

**CONSTITUTION OF**  
**SOUTHEND UNIVERSITY HOSPITAL NHS FOUNDATION TRUST**  
**(A PUBLIC BENEFIT CORPORATION)**

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**CONSTITUTION OF**  
**SOUTHEND UNIVERSITY HOSPITAL NHS FOUNDATION TRUST**  
**(A PUBLIC BENEFIT CORPORATION)**

Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the 2003 Act.

References in this constitution to legislation include all amendments, replacements, or re-enactments made.

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

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

## **1 Definitions**

### 1.1 In this constitution:-

"the 2003 Act"	means the Health and Social Care (Community Health and Standards) Act 2003;
"the 2012 Act"	means the Health and Social Care Act 2012
"the 1977 Act"	means the National Health Service Act 1977;
"the 2006 Act"	means the National Health Service Act 2006;
"applicant NHS trust"	means the Southend Hospital NHS Trust which made the application to become an NHS foundation trust;
"area of the Trust"	means the area consisting of all the areas specified in Annex 1 as areas for public constituencies;
"board of directors"	means the board of directors as constituted in accordance with this constitution;
"Council of Governors"	means the Council of Governors as constituted in accordance with this constitution;
"carer"	means an individual who has (within the two year period immediately preceding the date of his application for membership) attended one of the Trust's hospitals as the carer of a patient (other than as an individual providing care in pursuance of a contract – including a contract of employment – or as a volunteer for a voluntary organisation);
"director"	means a director of the board of directors;

“financial year”	means -  (a) the period beginning with the date on which the Trust is authorised under the 2003 Act and ending with the next 31 <sup>st</sup> March; and  (b) each successive period of twelve months beginning with 1st April.
“Independent Regulator”	means the regulator for the purposes of Part I of the 2003 Act;
“Local Authority governor”	means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the area of the Trust;
"member"	means a member of the Trust;
“Monitor”	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act
“other partnership governor”	means a member of the Council of Governors appointed by a partnership organisation (as defined in paragraph 8.2.2 of the constitution) other than a Primary Care Trust;
“	
“patient”	means an individual who has attended any of the Trust’s hospitals as a patient within the two year period immediately preceding the date of his application for membership ;
;	
“public constituencies”	means that part of the Trust’s membership consisting of members from areas of the Trust and which is made up of four public constituencies as described in paragraph 7.2 below (and public constituency shall be construed accordingly);
“public governor”	means a member of the Council of Governors elected by the members of a public constituency;
"secretary"	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;
“the Trust”	means Southend University Hospital NHS Foundation Trust;
“vexatious complainant”	means any person who, in the opinion of the board of directors, persistently and without reasonable grounds makes any unjustified complaint, the effect of which (in the opinion of

the board of directors) is to subject the Trust (or any of its staff, agents, patients or carers) to inconvenience, harassment or expense;

- “volunteer worker” means those employees who are not remunerated.
- “worker constituency” means that part of the Trust’s membership consisting of the Trust’s employees and which is divided into worker classes as described in paragraph 7.3 below.
- “worker governor” means a member of the Council of Governors elected by the members of a class of the worker constituency.

## **2 Name**

- Schedule 1, paragraph 2      2.1      The name of this Trust is to be "Southend University Hospital NHS Foundation Trust" (the Trust). The Foundation Trust is a public benefit corporation authorised under the 2003 Act.

## **3 Principal Purpose**

- Section 14(2)      3.1      The Trust’s principal purpose is the provision of goods and services for the purposes of the health service<sup>1</sup> in England.
- 3.2      The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3      The Trust may provide goods and services for any purposes related to
- 3.3.1      the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
- 3.3.2      the promotion and protection of public health.
- 3.4      The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## **4 Other Purposes**

- 4.1      The purpose of the Trust (as required by the 2003 Act) is to

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<sup>1</sup> See section 40(2) of the 2003 Act and section 128 of the NHS Act 1977, “the health service” means the health service established in pursuance of section 1 of the NHS Act 1946 and continued under section 1(1) of the NHS Act 1977 (i.e. the NHS).

provide goods and services for purposes related to the provision of health care in accordance with its statutory duties and the terms of the Independent Regulator's authorisation.

Section  
14(3)

- 4.2 The Trust may also carry on activities other than those mentioned above subject to any restrictions in the Independent Regulator's authorisation. These activities must be for the purpose of making additional income available in order to carry on the Trust's principal purpose better.
- 4.3 Without prejudice to the generality of the foregoing and subject to the 2003 Act and to any restrictions in the Independent Regulator's authorisation, the Trust may also:
- (a) subject to the restrictions on disposal of protected property, take on exchange, hire or otherwise acquire, hold, manage and mortgage, charge, sell, exchange or let out any real and personal property of any kind;
  - (b) purchase, take licences of, protect, extend and renew any intellectual property rights of any description and may exploit the same and sell or license the same to others;
  - (c) form, acquire, invest in, assist and dispose of any companies or businesses carrying out any activity the Trust is authorised to carry out;
  - (d) form, acquire an interest in, invest in, participate in, and dispose of any interest in, joint ventures and partnerships, whether incorporated or not, carrying out any activity the Trust is authorised to carry out;
  - (e) enter into, carry on and participate in financial transactions, dealings and operations of all kinds and to take any steps which may be considered expedient for carrying into effect such transactions, dealings and operations including, but not limited to, borrowing and lending money and entering into contracts and arrangements of all kinds and guaranteeing or otherwise ordering or securing the liabilities and obligations or payment of monies by any person, firm or company including, but not limited to, any company which is for the time being a subsidiary (as defined by Section 736 of the Companies Act 1985) of the Trust or is otherwise associated with the Trust in its activities;
  - (f) act and continue to act as trustee of charitable and other trusts and funds, including but not limited to those trusts and funds of which the Trust is a trustee at the date of adoption of this constitution;
  - (g) appoint any person or persons, firm or firms, company or companies to be the agent of agents or attorneys of the Trust and to act as agents, managers, secretaries, contractors or in a similar capacity;

- (h) establish and maintain for the benefit of current and former directors, governors and other officers of the Trust and employees of the Trust, and their families (including former spouses) and dependants, insurance and pension or superannuation funds and to grant pensions, emoluments, allowances, donations, gratuities, loans and bonuses to such persons;
- (i) establish, maintain and support institutions (including but not limited to research institutions), associations, societies, clubs or other establishments the support of which may, in the opinion of the board of directors be calculated directly or indirectly to benefit the Trust, or may be connected with the area of the Trust or any other place where the Trust carries on business or otherwise connected in any way with any activities of the Trust;
- (j) join, participate in and subsidise or assist any organisation of employers or employees or a trade association relevant to the activities of the Trust;
- (k) take, make, execute, enter into, commence, carry on, prosecute and defend all steps, claims, demands, contracts, agreements, negotiations, legal and other proceedings, compromises, arrangements and schemes, and to do all other acts, matters and things which shall at any time appear conducive or expedient for the advantage or protection of the Trust;
- (l) take all and any action required or permitted by sections 14, 44 and 45 of the 2003 Act, section 26 of the Health Act 1999 and section 11(2) of the Health and Social Care Act 2001, all as amended from time to time and insofar as the same apply to the Trust;
- (m) undertake any activities which promote or further the purposes set out at paragraph 3.1 and the foregoing paragraphs of this paragraph 4.

