11.1 An individual who is:

11.1.1 eligible to become a member of the Staff Constituency, and

11.1.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency, shall become a Member 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 become a Member.

12. **RESTRICTION ON MEMBERSHIP**

12.1 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.

12.2 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.

12.3 An individual must be at least fourteen years old to become a Member.

12.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member are set out in Annex 6.

13. **ANNUAL MEMBERS' MEETING**

13.1 The Trust shall hold an annual meeting of its members (the **Annual Members' Meeting**). The Annual Members' Meeting shall be open to members of the public.

13.2 Further provisions about the Annual Members' Meeting are set out in Annex 7.

14. **COUNCIL OF GOVERNORS – COMPOSITION**

14.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.

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

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

15. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 15.1 Elections for Elected Governors shall be conducted in accordance with the Model Election Rules.
- 15.2 The Model Election Rules as published from time to time form part of this Constitution. The Model Election Rules current at the date of this Constitution are set out at Annex 8.
- 15.3 A subsequent variation of the Model Election Rules shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 46. An updated version of the Constitution may be published by the Secretary incorporating any revised Model Election Rules.
- 15.4 An election, if contested, shall be by secret ballot.

16. COUNCIL OF GOVERNORS - TENURE

16.1 Elected Governors

- 16.1.1 An Elected Governor may hold office for a period of up to three years.
- 16.1.2 An Elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 16.1.3 Subject to paragraph 16.1.4, an Elected Governor shall be eligible for re-election at the end of their term.
- 16.1.4 An Elected Governor may not serve on the Council of Governors for more than nine years in aggregate. For the avoidance of doubt, this covers all constituencies such that once an Elected Governor has served for nine years in any one constituency or across a mixture of several Constituencies they are no longer eligible to stand for election in any constituency or be appointed to the Council of Governors.

16.2 Appointed Governors

- 16.2.1 An Appointed Governor may hold office for a term of up to three years.
- 16.2.2 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 16.2.3 An Appointed Governor shall be eligible for re-appointment at the end of their term.

17. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

- 17.1 The following may not become or continue as a member of the Council of Governors:
- 17.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 17.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 17.1.3 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; or
 - 17.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 17.2 Governors must be at least sixteen years (16) of age at the date they are nominated for election or appointment.
- 17.3 Further provisions as to the circumstances in which an individual may not become or continue as a Governor are set out in Annex 4.

18. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

- 18.1 The general duties of the Council of Governors are to:
- 18.1.1 hold the non-executive directors individually and collectively to account for the performance of the Board of Directors;
 - 18.1.2 represent the interests of the Members as a whole and the interests of the public; and
 - 18.1.3 feedback information about the Trust, its vision and its performance to Members, the public and stakeholder organisations.
- 18.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

19. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 19.1 The Chair, or, in their absence the Vice Chair, shall preside at meetings of the Council of Governors.
- 19.2 In the absence of both the Chair and the Vice Chair at a meeting of the Council of Governors, the Governors present shall nominate another non- executive director to preside over that meeting.

19.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

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

20. **COUNCIL OF GOVERNORS – STANDING ORDERS**

The standing orders for the practice and procedure of the Council of Governors shall be read alongside this Constitution.

21. **COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS**

21.1 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.

21.2 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.

22. **COUNCIL OF GOVERNORS – TRAVEL EXPENSES**

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

23. **COUNCIL OF GOVERNORS – FURTHER PROVISIONS**

Further provisions with respect to the Council of Governors are set out in Annex 4.

24. **BOARD OF DIRECTORS – COMPOSITION**

24.1 The Trust is to have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.

24.2 The Board of Directors is to comprise:

24.2.1 a non-executive Chair

24.2.2 Non-Executive Directors; and

24.2.3 Executive Directors.

24.3 One of the Executive Directors shall be the Chief Executive.

24.4 The Chief Executive shall be the Accounting Officer.

- 24.5 One of the Executive Directors shall be the finance director
- 24.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 24.7 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 24.8 At least half of the Board of Directors (excluding the Chair) should be Non-executive Directors. In the event that the number of Non-Executive Directors (including the Chair) is equal to the number of Executive Directors, the Chair (and in their absence, the Vice Chair), shall have a casting vote at meetings of the Board of Directors.
- 24.9 The post of an Executive Director may be held by two individuals (provided that the provisions of this paragraph 24 are met in respect of required qualifications) on a job share basis. Where such an agreement is in force the two individuals may only exercise one vote between them at any meeting of the Board of Directors. In the case of disagreements, no vote may be cast.
- 24.10 The Trust may appoint other individuals who may receive a standing invite to attend meetings of the Board of Directors, but such individuals shall not be members of the Board of Directors, shall not have a vote and shall not count towards any quorum requirements.

25. **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.

