

**20220330**

**Essex Partnership University NHS Foundation Trust  
Constitution**

**Approved by Council of Governors 21 March 2022 and  
Board of Directors 30 March 2022  
Next Review Date: 30 June 2023**

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## 1. Interpretation and Definitions

- 1.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act
- 1.2 Words importing the plural shall import the singular and vice-versa.
- 1.3 The **2006 Act** is the National Health Service Act 2006
- 1.4 The **2012 Act** is the Health and Social Care Act 2012
- 1.5 **Annual Members' Meeting** is defined in paragraph 13 of the Constitution
- 1.6 **Board of Directors** or **Board** means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body in accordance with this Constitution
- 1.7 **Board of Directors Nominations Committee** means a committee of the Board described in paragraph 30.4 of the Constitution
- 1.8 **Constitution** means this constitution which has effect in accordance with Section 37(1) of the 2006 Act
- 1.9 **Council of Governors or Council** means the Council of Governors of the Trust as described in paragraph 14 of this Constitution
- 1.10 **Chair** is the person appointed as Chair of the Board of Directors (and Chair of the Council of Governors) under paragraph 28 of this Constitution
- 1.11 **Chief Executive** is the person appointed as the Chief Executive Officer of the Trust under paragraph 31 of this Constitution
- 1.12 **Directors** means the Executive and Non-Executive members of the Board of Directors
- 1.13 **Executive Director** means a member of the Board of Directors appointed under paragraph 25 of the Constitution
- 1.14 **Member** means a person registered as a member of one of the constituencies set out in paragraph 5 of this Constitution
- 1.15 **Model Election Rules** means the Model Election Rules published by Department of Health and/or NHS Providers
- 1.16 **Monitor** is the body corporate known as Monitor, as part of NHS Improvement, as provided by Section 61 of the 2012 Act
- 1.17 **NHS England / Improvement (NHSE/I)** the operational name for the organisation which consists of (inter alia) NHS Improvement, NHS England,

Monitor and the NHSTDA;

- 1.18 NHSTDA** means the Special Health Authority known as the National Health Service Trust Development Authority established under the NHS Trust Development Authority (Establishment and Constitution) Order 2012 SI 901/2012
- 1.19 Non-Executive Director** means a member of the Board of Directors, including the Chair, appointed by the Council of Governors under paragraph 28 of the Constitution
- 1.20 Officer** means an employee of the Trust or any person holding a paid appointment or office with the Trust
- 1.21 Regulated Activities Regulations** means the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as amended
- 1.22 The Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act
- 1.23 The Trust Secretary** is the person appointed by the Chair and Chief Executive as the Trust Secretary
- 1.24 Vice-Chair** means the Non-Executive Director appointed under paragraph 30.1 and 30.3 of this Constitution
- 1.25 Acting Chair** means the Non Executive Director appointed under paragraph 30.2 and 30.3 of this Constitution.
- 1.26 Voluntary Organisation** is a body, other than a public or local authority, the activities of which are not carried out for profit
- 1.27 Working Day** means a day of the week which is not a Saturday, Sunday or public holiday in England.

## **2. Name**

- 2.1** The name of the foundation trust is Essex Partnership University 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 the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

#### **4. Powers**

- 4.1** The powers of the Trust are set out in the 2006 Act
- 4.2** All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust
- 4.3** Any of these powers may be delegated to a committee of Directors or to an Executive Director.

#### **5. Membership and Constituencies**

- 5.1** The Trust shall have members, each of whom shall be a member of one of the constituencies in paragraph 5.2
- 5.2** The constituencies of the Trust shall be:
- 5.2.1** a Public Constituency
  - 5.2.2** a Staff Constituency.

#### **6. Application for Membership**

- 6.1** An individual who is eligible to become a member of the Trust may do so on application to the Trust subject to paragraphs 8 and 12 below
- 6.2** An applicant will become a member when the Trust has received and accepted the application, and the name of the applicant has been entered in the Trust's Register of Members (see Annex 9: Further Provisions paragraph 2).