## **5 Powers**

See  
Sections 17  
and 18

- 5.1 The Trust is to have all the powers of an NHS foundation trust set out in the 2003 Act, subject to the terms of its authorisation.

## **6 Framework**

- 6.1 Subject to the terms of this constitution, the members of the Trust will be able to
  - (a) elect representatives to the Council of Governors;



- (b) stand for election to the Council of Governors;
- (c) (if they are members of the public constituencies) put themselves forward for appointment as chairman of the Trust or put themselves forward for appointment as non-executive directors on the board of directors;
- (d) through the Council of Governors, receive information about the Trust and be consulted on plans regarding the future development of the Trust and its services.

6.2 Subject to the terms of this constitution, the Council of Governors of the Trust will be responsible for

- (a) representing the interests of members of the Trust and partnership organisations in the governance of the Trust regularly feeding back information about the Trust, its vision and its performance to the constituency they represent;
- (b) appointing and removing the non-executive directors, including the chairman, of the Trust at a general meeting;
- (c) appointing and removing the Trust's auditor at a general meeting;
- (d) receiving and giving their view on plans from the board of directors regarding the future development of the Trust;
- (e) receiving at a general meeting, copies of the Trust's annual accounts, auditor's reports and annual reports; and
- (f) informing the Independent Regulator if concerns about the performance of the board of directors cannot be resolved at local level.

6.3 Subject to the terms of this constitution, the board of directors of the Trust will be responsible for:

- (a) exercising the powers of the Trust;
- (b) the effective management of the Trust;
- (c) in consultation with the Council of Governors, producing plans regarding the future development of the Trust to be sent to the Independent Regulator;
- (d) compliance with all obligations lawfully imposed upon the Trust by the Independent Regulator and any other statutory body or agency;
- (e) preparing the Trust's annual report and accounts.

## **7 Members**

- Schedule 1, paragraphs 3(1),(3),4(1)-(4)
- 7.1 The Trust is to have five membership constituencies, namely-
- (a) four public constituencies,
  - (b) a worker constituency,

Where an individual, on application, is eligible to be a member of a public constituency he/she must elect the constituency of which he/she wishes to be a member.

For the purposes of the 2003 Act the eligibility for membership of the worker constituency is as defined by Schedule 1 paragraph 3 (1) (b) of that Act.

### **7.2 Public Constituencies**

There are four public constituencies corresponding to the areas served by the Trust.

- Schedule 1 paragraphs 4(2)3(1)(a) (2),
- 7.2.1 Members of the Trust who are members of a public constituency are to be individuals -
- (a) who live in the area of the Trust specified for that constituency in Annex 1 or who are patients or carers of patients of the hospital;
  - (b) who are not eligible to become a member of the worker constituency and are not members of any other constituency;
  - (c) who have each made an application for membership to the Trust; and
  - (d) who are not disqualified for membership under paragraph 7.5 below.

Schedule 1, paragraphs 4(5) and (6) and 3(7)

Schedule 1, paragraphs 6(1), (3) and (4)

- Schedule 1, paragraph 5
- 7.2.2 The minimum number of members required for each of the public constituencies is to be 100.

### **7.3 Worker Constituency**

- 7.3.1 The worker constituency is divided into three classes as follows:
- (a) those members of the worker constituency based at the Hospital and Treatment Centre sites;

- (b) those members of the worker constituency based at Britannia House and the satellite clinics; and
- (c) those volunteer workers based at the Hospital.

In the event of any dispute as to the class for which any member (or applicant member) of the worker constituency should be eligible, the decision of the secretary shall be final and binding on such matter.

Schedule 1,  
paragraph  
3(1)(b), 3(3) and 4(3)

7.3.2 Members of the worker constituency are to be individuals -

- (a) who are employed under a contract of employment by the Trust ; or
- (b) who are not so employed but who nevertheless exercise functions for the purposes of the Trust; and
- (c) who satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 1 to the 2003 Act, that is to say

(i) in the case of individuals described at (a) above,

(aa) who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or

(bb) who have been continuously employed by the Trust for at least 12 months;

Schedule 1  
paragraph  
3(3)(b)

(ii) in the case of individuals described at (b) above,  
who have exercised the functions for the purposes  
of the Trust continuously for at least 12 months;

(d) and who are not disqualified for membership under paragraph 7.5 below; and

Schedule 1,  
paragraph  
3(7)

(e) who either:-

(i) have made an application for membership to the Trust;  
or

Schedule 1,  
paragraph  
6(2)

(ii) have been invited by the Trust to become a member of that constituency and have not informed the Trust (within the period specified in such invitation) that they do not wish to do so.

7.3.3 A person eligible to become a member of the worker constituency under paragraph 7.3.1 above may not become or continue as a member of any constituency other than the worker constituency.

Schedule 1,  
paragraph 5

7.3.4 The minimum number of members required for the Hospital and Treatment Centre worker class is to be 500, for the Britannia House and satellites sites worker class, is to be 50; and, for the volunteer worker class is to be 50.

#### 7.4 **Disqualification for Membership**

7.4.1 A person may not be a member:

- (a) if he is employed by the Trust (or is not employed but nevertheless exercises functions for the purposes of the Trust) and his employment or engagement is terminated by the Trust with cause;
- (b) if he is or has at any time been listed on the Sex Offenders' Register as created by the Sex Offenders Act 1997;
- (c) if he has within the preceding five years been convicted in the British Islands of any offence resulting in a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) being imposed on him;
- (d) if he is or has at any time been a vexatious complainant;
- (e) if he has, in the opinion of the board of directors, behaved in a violent manner towards Trust staff (or other individuals providing services for the Trust, for example agency staff or to other members); or
- (f) he is under 12 years of age.

7.4.2 It is the responsibility of each member to ensure his eligibility and not the Trust's, but where the board of directors is on notice that a member may be disqualified from membership, it may carry out all reasonable enquiries to establish if this is the case.

#### 7.5 **Termination of Membership**

Schedule 1,  
paragraph  
1(2)

7.5.1 A member shall cease to be a member if he-

- (a) resigns by notice to the secretary;
- (b) ceases to fulfil the requirements of paragraph 7.2 or 7.3;
- (c) falls within any of the circumstances set out in paragraph 7.4.1 above.