26. **BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR**

- 26.1 A person may be appointed as a Non-Executive Director only if:
- 26.1.1 they are a member of a Public Constituency, or
 - 26.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and
 - 26.1.3 they are not disqualified by virtue of paragraph 31 below.
- 26.2 On first appointment, re-appointment for each further term and throughout their term of office, the Chair and Non-Executive Directors are required to meet the Independence Criteria. In circumstances where, in relation to the Chair or a Non-Executive Director, the Independence Criteria are not met but the Board of Directors considers that the individual in question is independent this will be explained in the Annual Report.

27. **BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS**

27.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair and the other Non-Executive Directors. In doing so, the Council of Governors shall take into account the Provider Code of Governance.

27.2 Removal of the Chair or another Non-Executive Directors shall require the approval of three-quarters of the members of the Council of Governors.

27.3 Subject always to the Provider Code of Governance, the maximum tenure for any individual holding the office of Non-Executive Director shall be nine years in aggregate unless exceptional circumstances apply. For the avoidance of doubt, exceptional circumstances shall be determined on a case by case basis.

27.4 In a situation where a Non-Executive Director becomes the Chair, the maximum tenure runs from the time of first appointment to the position of Non-Executive Director.

28. **BOARD OF DIRECTORS – APPOINTMENT OF VICE CHAIR**

28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice Chair.

28.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice Chair by giving notice in writing to the Chair. The Council of Governors may consequently appoint another Non-Executive Director as Vice Chair in accordance with this Constitution.

29. **BOARD OF DIRECTORS – APPOINTMENT OF SENIOR INDEPENDENT DIRECTOR**

29.1 The Board of Directors shall appoint one of the independent Non-Executive Director (as set out in the Provider Code of Governance) to be the Senior Independent Director in consultation with the Council of Governors, for such a period not exceeding the remainder of their term as a Non-Executive Director, as they may specify on appointing them.

29.2 The Senior Independent Director will be available to Governors if they have concerns that the Chair is unable to resolve.

30. **BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

30.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

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

- 30.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Director shall appoint or remove the other Executive Directors.

31. BOARD OF DIRECTORS – DISQUALIFICATION

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

31.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

31.1.2 a person in relation to whom a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986);

31.1.3 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; or

31.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.

- 31.2 Further provisions as to the circumstances in which a person may not become or continue as a member of the Board of Directors are set out in Annex 5.

32. BOARD OF DIRECTORS – MEETINGS

- 32.1 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.

- 32.2 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. Minutes of meetings of the Board of Directors held in private shall be provided as required by the Provider Code of Governance unless exceptional circumstances apply which shall be determined on a case by case basis.

33. BOARD OF DIRECTORS – STANDING ORDERS

- The standing orders for the practice and procedure of the Board of Directors shall be read alongside this Constitution.

34. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

- 34.1 The duties that a director of the Trust has by virtue of being a director include in particular:
- 34.1.1 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.
 - 34.1.2 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.
- 34.2 The duty referred to in paragraph 34.1.1 is not infringed if:
- 34.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 34.2.2 the matter has been authorised in accordance with this Constitution.
- 34.3 The duty referred to in paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 34.4 In paragraph 34.1.2, “third party” means a person other than:
- 34.4.1 the Trust, or
 - 34.4.2 a person acting on its behalf.
- 34.5 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 extend of that interest to the other directors.
- 34.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 34.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 34.8 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.
- 34.9 A director need not declare an interest:
- 34.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 34.9.2 if, or to the extent that, the directors are already aware of it;
 - 34.9.3 if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered:
 - (a) by a meeting of the Board of Directors; or

- (b) by a committee of the directors appointed for the purpose under this Constitution.

34.10 A matter shall have been authorised for the purposes of paragraph 34.2.2 if:

34.10.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

34.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

34.10.3 the director's conflict of interest arises from a permitted clause (as determined by the Board of Directors) from time to time.

35. **BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

35.1 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.

35.2 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.

36. **REGISTERS**

36.1 The Trust shall have:

36.1.1 a register of Members showing, in respect of each Member, the Constituency to which they belong and, where there are classes within it, the class to which they belong;

36.1.2 a Register of Members of the Council of Governors;

36.1.3 a Register of Interests of Governors;

36.1.4 a Register of Directors; and

36.1.5 a Register of Interests of the Directors.

36.2 The Secretary shall be responsible for compiling and maintaining the registers, and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

37. ADMISSION TO AND REMOVAL FROM THE REGISTERS

37.1 The Secretary shall add to the register of Members the name of any individual who is accepted as a Member under the provisions of this Constitution. The Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member.

38. REGISTERS – INSPECTION AND COPIES

38.1 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member, if the Member so requests.

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

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

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

38.3 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for doing so.

39. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

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

39.1.1 a copy of the current constitution;

39.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and

39.1.3 a copy of the latest Annual Report.

39.2 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:

39.2.1 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.

39.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

39.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

39.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

- 39.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 39.2.6 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 (NHS England's decision), 65KB (Secretary of State's response to NHS England'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.
 - 39.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 39.2.8 a copy of any final report published under section 65I (administrator's final report),
 - 39.2.9 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.
 - 39.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 39.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 39.4 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for doing so.

40. **AUDITOR**

- 40.1 The Trust shall have an auditor.
- 40.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 40.3 A person may only be appointed as the auditor if they (or, in the case of a firm, each of its members) are a member of one or more of the bodies referred to in paragraph 23(4) of schedule 7 to the 2006 Act.
- 40.4 The auditor is to carry out their duties in accordance with schedule 10 to the 2006 Act.

41. **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.

42. **ACCOUNTS**

- 42.1 The Trust must keep proper accounts and proper records in relation to the accounts.

- 42.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 42.3 The accounts are to be audited by the Trust's auditor.
- 42.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State direct
- 42.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

43. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

- 43.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 43.2 The Annual Report must
 - 43.2.1 review the extent to which the Trust has exercised its functions in accordance with the plans published under:
 - (a) section 14Z52 of the 2006 Act (joint forward plans for integrated care board and its partners); and
 - (b) section 14Z56 of the 2006 Act (joint capital resource use plan for integrated care board and its partners),
 - 43.2.2 review the extent to which the Trust has exercised its functions consistently with NHS England's views set out in the latest statement published under section 13SA(1) of the 2006 Act (views about how functions relating to inequalities information should be exercised);
 - 43.2.3 give information:
 - (a) on any steps taken by the Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
 - (b) on any occasions in the period to which the report relates on which the council of governors exercised its power under paragraph 10C of schedule 7 to the 2006 Act;
 - (c) on the remuneration of the directors and on the expenses of the Governors and the directors;
 - (d) on the impact that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes; and
 - (e) on any other matter which NHS England requires.

- 43.3 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 43.4 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 43.5 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 43.6 Each forward plan must include information about:
 - 43.6.1 the activities other than the provision of goods and services for the purpose of the health service in England that the Trust proposes to carry on; and
 - 43.6.2 the income it expects to receive from doing so.
- 43.7 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 43.6.1 the Council of Governors must:
 - 43.7.1 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 functions; and
 - 43.7.2 notify the directors of the Trust and its determination.
- 43.8 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 purpose 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.

44. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

- 44.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 44.1.1 the annual accounts
 - 44.1.2 any report of the auditor on them
 - 44.1.3 the Annual Report.
- 44.2 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.
- 44.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 44.1 with the Annual Members' Meeting.

45. INSTRUMENTS

- 45.1 The Trust shall have a seal.
- 45.2 The seal shall not be affixed except under the authority of the Board of Directors.
- 45.3 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.

46. AMENDMENT OF THE CONSTITUTION

- 46.1 The Trust may make amendments to this Constitution only if:
 - 46.1.1 more than half of the members of the Council of Governors voting approve the amendments, and
 - 46.1.2 more than half of the members of the Board of Directors voting approve the amendments.
- 46.2 Amendments made under paragraph 46.1 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.
- 46.3 Where an amendment is made to this Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
 - 46.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
 - 46.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 46.4 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.
- 46.5 Amendments by the Trust to this Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with schedule 7 of the 2006 Act.
- 46.6 The following amendments to ancillary documents shall not be considered amendments to the Trust's Constitution and shall not be required to follow the process set out above:
 - 46.6.1 new versions of the Model Election Rules which will be notified in accordance with paragraph 15.3 above;

- 46.6.2 amendments to the standing orders for the practice and procedure of the Council of Governors and the standing orders for the practice and procedure of the Board of Directors shall be made in accordance with those standing orders;
- 46.6.3 amendments to any Director Code of Conduct which will follow the amendment process in that document; and
- 46.6.4 amendments to any Governor Code of Conduct which will follow the amendment process in that document.

47. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

- 47.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 47.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 47.3 In paragraph 47.2, the following words have the following meanings:
 - 47.3.1 “Significant Transaction” means a transaction which meets any one of the tests below:
 - (a) the total asset test; or
 - (b) the total income test; or
 - (c) the capital test (relating to acquisitions or divestments).
 - 47.3.2 The total asset test is met if the assets which are the subject of the transaction exceed 25% of the total assets of the Trust.
 - 47.3.3 The total income test is met if, following the completion of the relevant transaction, the total income of the Trust will increase or decrease by more than 25%.
 - 47.3.4 The capital test is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s total taxpayers’ equity).
 - 47.3.5 For the purposes of calculating the tests in this paragraph 47.3 figures used for the Trust assets, total income and taxpayers’ equity must be the figures shown in the latest published audited consolidated accounts.