#### **7. Public Constituency**

- 7.1** 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
- 7.2** Those individuals who live in an area specified for a Public Constituency are referred to collectively as a Public Constituency

7.3 The minimum number of members in each Public Constituency is specified in Annex 1.

**8. Staff Constituency**

8.1 Individuals who are employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:

8.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months

8.1.3 For the avoidance of doubt permanent staff are eligible to be members of the staff constituency. Temporary Staff can be a member of a Public Constituency if the criteria is met.

8.2 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. For the avoidance of doubt, this does not include those who assist or provide services to the Trust on a voluntary basis

8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency

8.4 The Staff Constituency shall be divided into two 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

8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

**9. Automatic Membership by Default – Staff**

9.1 An individual who is:

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

9.1.2 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 of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

**10. NOT USED**

**11. NOT USED**

**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 12 years old to become a member of the Trust
- 12.4** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9: Further Provisions paragraph 2.

**13. Annual Members' Meeting**

- 13.1** The Trust shall hold an annual meeting of its members (Annual Members' Meeting). The Annual Members' Meeting shall be open to members of the public
- 13.2** Annual Members' Meetings shall be conducted in accordance with paragraph 27A of Schedule 7 of the 2006 Act (and as set out in paragraph 46 of this constitution) and the standing orders for the practice and procedure of Annual Members' Meetings as set out in Annex 10: Annual Members' Meeting.

**14. Council of Governors – Composition**

- 14.1** The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors
- 14.2** The composition of the Council of Governors is specified in Annex 4
- 14.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

## **15. Council of Governors – Election of Governors**

- 15.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules adopting Single Transferable Vote (STV)
- 15.2** The Model Election Rules are attached at Annex 5 but they do not form part of this constitution
- 15.3** A variation of the Model Election Rules by the Department of Health or NHS Providers shall not constitute a variation of the terms of this constitution for the purposes of paragraph 48 of the constitution (amendment of the constitution)
- 15.4** An election, if contested, shall be by secret ballot
- 15.5** Where a vacancy arises from amongst the elected Governors within the first 24-months of their term of office, the Trust Secretary shall offer the next highest polling candidate in the election for that post the opportunity to assume the vacancy for the unexpired balance of the former member's term of office. If that candidate does not wish to fill the vacancy, it will then be offered to the next highest polling candidate and so on until the vacancy is filled.
- 15.6** Governors must be at least 16 years of age at the date they are nominated for election or appointment

## **16. Council of Governors – Tenure**

- 16.1** An elected Governor may hold office for a period of up to three Years. The period of office shall be known as the 'term'
- 16.2** Elected Governors shall cease to hold office if they cease to be a member of the constituency or class by which they were elected
- 16.3** Elected Governors shall be eligible for re-election at the end of their term
- 16.4** Appointed Governors may hold office for a period of up to three Years
- 16.5** Appointed Governors shall cease to hold office if the appointing organisation withdraws its sponsorship of them or if the appointing organisation ceases to exist and there is no successor in title to its business
- 16.6** Appointed Governors shall be eligible for re-appointment at the end of their term
- 16.7** A Governor may serve a maximum of three terms of each up to three years in office and shall be eligible to stand for election or appointment as a

Governor again following a break of at least a Year

- 16.8** “Year’ in this clause 16 means the period commencing on the date of election or appointment (as the case may be) and ending 12 months after such election or appointment.

## **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** people who have made a composition or arrangement with, or granted a Trust deed for their creditors and have not been discharged in respect of it

**17.1.4** people who within the preceding five years have 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** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors and for the removal of Governors are set out in Annex 6 paragraphs 4 and 5.