	<b>7.6</b>	<b>Voting at Governor Elections</b>
Clause 36(1) (4)	7.6.1	A person may not vote at an election for a public governor unless (within the period specified in Annex 3 Part 3) he has made a declaration in such form as the secretary of the Trust determines stating the particulars of his qualification to vote as a member of the constituency for which an election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.
	<b>8</b>	<b>Council of Governors</b>
Schedule 1, paragraph 7(1) and 9	8.1	The Trust is to have a Council of Governors. It is to consist of public governors, worker governors, , local authority governors, and other partnership governors;
	8.2	The Council of Governors of the Trust is to include-
	(a)	19 public governors:-
		(i) 8 for the Southend public constituency;
		(ii) 4 for the Castle Point public constituency;
		(iii) 4 for the Rochford public constituency; and
		(iv) 3 for the Rest of Essex public constituency.
Schedule 1, paragraph 9(2)	(b)	5 worker governors
		(i) 3 worker governors to be elected by workers in the Southend Hospital and Treatment Centre class
		(ii) one worker governor to be elected by staff in the Britannia House and satellites clinics class
		(iii) one volunteer worker to be elected by volunteer workers in the volunteer worker class.
Schedule 1, paragraph 9(4) Schedule 1, paragraph 9(6)	(e)	4 Local Authority governors.
	(f)	4 other partnership governors.
Schedule 1, paragraph 9(1)	8.2.1	The aggregate number of members of public governors is to be more than half the total number of governors on the Council.

Schedule 1, paragraph 9(6)	8.2.2	<p>The organisations specified as partnership organisations that may appoint one other partnership governor each are:</p> <p>(a) Essex University;</p> <p>(b) Anglia Ruskin University</p> <p>(c) Southend Hospital Charitable Foundation (a registered charity);</p> <p>(d) Southend Association of Voluntary Services; and</p>
	8.3	The validity of any act of the Trust is not affected by any vacancy among the governors or by any defect in the appointment of any governor
	8.4	<b>Public Governors</b>
Schedule 1, paragraph 7(4)	8.4.1	Members of a public constituency may elect any of their number to be a public governor for that public constituency (subject to the number of public governors for such constituency set out in paragraph 8.2).
Section 35(5)	8.4.2	If contested, the election must be by secret ballot.
See Schedule 1, paragraph 14(1)(a) and Section 36 (1) and (2)	8.4.3	The election scheme, including the specified forms of and period for declarations to be made by candidates for office and members as a condition of voting and the process if an election is uncontested is set out in Annex 3. The rules to be applied to elections are to be determined by the council of governors in accordance with the 2003 Act and any Regulations made under the 2003 Act.
Clause 36(2), (5) and (6)	8.4.4	A person may not stand for election to the council as a public governor unless, within the period specified in Annex 3, Part 3, he has made a declaration in the form specified in that Part of that Annex of his qualification to vote as a member of the public constituency and is not prevented from being a member of the Council by paragraph 8 of Schedule 1 to the Act or paragraph 8.14 (disqualification) below. It is an offence under section 36 of the 2003 Act to knowingly or recklessly make a declaration which is false in a material particular.
	8.4.5	Paragraph 7.7.1 (voting at governor elections) applies.

	<b>8.5</b>	<b>Worker Governors</b>
Schedule 1, paragraph 7(4)	8.5.1	Members of each class of the worker constituency may elect any of their number to be a worker governor for that class.
Section 35(5)	8.5.2	If contested, the election must be by secret ballot.
See Schedule 1, paragraph	8.5.3	The election scheme, including the process to be followed in uncontested elections, is set out in Annex 3. The rules to be applied to elections are to be determined by the Council of Governors in accordance with the Act and any Regulations made under the Act.
	<b>8.6</b>	<b>Local Authority Governors</b>
See Schedule 1, paragraphs 14 (1)(b) and 9(4)	8.6.1	The local authorities listed in Annex 5 are authorised to appoint one Local Authority governor each up to a maximum of 4 Local Authority governors, as specified in Annex 4, in accordance with a process agreed by each such local authority and the Trust.
	<b>8.7</b>	<b>University Governors</b>
		Governors appointed by universities will be treated as other partnership governors, since the applicant Trust does not include a medical or dental school.
	<b>8.8</b>	<b>Other Partnership Governors</b>
See Schedule 1, paragraphs 9(6) and 14(1)(b)	8.8.1	The other partnership governors are to be appointed by the the organisations listed in paragraph 8.2.2, in accordance with a process agreed with the secretary.
	<b>8.9</b>	<b>Terms of Office</b>
	8.9.1	Public governors -
Schedule 1, paragraph 10(1)	(a)	subject to paragraph 8.12.9, may hold office for a period of three years;
Schedule 1, paragraph 10(2)	(b)	subject to paragraph 8.12.1(c), are eligible for re-election at the end of their period of office;
Schedule 1, paragraph 14(2)	(c)	may not hold office for a continuous period of longer than 6 years, which must be followed by a break of 2

years before standing for re-election;

Schedule 1,  
paragraph 10(3) (d) cease to hold office if they cease to be a member of the public constituency for which they were elected.

8.9.4 Worker governors -

Schedule 1,  
paragraph 10(1) (a) subject to paragraph 8.12.11, may hold office for a period of three years;

Schedule 1,  
paragraph 10(2) (b) subject to paragraph 8.12.4(c), are eligible for re-election at the end of that period of office;

Schedule 1,  
paragraph 14(2) (c) may not hold office for a continuous period of longer than 6 years, which must be followed by a break of two years before standing for re-election;

Schedule 1,  
paragraph 10(3) (d) cease to hold office if they cease to be a member of the class of the worker constituency for which they were elected.

8.9.5 Local Authority governors -

Schedule 1,  
paragraph 14(2) (a) may hold office for a period of 3 years;

Schedule 1,  
paragraph 14(2) (b) are eligible for reappointment at the end of that period;

Schedule 1,  
paragraph 14(2) (c) may not hold office for longer than 9 years;

Schedule 1,  
paragraph 14(2) (d) cease to hold office if the sponsoring local authority withdraws its sponsorship of them.

Schedule 1,  
paragraph 14(2) 8.9.6 There are no university governors.

8.9.7 Other partnership governors -

Schedule 1,  
paragraph 14(2) (a) may hold office for a period of 3 years;

Schedule 1,  
paragraph 14(2) (b) are eligible for reappointment at the end of that period;

Schedule 1,  
(c) may not hold office for longer than 9 years;



paragraph 14(2)

Schedule 1,  
paragraph 14(2)

- (d) cease to hold office if the sponsoring partnership organisation withdraws its sponsorship of them.

#### 8.10 Termination of Tenure

Schedule 1,  
paragraph  
14 (1)(d)

- 8.10.1 A governor may resign from that office at any time during the term of that office by giving notice in writing to the secretary.
- 8.10.2 If a governor fails to attend 3 out of any 4 consecutive meetings, his tenure of office is to be immediately terminated unless the other governors are satisfied that -
  - (a) the absence was due to a reasonable cause; and
  - (b) he will be able to start attending meetings of the Trust again within such a period as they consider reasonable.