- 47.4 A transaction:
- 47.4.1 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust);
 - 47.4.2 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services;
 - 47.4.3 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.
- 47.5 The Trust may enter into Material Transactions provided that it has sought the views of the Council of Governors. A “Material Transaction” for the purposes of this paragraph 47.5 shall mean a transaction which meets one of the following tests:
- 47.5.1 the total asset test; or
 - 47.5.2 the total income test; or
 - 47.5.3 the capital test (relating to acquisitions or divestments).

where the definitions set out in paragraph 47.3 will apply, except that instead of the threshold being 25% it shall be “greater than 10%”.

48. ELECTRONIC COMMUNICATIONS

- 48.1 Meetings of the Trust may be conducted by electronic means (in whole or in part) provided that each person attending has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication where the meeting is hybrid.
- 48.2 A meeting at which one or more persons attends by way of electronic means the meeting will be deemed to be held at such a place as said meeting shall resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of persons attending the meeting are physically present, or in default of such a majority, the place at which the chair of the meeting is physically present.
- 48.3 Meetings held by electronic means remain subject to requirements in respect of quorum. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 48.4 The minutes of a meeting held in this way must state that it was held by electronic means and that all persons were all able to hear each other and were present throughout the meeting.
- 48.5 Meetings open to the public, if held by electronic means, should be open to public attendance by such means.

48.6 For the purposes of this paragraph "electronic means" shall include telephone, video conference or any other such electronic methods, which allows all participating persons in the meeting to hear and interact with each other.

49. **INDEMNITY**

To the extent permissible by law, the Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, the Council of Governors, the Board of Directors and the Secretary.

50. **DEFECTIVE APPOINTMENTS**

Acts done by the Trust or of a committee or by a person acting as a director or Governor shall not be invalidated by the subsequent realisation that the appointment of any such director or Governor person acting as a director or Governor was defective.

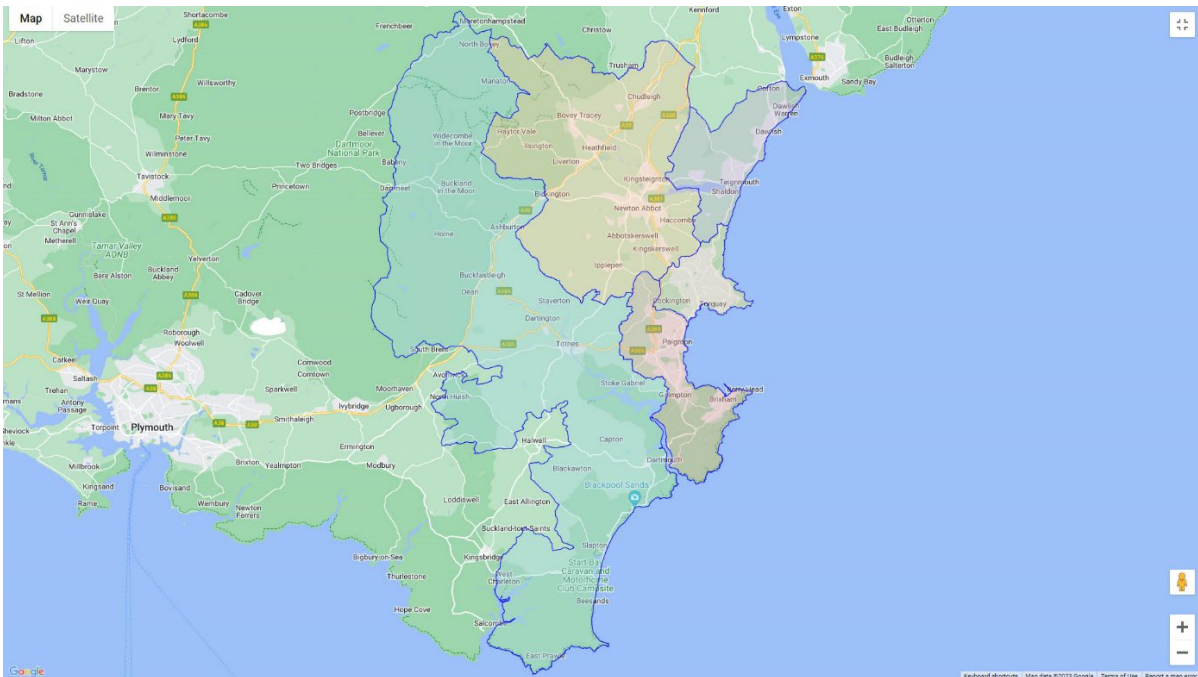
ANNEX 1

THE PUBLIC CONSTITUENCIES

The Trust has four (4) Public Constituencies as follows:

Areas comprising the Public Constituency	Local Authority areas/or local authority electoral areas falling within the following Electoral Wards	Minimum number of Members	Number of elected Governors
South Hams	South Hams District Council	Five hundred (500)	Three (3)
Torbay	Torbay Unitary Authority	Five hundred (500)	Seven (7)
Teignbridge	Teignbridge District Council	Five hundred (500)	Seven (7)
Rest of the South West Peninsula	All electoral wards in Cornwall, Devon, Dorset, Somerset and Bristol not included in the above Public Constituencies (which for the avoidance of doubt includes all wards within the district and unitary councils within those areas)	Ten (10)	One (1)

For ease of reference, a map identifying the footprint of the Trust is provided below:



ANNEX 2
THE STAFF CONSTITUENCY

The Staff Constituency is divided into five (5) classes as follows:

Classes comprising the Staff Constituency	Minimum number of Members	Number of elected Governors
Families and Communities	One hundred (100)	One (1)
Medicine and Urgent Care	One hundred (100)	One (1)
Planned Care and Surgery	One hundred (100)	One (1)
Children and Family Health Devon	One hundred (100)	One (1)
Professional Support Services	One hundred (100)	One (1)

ANNEX 3

COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors is to comprise:

Constituency	Number of seats on the Council of Governors
Elected Governors	
Public constituency	18
South Hams and Plymouth	Three (3)
Torbay	Seven (7)
Teignbridge	Seven (7)
Rest of the South West Peninsula	One (1)
Staff constituency	5
Families and Communities	One (1)
Medicine and Urgent Care	One (1)
Planned Care and Surgery	One (1)
Children and Family Health Devon	One (1)
Professional Support Services	One (1)
Appointed Governors	9
Devon County Council	One (1)
South Hams District Council	One (1)
Teignbridge District Council	One (1)
Torbay District Council	One (1)
NHS Devon Integrated Care Board	One (1)
Devon Partnership NHS Trust	One (1)
University of Exeter Medical School	One (1)
Plymouth University Peninsula School of Medicine and Dentistry	One (1)
Devon Carers Strategy Board or Torbay Carers Strategy Steering Group	One (1)
Total	32

ANNEX 4

Additional Provisions – Council of Governors

1. Elected Governors

A Member of the Public Constituency may not vote at an election for a public governor unless at the time of voting they have made and returned a declaration in the form specified in the Model Election Rules, that they are qualified to vote as a Member of the Public Constituency.

2. Appointed Governors

2.1 The Secretary (or such person as they may nominate) shall contact each relevant organisation in writing regarding the appointment of the Governor by it.

2.2 For the purposes of this paragraph 2 “relevant organisation” shall mean any local authority, university or other partnership organisation which is eligible to appoint a Governor to the Council of Governors under this Constitution.

3. Lead Governor

3.1 The Council of Governors shall appoint one of its public Governors as the Lead Governor in accordance with the conditions of appointment set out in the Lead Governor role description approved by the Council of Governors.

3.2 The Lead Governor shall have the responsibilities, and perform the tasks, set out in the Lead Governor role description.

3.3 The term of the Lead Governor shall be one (1) year.

4. Further provisions as to eligibility to be a Governor

4.1 In addition to paragraph 17 of this Constitution, a person may not become or continue as a Governor if:

4.1.1 they are not a Member;

4.1.2 in the case of a public governor or staff governor they cease to be a Member of the Constituency or Class from which they were elected;

4.1.3 in the case of an appointed governor, the organisation which appointed them terminates that appointment;

4.1.4 they are a person who is not a fit and proper person as required by the NHS Provider Licence;

4.1.5 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their

name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;

- 4.1.6 they (or an organisation of which they were a director) have been found guilty of an offence under the Modern Slavery Act 2015;
- 4.1.7 they (or an organisation of which they were a director) have been found guilty of an offence under the Bribery Act 2010 or any other applicable law relating to fraud, financial crime or terrorist financing;
- 4.1.8 they are the spouse, partner, parent, child of, or occupant of the same household as a director or a member of the Council of Governors;
- 4.1.9 they are a member of a local authority's Overview and Scrutiny Committee covering health matters or hold a role at a local authority which involves the review or scrutiny of health matters;
- 4.1.10 they are a director of the Trust;
- 4.1.11 they are a governor, non-executive director (including the chair) or, executive director (including the chief executive officer) of another NHS Body, unless they are appointed by an appointing organisation which is a NHS Body or the Chair agrees to them becoming, or continuing as, a governor of the Trust in exceptional circumstances;
- 4.1.12 they have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a NHS Body;
- 4.1.13 they are a person whose tenure of office as a Chair or as a member or director of a NHS Body has been terminated on the grounds that their appointment is not in the interests of the NHS, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 4.1.14 they have previously been removed as a Governor of the Trust;
- 4.1.15 they have previously been removed as a governor from another NHS foundation trust;
- 4.1.16 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of any Governor Code of Conduct;
- 4.1.17 they have committed a serious breach of the Governor Code of Conduct;