## **18. Council of Governors – Duties of Governors**

- 18.1** The general duties of the Council of Governors are:

**18.1.1** to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

**18.1.2** to represent the interests of the members of the Trust as a whole and the interests of the public

- 18.2** Further provision as to the roles and responsibilities of the Council of Governors is set out in Annex 6

- 18.3** The Trust must take steps to ensure that 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 of the Trust (i.e. the Chair of the Board of Directors, appointed in

accordance with the provisions of paragraph 28 of this constitution) or, in their absence the Vice-Chair or Acting Chair (appointed in accordance with the provisions of paragraph 30 of this constitution), shall preside at meetings of the Council of Governors except as otherwise provided pursuant to the standing orders for the Council of Governors as at Annex 7

**19.2** 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. Special reasons include for reasons of commercial confidentiality. The Chair may exclude any person from a meeting of the Council of Governors if that person is interfering with or preventing the proper conduct of the meeting

**19.3** 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**

**20.1** The standing orders for the practice and procedure of the Council of Governors are referenced at Annex 7

**20.2** The standing orders do not form part of this constitution. Any amendment of the standing orders shall not constitute an amendment of the terms of this constitution for the purposes of paragraph 48 of this constitution.

## **21. NOT USED**

## **22. Council of Governors – Conflicts of Interest of Governors**

**22.1** If Governors have 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, Governors shall disclose that interest to the members of the Council of Governors as soon as they become aware of it. The standing orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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

**23.1** The Trust may pay travelling and other expenses to Governors that are incurred in carrying out their duties at rates determined by the Trust. These expenses are to be disclosed in the Trust's annual report

**23.2** Governors do not receive remuneration when undertaking their duties and role as a Governor.

## **24. Council of Governors – Further Provisions**

**24.1** Further provisions with respect to the Council of Governors are set out in Annex 6.

## **25. Board of Directors – Composition**

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

**25.2** The Board of Directors is to comprise:

**25.2.1** a Non-Executive Chair

**25.2.2** not less than five and not more than eight other Non-Executive Directors; and

**25.2.3** not less than four and not more than eight Executive Directors,

so that the number of Non-Executive Directors including the Chair shall always exceed the number of Executive Directors including the Chief Executive in a voting capacity.

**25.3** One of the Executive Directors shall be the Chief Executive

**25.4** The Chief Executive shall be the Accounting Officer

**25.5** One of the Executive Directors shall be the Finance Director

**25.6** One of the Executive Directors is to be a registered Medical Practitioner or a registered Dentist (within the meaning of the Dentists Act 1984)

**25.7** One of the Executive Directors is to be a registered Nurse or a registered Midwife.

## **26. Board of Directors – General Duty**

**26.1** 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.

## **27. Board of Directors – Qualification for Appointment as a Non-Executive Director**

A person may be appointed as a Non-Executive Director only if:

**27.1** they are a member of a Public Constituency, or

**27.2** 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

**27.3** they are not disqualified by virtue of paragraph 33 of this constitution.

<b>28. Board of Directors – Appointment and Removal of Chair and Other Non-Executive Directors</b>
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**28.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors

**28.2** Appointment of the Chair or another Non-Executive Director shall require the approval of a majority of the Council of Governors present at a meeting of the Council of Governors

**28.3** Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors

**28.4** The Council of Governors shall adopt a procedure for appointing/removing the Chair and/or other Non-Executive Directors in accordance with any guidance issued by Monitor.

<b>29. NOT USED</b>
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<b>30. Board of Directors – Appointment of Vice-Chair, Acting Chair, Senior Independent Director and Deputy Chief Executive</b>
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**30.1** The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as the Vice-Chair

**30.2** When the absence of the Chair has or will exceed a period of 3 months the Council of Governors at a meeting shall appoint one of the Non-Executive Directors as the Acting Chair.

**30.3** Before a resolution for such appointments is passed, the Chair shall be entitled to advise the Council of Governors of the Non-Executive Director who is recommended by the Board of Directors for that appointment. This recommendation will not, however, be binding upon the Council of Governors; it will be presented to the Council of Governors at its meeting before it comes to its decision.

**30.4** The Board of Directors shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors as the Senior Independent Director to act in accordance with Monitor's *NHS Foundation Trust Code of Governance* (as may be amended and replaced from time to time) and the Trust's standing orders.