#### 8.11 Disqualification

Schedule 1,  
paragraphs  
8 and 10(3)

- 8.11.1 A person may not become or continue as a governor of the Trust if -
  - (a) in the case of a worker governor or public governor, he ceases to be a member of the constituency he represents;
  - (b) in the case of a, Local Authority governor, or other partnership governor, local authority, or organisation withdraw their sponsorship of him;
  - (c) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
  - (d) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - (e) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
  - (f) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

- (g) he is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- (h) he is an executive or non-executive director of the Trust, or a governor, non-executive director, chairman, chief executive officer or other executive director of another NHS foundation trust;
- (i) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act or has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his name included in such a list or had his suspension lifted or qualification re-instated (as applicable);
- (j) he is or may be suffering from mental disorder, and either:
  - (i) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983; or
  - (ii) an order is made by a court having jurisdiction in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs;
- (k) he has made a claim against the Trust (or applicant trust) where such claim relates to the period prior to creation of the Trust) and has issued legal proceedings in respect of such claim;
- (l) he is or has at any time been listed on the Sex Offenders' Register as created by the Sex Offenders Act 1997;
- (m) he has, in the opinion of the board of directors, behaved in a violent manner towards Trust staff (or other individuals providing services for the Trust, for example, agency staff) or to other members;
- (n) he is under the age of 16 as at the last date on which nominations for election are to be accepted in accordance with Annex 3; or
- (o) he is failing or has failed to abide by such code(s) of conduct which may be determined by a majority of the Council of Governors from time to time.

#### 8.11.2 Where a person has been elected or appointed to be a governor

and he becomes disqualified for appointment under paragraph 8.14.1, he shall notify the secretary in writing of such disqualification.

If it comes to the notice of the secretary at the time of his appointment or later that the governor is so disqualified, he shall immediately declare that the person in question is disqualified and notify him in writing to that effect.

Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a governor.

- 8.11.3 Where a person has been declared disqualified by the secretary under clause 8.14.2 above, he may appeal the secretary's decision to the chairman in accordance with paragraph 19.2 below, whose decision on the matter will be final except in the case of manifest error.

## 8.12 Vacancies

- Schedule 1, paragraph 14(2) 8.12.1 Where a member of the Council of Governors ceases to hold office for one of the reasons set out in paragraph 7.6.1 or 8.13 or paragraph 8.14, public and worker governors shall be replaced by by-elections, in accordance with the relevant electoral scheme set out in Annex 3, and Local Authority governors and other partnership governors are to be replaced in accordance with the processes agreed pursuant to paragraphs 8.8 to 8.11.

## 8.13 Roles and Responsibilities of Governors

- Schedule 1, paragraph 17(1) 8.13.1 The roles and responsibilities of the governors are -
- (a) at a general meeting –
    - (i) to appoint or remove the chairman and the other non-executive directors. The initial chairman appointed by the Council of Governors is to be the chairman of the applicant NHS trust if he wishes to be appointed. The other initial non-executive directors appointed by the Council of Governors are, so far as possible, to be non-executive directors (other than the chairman) of the applicant trust who wish to be appointed. The removal of a non-executive director requires the approval of three-quarters of all the members of the Council of Governors,
    - (ii) to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors,
    - (iii) to appoint or remove the Trust's auditor.
- Schedule 1, paragraph 18(1)
- Schedule 1, paragraph 23(2)

- Schedule 1, paragraph 28 (iv) to be presented with the annual accounts, any report of the auditor on them and the annual report.
- Schedule, 1 paragraph 17(4 ) 19(1), (5) and (6) (b) to approve (by a majority of the Council of Governors voting) an appointment (by the non-executive directors) of the chief executive other than the initial chief executive of the Trust appointed in accordance with paragraph 19(5) of Schedule 1 to the 2003 Act;
- Schedule 1, paragraph 27(3) (c) to give the views of the Council of Governors to directors for the purposes of the preparation (by the directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to the independent Regulator;
- Schedule, 1 paragraph 28 (d) to consider the annual accounts, any report of the auditor on them and the annual report; and
- (e) to respond as appropriate when consulted by the directors.
- (e) to hold the non-executive directors individually and collectively to account for the performance of the board of directors. This includes ensuring the board of directors acts so that the foundation trust does not breach the conditions of its licence. It remains the responsibility of the board of directors to design and then implement agreed priorities, objectives and the overall strategy of the NHS foundation trust.
- (f) To represent the interests of NHS foundation trust members and the public in the governance of the NHS foundation trust. Governors must act in the best interests of the NHS foundation trust and should adhere to its values and code of conduct.
- (g) to regularly feed back information about the trust, its vision and its performance to members and the public and the stakeholder organisations that either elected or appointed them. The trust should ensure governors have appropriate support to help them discharge this duty.

## 8.14 Expenses

- Schedule 1, paragraph 11 8.14.1 The Trust may pay travelling and other expenses to governors at such rates as it decides. These rates are to be published in the Trust's annual report.
- 8.14.2 The remuneration and allowances for non-executive Directors set by the governors are also to be published in the Trust's annual report.

8.15 **Remuneration**

8.15.1 Governors are not to receive remuneration.

8.16 **Meetings**

Schedule 1,  
Paragraph 12  
12

8.16.1

- (a) The chairman of the Trust or, in his absence, the deputy chairman (to be appointed from amongst the non-executive directors by resolution of the board of directors) is to preside at meetings of the Council of Governors and will have a casting vote.
- (b) The vice-chairman (to be appointed by the Council of Governors from amongst the public governors) and not the chairman or deputy chairman is to preside over issues relating to non-executive directors or on all issues when the chairman and deputy chairman have a conflict of interest and will have a casting vote.

Schedule 1,  
paragraph  
13(1) and  
(2)

8.16.2 Meetings of the Council of Governors are to be open to members of the public except in the following circumstances -

- (a) where issues concerning confidential details of a personal nature are to be discussed – in which case such items will be discussed as closed items at the end of the meeting from which members of the public and press will be excluded;
- (b) where the Council of Governors resolves that the public and representatives of the media be excluded from the meeting because the business to be conducted is confidential and/or publicity would be prejudicial to the public interest and/or the interests of the Trust;
- (c) where the Council of Governors resolves that the meeting be adjourned in the interests of public order and to allow them to conclude the business in hand in private. The resolution shall specify the period of any adjournment.

8.16.3 The Council of Governors is to meet at least 3 times per year.

Schedule 1,  
paragraph  
28

8.16.4 At a general meeting, within 6 months of the end of the Trust's financial year the Council of Governors are to receive and consider the annual accounts, any report of the auditor on them, and the annual report.

8.16.5 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 2.

Clause 36(3)(4) 8.16.6 A governor elected to the Council by the public or the worker constituencies may not vote at a meeting of the Council unless, not less than seven days prior to the date of the meeting, he has made a declaration in the form specified at paragraph 8.16.7 stating which constituency he is a member of and that he is not prevented from being a member of the Council by paragraph 8 of Schedule 1 to the 2003 Act or under this constitution.

Clause 36(5) 8.16.7 The form referred to in paragraph 8.16.6 is set out in Annex 5.

#### 8.17 **Committees and Sub-Committees**

8.17.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.

8.17.2 These committees or sub-committees may call upon outside advisers to help them in their tasks.

#### 8.18 **Conflicts of Interest of Governors**

Schedule 1, paragraph 21 8.18.1 Any governor who has a relevant and material interest in a matter as defined below shall declare such interest to the Council of Governors at the next governors' meeting and it shall be recorded in a register of interests. The governor in question:

- (a) shall not be present (except with the permission of the Council of Governors) in any discussion of the matter; and
- (b) shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

A governor is obliged to inform the secretary in writing within seven days of becoming aware of relevant or material interest.

8.18.2 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 majority of the remaining governors.