- 4.1.18 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor;
 - 4.1.19 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 4.1.20 they have had their name removed from a list maintained under regulations pursuant to sections 91 (Persons performing primary medical services), 106 (Persons performing primary dental services), 123 (Persons performing primary ophthalmic services), or 146 (Persons performing local pharmaceutical services) of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales, and they have not subsequently had their name included in such a list;
 - 4.1.21 they are deemed a vexatious or persistent complainant or litigant against the Trust without reasonable cause; or
 - 4.1.22 they have failed to repay (without good cause) any amount of monies properly owed to the Trust.
- 4.2 For the purposes of this Annex 4 "a vexatious or persistent complainant" shall be as defined in the Trust's Feedback Complaints and Patient Advice and Liaison (PALS) Policy (or such other policy that may replace it from time to time). In the event of a dispute regarding whether an individual is a vexatious or persistent complainant, the Chair in consultation with the Senior Independent Director shall make the final decision.
- 4.3 A person holding office as a Governor shall immediately cease to do so if:
- 4.3.1 they resign by notice in writing to the Secretary;
 - 4.3.2 they become disqualified from office under paragraph 17 of this Constitution or under paragraph 4.1 of this Annex 4;
 - 4.3.3 they fail to attend two meetings of the Council of Governors in a period of one year unless the Lead Governor, Chair and Secretary are satisfied that:
 - 4.3.3.1 the absence was due to a reasonable cause; and
 - 4.3.3.2 they will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
 - 4.3.4 they have refused to undertake any training which the Council of Governors requires all governors to undertake unless the Lead Governor, Chair and Secretary are satisfied that the refusal was due to a reasonable cause; or

- 4.3.5 they are removed from the Council of Governors by a resolution passed under paragraph 5 below.
- 4.4 For the purposes of 4.3.3.1 and 4.3.4:
 - 4.4.1 an absence will ordinarily be considered to be due to a reasonable cause if it is due to:
 - 4.4.1.1 a conflict with work or personal commitments in circumstances where the Trust has changed the date of the meeting of the Council of Governors at short notice;
 - 4.4.1.2 ill health (provided that the Governor in question, or someone on their behalf, has advised the Secretary of such circumstances as soon as reasonably practicable); or
 - 4.4.1.3 a personal or family emergency.
 - 4.4.2 For the avoidance of doubt, work commitments will not be considered a reasonable cause unless the Trust has changed the date of the meeting of the Council of Governors at short notice.
 - 4.4.3 Instances of ill health will be reviewed on a case-by-case basis in consultation between the Lead Governor, Secretary, the Chair and the affected Governor with a view of acting in the best interests of the Trust.
- 4.5 Where a Governor becomes disqualified for appointment under this paragraph 4 or paragraph 17 of this Constitution, they shall notify the Secretary in writing without delay upon becoming aware the grounds for disqualification. Any failure to notify the Secretary of grounds for disqualification pursuant to this paragraph 4.5 shall result in such individual becoming ineligible to become a Governor at any future point.
- 4.6 If it comes to the notice of the Secretary that at the time of their appointment or later a Governor is disqualified, they shall immediately declare that the person in question is disqualified and notify them in writing to that effect.

5. Removal of Governor from office

- 5.1 A Governor may be removed from the Council of Governors by a resolution approved at a meeting of the Council of Governors by not less than three-quarters of the Governor present and voting on the grounds that:
 - 5.1.1 they have acted in a manner detrimental to the interests of the Trust or otherwise bring the Trust into disrepute; or

5.1.2 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor, for example because:

5.1.2.1 the individual's continuation as a Governor would be likely to prejudice the ability of the Trust to fulfil its principal purpose or discharge its duties and functions;

5.1.2.2 the individual's continuation as a Governor would be likely to prejudice the Trust's work with other persons or body within whom it is engaged or may be engaged in the provision of goods and services;

5.1.2.3 the individual's continuation as a Governor would be likely to adversely affect public confidence in the goods and services provided by the Trust;

5.1.2.4 it would not be in the best interests of the Council of Governors for the individual to continue as a Governor / the individual has caused or is likely to cause prejudice to the proper conduct of the Council of Governors' affairs; or

5.1.2.5 the individual has failed to comply with the values and principles of the NHS, the Trust or this Constitution.

5.2 The Council of Governors will agree a process for investigating complaints against Governor which may lead to a removal of a Governor under this paragraph 5.

6. Vacancies amongst Governors

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

Appointed Governors

6.2 Where the vacancy arises amongst the Appointed Governor, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office or to commence a new term of office.