- 30.5** The Board of Directors Remuneration and Nominations Committee, which comprises of all the Non-Executive Directors, shall appoint an Executive Director as the Deputy Chief Executive in line with agreed procedure.

**31. Board of Directors – Appointment and Removal of the Chief Executive and Other Executive Directors**

- 31.1** The Non-Executive Directors shall appoint or remove the Chief Executive
- 31.2** A committee consisting of the Chair and Non-Executive Directors shall appoint the Chief Executive.
- 31.3** The appointment of the Chief Executive shall require the approval of a majority of the Council of Governors present at a meeting of the Council of Governors in accordance with the procedure agreed by the Council of Governors from time to time
- 31.4** A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors
- 31.5** An Executive Director’s post may be held by two individuals on a job share basis (save that the Executive positions of registered Medical Practitioner or registered Dentist and registered Nurse or registered Midwife cannot be shared between the two professions). Where such an arrangement is in force, the two individuals may only exercise one vote between them at any meeting of the Board of Directors as in the standing orders.

**32. NOT USED**

**33. Board of Directors – Disqualification**

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

- 33.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged
- 33.2** a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986)
- 33.3** people who have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it
- 33.4** 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
- 33.5** a person who is subject of a disqualification order made under the Company Directors Disqualification Act 1986 and/or who is disqualified from being a trustee of a charity under the Charities Act 2011

- 33.6** people where disclosures revealed by a Disclosure & Barring Service check against such people are such that it would be inappropriate for them to become or continue as a Director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute
- 33.7** people whose tenure of office as 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 health service for reasons including non-attendance at meetings, or for non-disclosure of a pecuniary interest
- 33.8** a person who has within the preceding two years been dismissed: otherwise than by reason of redundancy or for ill health, from any paid employment with;
- 33.8.1** a health service body or a local authority;
  - 33.8.2** any other public body; or
  - 33.8.3** a private provider or health or social care services;
- unless approved by the Board of Directors for Executive Directors or the Council of Governors for Non-Executive Directors
- 33.9** a person who is the subject of a Sexual Offenders Order under the Sexual Offences Act 2003
- 33.10** a person who is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list maintained under the laws of Scotland or Northern Ireland
- 33.11** a person who is a Director or Governor or Governing Body member or equivalent of another NHS body, including Clinical Commissioning Groups unless approved by the Board of Directors for Executive Directors or the Council of Governors for Non-Executive Directors
- 33.12** a person who is a member of the Council of Governors
- 33.13** in the case of Non-Executive Directors, a person who is no longer a member of one of the public constituencies
- 33.14** in the case of Non-Executive Directors, a person who has refused without any reasonable cause to fulfil any training requirement established by the Board of Directors
- 33.15** a person who is a member of a Local Authority's Overview & Scrutiny Committee covering health matters or of a Local Healthwatch Board or of a Health & Wellbeing Board
- 33.16** a person who is the spouse, partner, parent or child of a member of the



## Trust's Board of Directors

- 33.17** a person who has displayed aggressive or violent behaviour at any NHS establishment or against any of the Trust's staff or persons exercising functions for the Trust
- 33.18** a person who fails to satisfy the requirements of the Regulated Activities Regulations
- 33.19** a person who has failed to sign and return to the Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for the Board of Directors
- 33.20** a person who has acted in a manner inconsistent with or who has failed to comply with the Trust's terms of authorisation, standing orders, standing financial instructions and/ or the code of conduct for the Board of Directors.

### **34. Board of Directors – Meetings**

- 34.1** 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. Special reasons include for reasons of commercial confidentiality. The Chair may exclude any person from a meeting of the Board of Directors if that person is interfering with or preventing the proper conduct of the meeting
- 34.2** 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 Part 1 minutes of the meeting to the Council of Governors. A summary of Part 2 minutes will be provided to the Council of Governors.