8.18.3 A relevant and material interest in a matter is any interest (save for the exceptions referred to below) held by a governor or their spouse or partner in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust.

Interests which should be regarded as "relevant and material" include:

- (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those

of dormant companies);

- (b) Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS;
- (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- (d) A position of authority in a charity or voluntary organisation in the field of health and social care;
- (e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;
- (f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.

8.18.4 The exceptions which shall not be treated as material interests are holdings of shares not exceeding 2% of the total shares in issue in any company whose shares are listed on any public exchange.

## 9 Board of Directors

Schedule 1,  
paragraph  
15(1)

9.1 The trust is to have a board of directors. It is to consist of executive and non-executive directors.

9.2 The board is to include –

Schedule 1,  
paragraph  
16(1)

(a) the following non-executive directors -

Schedule 1,  
paragraph  
16(1)(b)

(i) a chairman,

Schedule 1,  
paragraph  
16(1)(b)

(ii) up to 7 other non-executive directors;

Schedule 1,  
paragraph  
16(1)(a)

(b) the following executive directors -

Schedule 1,  
paragraph  
16(1)(a)

(i) a Chief Executive (and accounting officer),

Schedule 1, paragraph 16(1)(a)		(ii) a Finance director,
Schedule 1, paragraph 16(2)		(iii) up to 5 other executive directors, one of whom is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and another of whom is to be a registered nurse or registered midwife.
Schedule 1, paragraph 16(4)	9.3	Subject to paragraph 9.3.1 below only a member of the public constituency is eligible for appointment as a non-executive director.
	9.3.1	Paragraph 9.3 above does not apply to the appointment of any initial non-executive director in pursuance of paragraph 19 of Schedule 1 to the 2003 Act.
	9.4	Subject to the provisions of paragraph 9.6.1 regarding initial appointments, non-executive directors are to be appointed in accordance with a process of open competition outlined as follows:  An assessment of the skills required to be fulfilled by the non-executive will be made and agreed by a Search & Appointments committee of the Council of Governors following consultation with the board of directors. This will then be publicised widely, including the local press within the area of the Trust. Applicants will be interviewed by a panel including the chairman and two other governors. The formal appointment will be made and approved by the Council of Governors before being offered to the candidate.
Section 7(6)	9.5	The validity of any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.
	9.6	<b>Terms of Office</b>
Schedule 1, paragraph 17(1) and 18(1)	9.6.1	The chairman and the non-executive directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting. The initial chairman and the other non-executive directors are to be appointed for the unexpired period of their respective terms of office as chairman or (as the case may be) non-executive director of the applicant NHS trust or 12 months whichever is the longer.
Schedule 1, paragraph 19(4)		
Schedule 1, paragraph 18(2)	9.6.2	The Chief Executive (and accounting officer) and the Finance director shall hold offices for a period in accordance with the terms and conditions of office decided by the relevant committee of non-executive directors (or, pending the establishment of such a committee, in accordance with the terms and conditions decided by the remuneration committee of the



applicant NHS trust).

Schedule 1, paragraph 18(2) 9.6.3 The executive directors, other than the Chief Executive and the Finance director, shall hold office for a period in accordance with the terms and conditions decided by the relevant committee of non-executive directors (or, pending the establishment of such a committee, in accordance with the terms and conditions decided by the remuneration committee of the applicant NHS trust).

## 9.7 Disqualification

Schedule 1, paragraph 16(3) 9.7.1 A person may not be a director of the Trust if –

- Schedule 1, paragraph 16(3) (a) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged.
- Schedule 1, paragraph 16(3) (b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- Schedule 1, paragraph 16(3) (c) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- Schedule 1, paragraph 16(4) (d) in the case of a non-executive director, he no longer satisfies paragraph 9.3.
- (e) he is a person whose tenure of office as a chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- (f) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act or has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his name included on such a list or had his suspension lifted or qualification re-instated (as applicable);
- (g) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (h) he is or may be suffering from mental disorder, and either:
- (i) he is admitted to hospital in pursuance of an

application for admission for treatment under the Mental Health Act 1983; or

(ii) an order is made by a court having jurisdiction in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs;

- (i) he has made a claim against the Trust where such claim relates to the period prior to creation of the Trust) and has issued legal proceedings in respect of such claim;
- (j) he is or has at any time been listed on the Sex Offenders' Register as created by the Sex Offenders Act 1997; or
- (k) he has, in the opinion of the board of directors, behaved in a violent manner towards Trust staff (or other individuals providing services for the Trust, for example, agency staff) or to members of the Trust.
- (l) he does not satisfy the requirements of the Fit and Proper Person Test as prescribed by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

## 9.8 Roles and Responsibilities

Schedule 1 paragraph 15(2)	9.8.1	The powers of the Trust are to be exercisable by the board of directors on its behalf.
See Schedule 1, paragraph 15(3)	9.8.2	Any of those powers may be delegated to a committee of directors or to an executive director.
Schedule 1, paragraph 23(6)	9.8.3	A committee of non-executive directors established as an audit committee is to monitor, review and carry out such other functions as are appropriate.
Schedule 1, paragraph 17(2) Schedule 1, paragraph 19 (5)	9.8.4	It is for the non-executive directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and accounting officer). The initial Chief Executive (and accounting officer) is to be the chief officer of the the applicant NHS trust if he wishes to be appointed.
Schedule 1, paragraph 17(3)	9.8.5	It is for a committee consisting of the chairman, the Chief Executive (and accounting officer) and the other non-executive directors to appoint or remove the other executive directors.
Schedule 1,	9.8.6	The Trust is to establish a committee of non-executive directors

paragraph 18(2)) to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors, but pending the establishment of such a committee these matters are to be decided by the remuneration committee of the NHS trust.

Schedule 1, paragraph 27(2) and (3) 9.8.7 The directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to the Independent Regulator.

Schedule 1, paragraph 28 9.8.8 The directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the auditor on them, and the annual report.

Schedule 1, paragraph 25(5) 9.8.9 The functions of the Trust under paragraph 15 below are delegated to the Chief Executive as accounting officer.

## 10 Meetings of Directors

10.1 The board of directors, in consultation with the Council of Governors, is to adopt standing orders covering the proceedings and business of its meetings. These are to include setting a quorum for meetings, both of executive and non-executive directors. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a director's appointment.

10.2 The board intends, where possible, to conduct its meetings in public (though reserves the right not to do so from time to time in its sole discretion).

10.3 The chairman of the Trust or, in his absence or if he has a conflict of interest, the deputy chairman (to be appointed from amongst the non-executive directors by resolution of the board of directors) is to preside at meetings of the board of directors and will have a casting vote.

## 11 Conflicts of Interest of Directors

Schedule 1, paragraph 21 11.1 Any director who has a relevant and material interest in a matter as defined below shall declare such interest to the board of directors at the next directors' meeting and it shall be recorded in a register of interests and the director in question:

(a) shall not be present except with the permission of the board of directors in any discussion of the matter; and

(b) shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

A director is obliged to inform the secretary in writing within seven days of becoming aware of relevant or material interest.