Elected Governors

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

6.3.1 to call an election within three months to fill the seat for the remainder of that term of office;

6.3.2 to call an election to fill the seat for a new term of office;

- 6.3.3 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 subject to election for any unexpired period of the term of office; or
 - 6.3.4 if the unexpired period of the term of office is less than twelve months, to leave the seat vacant until the next elections are held.
- 6.4 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 in the appointment or election of the Governor attending the meeting.

7. Dispute Resolution

- 7.1 In the event of any dispute between the Council of Governors and the Board of Directors:
 - 7.1.1 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;
 - 7.1.2 if the Chair is unable to resolve the dispute they shall appoint a special committee comprising equal numbers of directors and Governors 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; and
 - 7.1.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

ANNEX 5

Additional Provisions – Board of Directors

1. Disqualification of directors

- 1.1 In addition to paragraph 31 of this Constitution, a person may not become or continue as a Director if:
- 1.1.1 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;
 - 1.1.2 they (or an organisation of which they were a director) have been found guilty of an offence under the Modern Slavery Act 2015;
 - 1.1.3 they (or an organisation of which they were a director) have been found guilty of an offence under the Bribery Act 2010 or any other applicable law relating to fraud, financial crime or terrorist financing;
 - 1.1.4 they are the spouse, partner, parent, child of, or occupant of the same household as a Director or a member of Council of Governors;
 - 1.1.5 they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
 - 1.1.6 they are a Governor;
 - 1.1.7 they are a governor, non-executive director (including the Chair) or, executive director (including the chief executive officer) of another NHS Body, unless:
 - 1.1.7.1 in the case of an executive director other than the Chief Executive, the Chair, following consultation with the Chief Executive;
 - 1.1.7.2 in the case of the Chief Executive, the Chair, following consultation with the Board of Directors;
 - 1.1.7.3 in the case of a non-executive director other than the Chair, the Chair following consultation with the Council of Governors; or
 - 1.1.7.4 in the case of the Chair, the Senior Independent Director, following consultation with the Board of Directors and the Council of Governors,agrees to them becoming, or continuing as, a Director;

- 1.1.8 they are a person whose tenure of office as a Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the NHS, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 1.1.9 in the case of a non-executive Director, they have refused, without reasonable cause, to fulfil any training requirement established by the Board of Directors;
 - 1.1.10 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a Director;
 - 1.1.11 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 1.1.12 they have had their name removed from a list maintained under regulations pursuant to sections 91 (Persons performing primary medical services), 106 (Persons performing primary dental services), 123 (Persons performing primary ophthalmic services), or 146 (Persons performing local pharmaceutical services) of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list;
 - 1.1.13 they are deemed a vexatious or persistent complainant (as defined in Annex 4) or litigant against the Trust without reasonable cause;
 - 1.1.14 they have failed to repay (without good cause) any amount of monies properly owed to the Trust; or
 - 1.1.15 they fail to satisfy the fit and proper persons requirements for directors as detailed in Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, as may be amended from time to time.
- 1.2 Where a Director becomes disqualified for appointment under paragraph 1 of this Annex or paragraph 31 of this Constitution, they shall notify the Trust Secretary in writing of such disqualification.
- 1.3 If it comes to the notice of the Trust Secretary that at the time of their appointment or later the Director is so disqualified, they shall immediately declare that the Director in question is disqualified and notify them in writing to that effect.
- 1.4 Where a Director is disqualified their tenure of office shall automatically terminate and they shall cease to hold office with immediate effect.

2. Expenses

- 2.1 The Trust may reimburse executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the Remuneration Committee decides. These are to be disclosed in the annual report.

ANNEX 6

Further Provisions - Membership

1. Restriction on membership

- 1.1 In addition to paragraph 12 of this Constitution, the following restrictions on Membership apply:
- 1.1.1 The following will not be eligible to become or continue a Member:
- 1.1.1.1 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;
- 1.1.1.2 an individual who exhibits inappropriate conduct (as agreed by a majority of the governors present and voting at a meeting of the Council of Governors), including those who have been identified as the perpetrators of a serious incident involving violence, assault or harassment against Trust staff; and/or
- 1.1.1.3 a person who is a deemed a vexatious or persistent complainant or litigant against the Trust (as defined in Annex 4) without reasonable cause (as agreed by a majority of the governors present and voting at a meeting of the Council of Governors).