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

- 35.1** The Board of Directors has adopted the standing orders for the practice and procedure of the Board of Directors referred to at Annex 8.
- 35.2** The standing orders do not form part of this constitution. Any amendment of the standing orders shall not constitute an amendment of the terms of this constitution for the purposes of paragraph 48 of the constitution.

### **36. Board of Directors – Conflicts of Interest of Directors**

- 36.1** The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 36.1.1** 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

- 36.1.2** 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
- 36.2** The duty referred to in sub-paragraph 36.1.1 is not infringed if:
- 36.2.1** the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 36.2.2** the matter has been authorised in accordance with the constitution if it has been considered and approved by the Board of Directors
- 36.3** The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest
- 36.4** In sub-paragraph 36.1.2, “third party” means a person other than:
- 36.4.1** the Trust, or
- 36.4.2** a person acting on its behalf
- 36.5** If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors
- 36.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made
- 36.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement
- 36.8** 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
- 36.9** A Director need not declare an interest:
- 36.9.1** if it cannot reasonably be regarded as likely to give rise to a conflict of interest
- 36.9.2** if, or to the extent that, the Directors are already aware of it
- 36.9.3** if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
- 36.9.3.1** by a meeting of the Board of Directors, or
- 36.9.3.2** by a committee of the Directors appointed for the purpose under the constitution

**36.10** The standing orders for the Board of Directors make further provision for the disclosure of interests.

**37. Board of Directors – Remuneration and Terms of Office**

**37.1** 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

**37.2** 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.

**38. Registers**

The Trust shall have:

**38.1** 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

**38.2** a register of members of the Council of Governors

**38.3** a register of interests of Governors

**38.4** a register of Directors, and

**38.5** a register of interests of the Directors.

**39. Admission to and Removal from the Registers**

**39.1** The Trust Secretary shall be responsible for fulfilling the obligations of the Trust in relation to the maintenance of, admission to and removal from the registers under the provisions of this constitution and as set out in paragraph 38.

**39.2** Directors and Governors shall advise the Trust Secretary as soon as practicable of anything which comes to their attention or of which they are aware and which might affect the accuracy of the matters recorded in any of the registers referred to in paragraph 38.

**40. Registers – Inspection and Copies**

**40.1** The Trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances prescribed below or as otherwise prescribed

- 40.2** The Trust may withhold all or part of the registers from inspection where disclosure of information could give rise to a real risk of harm or is prohibited by law.
- 40.3** So far as the registers are required to be made available:
- 40.3.1** they are to be available for inspection free of charge at all reasonable times, and
  - 40.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract
- 40.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

## **41. Documents Available for Public Inspection**

- 41.1** The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 41.1.1** a copy of the current constitution,
  - 41.1.2** a copy of the latest annual accounts and of any report of the auditor on them, and
  - 41.1.3** a copy of the latest annual report
- 41.2** 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:
- 41.2.1** 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
  - 41.2.2** a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act
  - 41.2.3** a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act
  - 41.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act
  - 41.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act

- 41.2.6** a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act
- 41.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act
- 41.2.8** a copy of any final report published under section 65I (administrator's final report) of the 2006 Act
- 41.2.9** 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
- 41.2.10** a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act
- 41.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy
- 41.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

## **42. Auditor**

- 42.1** The Trust shall have an auditor
- 42.2** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors
- 42.3** The auditor shall comply with Schedule 10 of the 2006 Act in auditing the accounts of the Trust.

## **43. Audit Committee**

- 43.1** The Board of Directors shall establish a committee comprising Non-Executive Directors (at least one of whom has competence in accounting and/or auditing and recent and relevant financial experience) as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate
- 43.2** The Audit Committee as a whole shall have competence relevant to the NHS sector.

## **44. Accounts**

- 44.1** The Trust must keep proper accounts and proper records in relation to the accounts
- 44.2** Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts
- 44.3** The accounts are to be audited by the Trust's auditor
- 44.4** The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct
- 44.5** The functions of the Trust with respect to the preparation of the annual accounts, as set out in paragraph 25 of Schedule 7 of the 2006 Act, shall be delegated to the Accounting Officer.