- 11.2 Any director 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 majority of the remaining directors.
- 11.3 A relevant and material interest in a matter is any interest (save for the exceptions referred to below) held by a director or their spouse or partner in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust. Interests which should be regarded as “relevant and material” are as follows:
- (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
  - (b) Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS;
  - (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
  - (d) A position of authority in a charity or voluntary organisation in the field of health and social care;
  - (e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;
  - (f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
- 11.4 The exceptions which shall not be treated as material interests are holdings of shares not exceeding 2% of the total shares in issue in any company whose shares are listed on any public exchange.

## 12 Registers

12.1 The Trust is to have –

- (a) a register of members showing, in respect of each member, the constituency and where there are classes within it, the class to which he belongs;
  - (b) a register of members of the Council of Governors;
- Schedule 1, paragraph 20(1)(a)
- Schedule 1,

paragraph  
20(1)(b)

Schedule 1,  
paragraph  
20(1)(c)

(c) a register of interests of the governors;

Schedule 1,  
paragraph  
20(1)(d)

(d) a register of directors;

Schedule 1,  
paragraph  
20(1)(e)

(e) a register of interests of the directors.

Schedule 1,  
paragraph  
20(2)

12.2

A register of members will be held by a membership secretary to whom members should direct any amendments to their circumstances. The contact details for such notification shall be as follows unless otherwise notified by the Trust to members:-

The Membership Secretary  
Trust Offices  
Southend Hospital,  
Prittlewell Chase,  
Westcliff on Sea,  
Essex, SS0 0RY

A register of governors and a register of directors together with registers of their respective interests will be held by the secretary.

See Section  
10(3)

12.3

The Trust is to send to the Independent Regulator a list of the persons who were first elected or appointed –

(a) as members of the Council of Governors;

(b) as directors.

13

### **Public Documents**

Schedule 1,  
paragraph  
22

13.1

The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times –

(a) a copy of the current constitution;

(b) a copy of the current authorisation;

(c) a copy of the latest annual accounts and of any report of the auditor on them;

(d) a copy of the latest annual report;

(e) a copy of the latest information as to its forward planning;

		(f) a copy of any notice given under section 23 of the 2003 Act (regulator's notice to failing NHS foundation trust).
Schedule 1, paragraph 22(2)	13.2	Any person who requests it is to be provided with a copy or extract from any of the above documents.
Schedule 1, paragraph 22(3)	13.3	The registers mentioned in paragraph 12.1 above are also to be made available for inspection by members of the public, except (in relation to the register of members) details of any member who has requested that the Trust does not make his details available for inspection by the public under the Public Benefit Corporation (Register of Members) Regulations 2004 , and in any other case in circumstances prescribed by regulations made under the 2003 Act; and, so far as those registers are required to be available –  (a) They are to be available free of charge at all reasonable times,  (b) A person who requests it is to be provided with a copy of or extract from them.
Schedule 1, paragraph 22(4)	13.4	If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.
See Section 10	14	<b>Auditor</b>
Schedule 1, 23(1) and Schedule 5, paragraph 2	14.1	The Trust is to have an auditor and is to provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under Part 1 of the 2003 Act.
Schedule 1, paragraph 23(4)	14.2	A person may only be appointed auditor if he (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 1 to the 2003 Act.
	14.3	Appointment of the auditor by the Council of Governors is covered in paragraph 8.16.1, and monitoring of the auditor's functions by a committee of non-executive directors is covered in paragraph 9.8.3.
Schedule 5 Schedule 1, paragraph 24(5)	14.4	The auditor is to carry out his duties in accordance with Schedule 5 to the 2003 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted when preparing the

accounts.

15 **Accounts**

- Schedule 1, paragraph 24(1) 15.1 The Trust must keep proper accounts and proper records in relation to the accounts
- Schedule 1, paragraph 24(1a) Initial arrangements 15.2 Monitor may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.
- Schedule 1, paragraph 24(2) 15.2 The accounts are to be audited by the Trust's auditor.
- Schedule 1, paragraph 24(3) 15.3 The following documents will be made available to the Comptroller and Auditor General for examination at his request -
- (a) the accounts;
  - (b) any records relating to them; and
  - (c) any report of the auditor on them.
- Schedule 1, paragraph 25(1) 15.4 The Trust (through its Chief Executive and accounting officer) is to prepare in respect of each financial year annual accounts in such form and content as Monitor may, with the approval of the Secretary of State direct.
- Schedule 1, paragraph 25(1) 15.5 In preparing its annual accounts, the Trust is to comply with any directions given by Monitor with the approval of the Secretary of State as to –
- (a) the methods and principles according to which the accounts are to be prepared;
  - (b) the information to be given in the accounts.
- Schedule 1, paragraph 25(4) 15.6 The Trust must –
- (a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
  - (b) once it has done so, send copies of those documents to the Independent Regulator.

16 **Annual Report and Forward Plans and non NHS work**

- Schedule 1, paragraph 26(1) 16.1 The Trust is to prepare an annual report and send it to Monitor.

- Schedule 1,  
paragraph  
26(2)
- 16.2 The report is to give -
- (a) information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituencies is representative of those eligible for such membership;
  - (b) information about 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
  - (c) the income it expects to receive from doing so.
  - (d) any other information Monitor requires .
- 16.3 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 16.2.(b) the Council of Governors must –
- 16.3.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its other functions, and
  - 16.3.2 notify the directors of the Trust and its determination.
- 16.4 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England may implement the proposal only if more than half of the members of council of governors of the trust voting approve its implementation.
- Schedule 1,  
paragraph  
26(3)
- 16.5 The Trust is to comply with any decision Monitor makes as to –
- (a) the form of the reports;
  - (b) when the reports are to be sent to them ;
  - (c) the periods to which the reports are to relate.
- Schedule 1,  
paragraph  
24(3)
- Schedule 1,  
paragraph  
27
- 16.6 The Trust is to give information as to its forward planning in respect of each financial year to Monitor.  
This information is to be prepared by the directors, who must have regard to views of the Council of Governors (paragraph 9.8.7 above).



## 17 **Indemnity**

17.1 Directors and governors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution of their Trust functions, save where they have acted recklessly. Such directors and governors shall be indemnified out of the assets of the Trust in respect of any such personal liabilities.

17.2 Without prejudice to the indemnity set out in paragraph 17.1, directors and governors shall also be indemnified out of the assets of the Trust against any liability incurred by them:

- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in their favour or in which they are acquitted; or
- (b) in connection with any application to which relief is granted to them by the court from liability for negligence, default, breach of duty or breach of trust,

in each case in relation to the affairs of the Trust.

17.3 The Trust may purchase and maintain for any director or governor, insurance against any liability they may suffer in connection with the affairs of the Trust.

## 18 **Instruments etc.**

Schedule 1,  
paragraph  
29(2)

18.1 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.

Schedule 1,  
paragraph  
29(1)

18.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the board of directors.

## 19 **Dispute Resolution Procedures**

19.1 The Trust is to establish appropriate dispute resolution procedures with its workforce, contractors and members. These are to be approved by the Council of Governors.