2. Termination of Membership

- 2.1 A Member shall cease to be a Member if:
- 2.1.1 they resign by notice in writing to the Trust Secretary;
- 2.1.2 they cease to be eligible to continue to as a Member under paragraph 1.1.1 of this Annex 6 or paragraph 12 of this Constitution;
- 2.1.3 they are expelled from Membership under paragraph 1.1 of this Annex 6; or
- 2.1.4 they die.
- 2.2 The Trust shall give any Member at least fourteen days' written notice of a proposal to remove them from the Trust membership under this paragraph 2 of Annex 6. The Trust shall consider any representations made by the Member during that notice period, and the Secretary shall decide whether to remove the Member. Within fourteen days after receiving notice of the Secretary's decision, a person wishing to dispute

the decision may require the Secretary to refer the matter to the Council of Governors to determine whether the decision was fair and reasonable taking all relevant matters into account. Where a Member does not ask the Secretary to refer their proposed removal to the Council of Governors, they shall cease to be a Member fourteen days after receiving notice of the Secretary's decision. Where a Member does ask the Secretary to refer their proposed removal to the Council of Governors, they shall continue to be a Member until the Council of Governors has reached a decision on their membership and provided them with notice. The decision of the Council of Governors shall be final.

- 2.3 An individual member removed under paragraph 2.2 may make a request to the Secretary that their membership removal be reviewed and their eligibility to be a member be considered no sooner than 12 months from the date of the removal.
- 2.4 When making a request under paragraph 2.3 the individual must make such a request in writing to the Secretary and outline whether they wish to be considered as eligible to be a member and the reasons for the requested review. The Trust shall endeavour to issue a decision in writing within 28 days of receipt of the request. The Trust's decision shall be final and any further requests for review may only be made after intervals of at least two further years.

ANNEX 7

Annual Members Meeting

- 1.1 The Trust shall hold a members' meeting for all Members (called the **Annual Members Meeting**) within six months of the end of the financial year of the Trust.
- 1.2 Any members' meeting other than the Annual Members' Meeting shall be called a 'Special Members Meeting'.
- 1.3 Both Annual Members' Meetings and Special Members' Meetings shall be open to all Members, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust's Auditors, and to members of the public. The Trust 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 any such meeting.
- 1.4 The Board of Directors may convene an Annual Members' Meeting or a Special Members' meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members' meeting.
- 1.5 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 any members' meeting.
- 1.6 The Board of Directors (or at least one (1) member of the Board of Directors) shall present to the members of the Annual Members' Meeting:
 - 1.6.1 the annual accounts;
 - 1.6.2 any report of the auditor on them;
 - 1.6.3 the Annual Report;
 - 1.6.4 a report on steps taken to secure that (taken as a whole) the actual membership of the Trust is representative of those eligible for such membership;
 - 1.6.5 the progress of the membership plan; and
 - 1.6.6 the results of any election and appointments to the Council of Governors, and any other reports or documentation it considers necessary or otherwise required.
- 1.7 The Trust shall give notice of all members' meetings:
 - 1.7.1 by notice prominently displayed at the Trust's headquarters;
 - 1.7.2 by notice on the Trust's website;
 - 1.7.3 by notice communicated by email to the Members; and

- 1.7.4 to the Council of Governors, Board of Directors and the Trust's Auditors, stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the relevant meeting).
- 1.8 Accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
- 1.9 The Chair or in their absence, the Vice Chair, shall preside at all members' meetings of the Trust. If neither the Chair nor the Vice Chair is present, the Governors present shall elect one of the Non-Executive Directors to act as Chair. If no Non-Executive Director is present, the Governors present shall elect one of their number to act as the meeting Chair. If no Governor is willing to act as Chair or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.
- 1.10 The quorum for a members' meeting shall be twenty (20) members present and entitled to vote. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven (7) days until such time as the Board of Directors determine.
- 1.11 No such meeting shall become incompetent to transact business by lack of a quorum arising after the chair has been taken.
- 1.12 The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.13 A resolution put to the vote at a members' meeting shall be decided on a show of hands.
- 1.14 Every Member registered who is present shall have one vote. No proxies will be admissible.
- 1.15 The Trust's Auditor shall act as scrutineers in event of any voting.
- 1.16 No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 1.17 If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting

at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date, and/or place.

- 1.18 Unless exceptional circumstances apply, in the case of a members' meeting is adjourned or postponed for fourteen (14) days or more, at least seven (7) working days' notice shall be given, specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 1.19 The Board of Directors may make any such arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.
- 1.20 Any approval to speak at a members' meeting must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. No proposal, speech or any reply may exceed three (3) minutes unless the Chair directs otherwise. In the interests of time, the Chair may, in their absolute discretion, limit the number of replies, questions or speeches which are heard at any one members' meeting.
- 1.21 A person who has already spoken on a matter at a members' meeting may not speak again at that meeting in respect of the same matter except (i) in exercise of a right of reply or (ii) on a point of order, or (iii) at the Chair's discretion.
- 1.22 The ruling of the Chair on any matter of procedure or a point of order shall be final.

ANNEX 8
Model Election Rules