19.2 Except where otherwise specified in this constitution or the standing orders of the Council of Governors, questions of eligibility, procedure and administrative matters in relation to governorship or meetings of members or governors shall be determined by the secretary. There will be a right of appeal to the chairman, subject to paragraph 19.5, whose decision shall be final and binding except in the case of manifest error.

19.3 Except where otherwise specified in this constitution, matters in relation to directorship or meetings of directors shall be determined by the chairman, subject to paragraph 19.5, whose decision shall be final and binding except in the case of manifest

error.

19.4 In the event of a dispute between the Council of Governors and the board of directors, the chairman shall appoint a special committee comprising equal numbers of directors and governors to consider the circumstances and make recommendations to the Council of Governors and the board of directors with a view to resolving the dispute. If agreement cannot be reached then, subject to paragraph 19.5, the dispute shall be referred to the chairman, whose decision shall be final.

19.5 In the event that a dispute is referred to the chairman under paragraphs 19.2 to 19.4 (inclusive) and the chairman considers that he has a perceived or real interest in the outcome of that dispute and that the dispute would be better resolved externally, then the chairman may refer the dispute for resolution by arbitration under the Rules of the Chartered Institute of Arbitrators (as amended or re-issued from time to time) and these rules are deemed to be incorporated by reference to this paragraph 19.5, save that the arbitrator's costs are to be borne by the corporation in all cases.

## 20 Amendment of the Constitution

Section 8 20.1 The Trust may make amendments to this constitution provided that more than half of the members of the board of directors who vote and more than half of the members of the council of governors who vote approve the proposed change/s to the constitution of .

20.2

Sections 25,  
27 and  
28(2) 21 **Dissolution of the Trust**

21.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2003 Act.

## 22 Notices

22.1 Any notice to be given to or by any person under the constitution must be in writing.

22.2 Any notice or document may be served by the Trust on any member, governor or director:

- (a) personally;
- (b) by electronic communication to the email address which appears in the register of members, register of governors or register of directors or to another email address, if any, as a member, governor or director directs to the secretary in writing; or
- (c) by leaving it, or sending it through the post, in a prepaid

letter addressed to that person at his registered address which appears in the register of members, register of governors or register of directors or to another address, if any, as a member, governor or director directs to the secretary in writing.

22.3 Where a notice is sent by post, service of the notice will be treated as being delivered 72 hours after the letter containing it is posted and if served personally or by electronic communication will be treated as being delivered the same day as the notice was delivered or the electronic communication was sent.

22.4 In proving service it will be sufficient to prove that the letter containing the notice or document was, if the notice or document is served by post, properly addressed, stamped and put into the post or given to delivery agents with postage or delivery paid or that the notice or document, if served by electronic communication, was properly addressed and sent, or if left at the address was left there.

22.5 Where under this constitution, a notice, form or declaration needs to be signed by a member, governor or other person and it is in the form of an electronic communication, the board of directors may, if it chooses, disapply the requirement for a signature or require the electronic communication to incorporate the electronic signature or personal identification details (which may be details previously allocated by the Trust or its agent) of that member or other person, in the form the board approves, or be accompanied by any other evidence the board may specify. The Trust can designate mechanisms for validating any document of this kind, and any document not validated by the use of these mechanisms can be treated by the Trust as never having been received by the Trust or its agent.

22.6 Any reference to days for service of notices, forms or declarations in this constitution shall be clear days. Therefore, the number of days specified does not include the two days between which the interval is measured. For example, if notice is to be given a number of clear days before a meeting, neither the date notice is delivered (or deemed to be delivered) nor the date of the meeting is to be taken into account.

### 23. **Significant Transactions**

23.1 The Trust may enter into a significant transaction only if more than half of the Council of Governors voting approves entering into the transaction.

22.3 “Significant transaction” for these purposes means either where:

- a) the gross assets or capital subject to the transaction, divided by the gross assets of the Trust
  - are greater than 5% (non-health care / international); or

- are greater than 10% (UK health care); or
- b) the income attributable to the assets or the contract associated with the transaction, divided by the income of the Trust
  - is greater than 5% (non-health care / international); or
  - is greater than 10% (UK health care); or
- c) the gross capital of the business being acquired / divested, divided by the total capital of the Trust following completion, or the effects on the total capital of the Trust resulting from a transaction;
  - is greater than 5% (non-health care / international); or
  - is greater than 10% (UK health care).

## ANNEX 1

### AREA OF THE TRUST

#### Patient classes of the

##### **Public constituencies of the Trust**

###### Public Constituency No 1

*Southend-on-Sea Borough Council*

###### Public Constituency No 2

*Rochford District Council*

###### Public Constituency No 3

*Castle Point Borough Council*

###### Public Constituency No 4

*Rest of Essex comprising of:*

*Basildon District Council*

*Braintree District Council*

*Brentwood Borough Council*

*Chelmsford Borough Council*

*Colchester Borough Council*

*Epping Forest District Council*

*Harlow District Council*

*Maldon District Council*

*Tendring District Council*

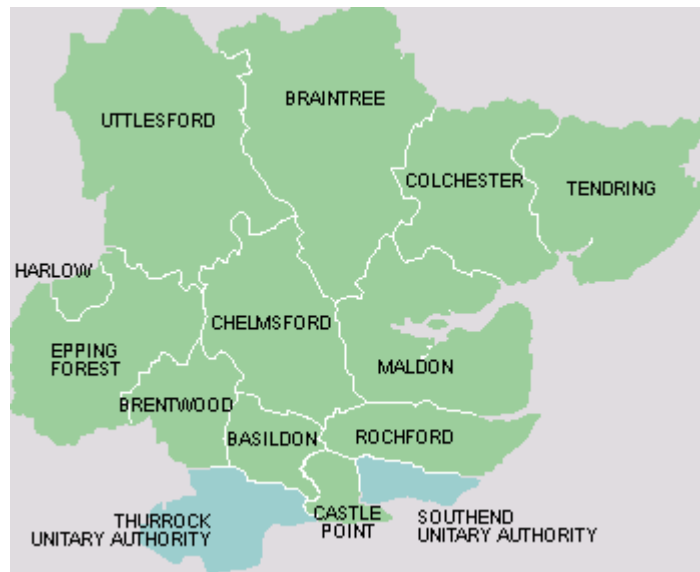
*Thurrock Council*

*Uttlesford District Council*

*Including patients and carers not resident in Essex*

**ANNEX 1 (CONTINUED)**

**MAP SHOWING AREA OF THE TRUST**



## ANNEX 2

### PRACTICE AND PROCEDURE FOR MEETINGS

#### Part 1 – Members

The members shall have no right to requisition or call meetings of members.

#### Part 2 – Board of Directors

All regulations governing the calling, holding and proceedings of meetings of the board of directors shall be set out in standing orders, to be adopted by the board of directors from time to time, in accordance with this constitution.

These will cover the following areas:

1. convening and requisitioning meetings;
2. notice of meetings;
3. quorum;
4. voting;
5. written resolutions;
6. other provisions regarding the directors' proceedings.

#### Part 3 – Council of Governors

The following regulations shall apply to all meetings of the Council of Governors. Save as set out in this constitution, the Council of Governors shall determine its own proceedings to be set out in standing orders from time to time.

##### 1 *General Meetings and Other Meetings*

- 1.1 The Council of Governors shall, in each year, hold an Annual General Meeting in addition to any other general meetings in that year, and notices of such meeting shall specify it as the Annual General Meeting.
- 1.2 It is intended that the general meeting will be held in September in each year.
- 1.3 Not more than 15 months shall elapse between the date of one Annual General Meeting of the Council of Governors and that of the next.

##### 2 *Convening Meetings*

- 2.1 The chairman shall ordinarily convene meetings of the Council of Governors.
- 2.2 The chairman shall call a meeting of the Council of Governors on a governors' requisition.
- 2.3 A governors' requisition is a requisition of governors amounting in number to 30 per cent or more of the total number of governors.

2.4 A governors' requisition must be in writing and state the objects of the meeting and must be signed by the requisitionists and deposited with the chairman, and may consist of several documents in like form each signed by one or more of the requisitionists.

2.5 If the chairman does not, within 14 days from the date of deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of six weeks from that date.

A meeting convened under this paragraph by requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the chairman.

### 3 *Notice of Meetings*

3.1 Meetings of the Council of Governors shall be called by at least 21 days' written notice.

3.2 A meeting of the Council of Governors may be called on shorter notice than is set out in paragraph 3.1 if it is agreed in writing by governors amounting in number to 50 per cent or more of the total number of governors.

3.3 The notice must state:

3.3.1 the date and time of the meeting;

3.3.2 where the meeting is to be held; and

3.3.3 the general nature of the business to be dealt with at the meeting.

3.4 If a notice or other document relating to a meeting is not sent or received, the meeting will not be invalid as a result.

3.5 Save where, in accordance with this constitution, any meeting of the Council of Governors is not required to be held in public, before each meeting a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.

### 4 *Quorum*

4.1 No business can be conducted at any meeting unless a quorum is present.

4.2 A quorum for any meeting of the Council of Governors shall be nine governors entitled to vote on the business to be conducted (including at least five public governors).

If this quorum is not present within half an hour from the time set for the meeting, or if during a meeting this quorum ceases to be present, the meeting will be automatically adjourned to the same day in the next week at the same time and place or to the day, time and place as the chairman in his discretion, decides, at which meeting those governors present shall constitute a quorum.

4.3 A governor may participate in a duly convened meeting by means of a videoconference, telephone or any other communications equipment which allows all persons to hear and speak to each other. Any governor participating in this way will



be treated as present in person at the meeting and will be entitled to vote and to be counted in the quorum.

## 5 *Voting*

5.1 Voting at duly convened meetings of the Council of Governors shall be conducted on a show of hands.

5.2 Each governor present at a meeting shall, subject to paragraph 5.3, have one vote.

5.3 In the event that, present at the meeting, there is not a majority of governors made up of public governors, then each of the public governors present and voting shall, on a show of hands, have such number (which shall include fractions of a vote) of votes as in aggregate amounts to one more vote than the aggregate number of votes of all the other governors present and voting, and each other governor present shall have one vote only.

5.4 Save as specifically provided for elsewhere in this constitution, matters to be resolved at meetings of the Council of Governors shall be decided by a simple majority of the votes cast by governors at such meeting.

## 6 *Written Resolutions*

Save where it is specifically provided, in this constitution and/or in the 2003 Act, that decisions are to be made at a general meeting, a resolution in writing, signed by each governor who would have been entitled to vote upon it if it had been proposed at a meeting at which he was present, will be just as valid and effective as if it had been passed at a meeting duly convened and held.

## 7 *Chairman*

7.1 The chairman shall preside over meetings of the Council of Governors, and shall be entitled to receive notice of and attend meetings of the Council of Governors for this purpose.

7.2 In the chairman's absence, the deputy chairman or, failing that, any public or patient/carer governor appointed by the governors present at the meeting shall preside and shall act as chairman at such meeting for all purposes.

## 8 *Minutes*

The chairman shall procure that minutes are made in books of all proceedings at meetings of the Council of Governors.

## 9 *Vacancies or Defects in Appointment*

No action taken or matter resolved by the Council of Governors shall be invalidated by any vacancy in its membership or defect in any governor's appointment.

## ANNEX 3

### Part 1 – CONDUCT OF ELECTIONS FOR PUBLIC GOVERNORS

1. When a vacancy arises for one or more public governors:
  - (i) the Council of Governors may appoint the next highest polling candidate at the most recent elections of governors for the relevant constituency/class, if he is willing to take office. The Council of Governors may adopt this process on no more than two occasions within 12 months of the last elections. Governors appointed using this process shall hold office until the conclusion of either the next election or the unexpired term of office of the vacant seat, whichever is the earlier, subject to a minimum term of six months. If the next highest polling candidate is unwilling to take office or the Council of Governors choose not to use this process the seat will fall vacant and subject to election for any unexpired period of office;
  - (ii) in all other cases, the returning officer appointed under Part 3 of this Annex shall notify the members of the relevant constituency/class by advertisement in one local newspaper, inviting nominations within such period and subject to such other procedural requirements as the secretary considers reasonable, save that the Trust shall not be obliged to seek nominations if it is less than 3 months to the next scheduled election of public governors and if meetings of the Council of Governors in the intervening period can still be quorate without the appointment of further public or patient governors.
2. Notwithstanding any other provision of this Annex, the candidate will not be able to vote at a meeting of the Council of Governors unless not less than seven days prior to the date of the meeting, he has made a declaration in the form set out in Annex 5.
3. The rules in Part 3 of this Annex apply to the elections of public governors except where they conflict with the provisions of this Part 1.

## Part 2 – CONDUCT OF ELECTIONS OF WORKER GOVERNORS

1. When a vacancy arises for one or more worker governors, the returning officer appointed under Part 3 of this Annex shall notify the staff members in writing or by other usual means, inviting nominations within such period and subject to such other procedural requirements as the returning officer considers reasonable.
2. The result of elections to the Council of Governors shall be notified to members by the returning officer in writing or by other usual means.
3. The rules in Part 3 of this Annex apply to elections of worker governors except where they conflict with the provisions of this Part 2.

Part 3 – PROVISIONS APPLICABLE TO ALL ELECTIONS

SECTION TO BE REMOVED AND REPLACED BY THE MODEL ELECTION RULES 2014

## **ANNEX 4**

### **LIST OF LOCAL AUTHORITIES AUTHORISED FOR THE PURPOSES OF APPOINTING LOCAL AUTHORITY GOVERNORS**

Castle Point District Council

Essex County Council

Rochford District Council

Southend-on-Sea Borough Council

**ANNEX 5**

**GOVERNORS' DECLARATIONS**

**SOUTHEND UNIVERSITY NHS FOUNDATION TRUST (the "Trust")**

"I, [insert name] of [insert address] confirm that to the best of my knowledge I am a member of the public/ worker constituency (delete as appropriate), and eligible to be, and not prohibited from being, a member of the Council of Governors in line with the requirements of the Constitution, Standing Orders and Paragraph 7 and 8 of Schedule 1 to the 2003 Act."

Signed.....

Print Name.....

Date of Declaration.....