<b>45. Annual Report, Forward Plans and Non-NHS Work</b>
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- 45.1** The Trust shall prepare an annual report and send it to Monitor
- 45.2** The Trust shall give information as to its forward planning in respect of each financial year to Monitor
- 45.3** The forward plan shall be prepared by the Directors
- 45.4** In preparing the forward plan, the Directors shall have regard to the views of the Council of Governors
- 45.5** Each forward plan must include information about:
  - 45.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 45.5.2** the income it expects to receive from doing so
- 45.6** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 the Council of Governors must:
  - 45.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
  - 45.6.2** notify the Directors of the Trust of its determination
- 45.7** A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council

of Governors of the Trust voting approve its implementation.

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

**46.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

**46.1.1** the annual accounts

**46.1.2** any report of the auditor on them

**46.1.3** the annual report

**46.2** The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one Board Director in attendance

**46.3** The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 46.1 with the Annual Members' Meeting.

#### **47. Instruments**

**47.1** The Trust shall have a seal

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

#### **48. Amendment of the Constitution**

**48.1** The Trust may make amendments of its constitution only if:

**48.1.1** more than half of the members of the Council of Governors of the Trust voting approve the amendments, and

**48.1.2** more than half of the members of the Board of Directors of the Trust voting approve the amendments

**48.2** Amendments made under sub-paragraph 48.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act

**48.3** Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

**48.3.1** at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

**48.3.2** the Trust must give the members an opportunity to vote on whether they approve the amendment

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. Actions taken by the Trust under the amended constitution, prior to the amendment ceasing to have effect, remain valid

**48.4** Amendments by the Trust of its constitution are to be notified to Monitor.

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

**49.1** 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

**49.2** The Trust may enter into a significant transaction unless it is a merger, acquisition, separation or dissolution only if more than half of the members of the Council of Governors of the Trust voting, approve entering into the transaction

**49.3** The definition of “significant transaction” for the purposes of paragraph 49.2 and section 51A of the 2006 Act is set out in Annex 9 paragraph 1.

#### **50. Indemnities**

**50.1** Members of the Board of Directors, members of the Council of Governors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust

**50.2** The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Board of Directors, the Council of Governors and the Trust Secretary.



**ANNEX 1: THE PUBLIC CONSTITUENCIES**

(Paragraphs 7.1 and 7.3)

<b>THE PUBLIC CONSTITUENCIES</b>			
<b>Constituency Name</b>	<b>Area of the Constituency</b>	<b>No of Governors to be Elected</b>	<b>Minimum No of Members</b>
Essex Mid & South	The electoral wards covered by: <ul style="list-style-type: none"> <li>• Basildon Borough Council</li> <li>• Braintree District Council</li> <li>• Brentwood Borough Council</li> <li>• Castle Point Borough Council</li> <li>• Chelmsford Borough Council</li> <li>• Maldon District Council</li> <li>• Rochford District Council</li> <li>• Southend on Sea Borough Council</li> <li>• Thurrock Borough Council</li> </ul>	9	60
North East Essex & Suffolk	<ul style="list-style-type: none"> <li>• Colchester Borough Council</li> <li>• Suffolk County Council</li> <li>• Tendring District Council</li> </ul>	3	60
West Essex & Herts	<ul style="list-style-type: none"> <li>• Borough of Broxbourne Council</li> <li>• East Herts District Council</li> <li>• Epping Forrest District Council</li> <li>• Harlow Council</li> <li>• North Herts District Council</li> <li>• Stevenage Borough Council</li> <li>• Uttlesford District Council</li> <li>• Welwyn Hatfield Borough Council</li> </ul>	5	60
Milton Keynes, Bedfordshire & Luton, and Rest of England	<ul style="list-style-type: none"> <li>• Bedford Borough Council</li> <li>• Central Bedfordshire Council</li> <li>• Luton Borough Council</li> <li>• Milton Keynes Council</li> <li>• Any other Council in England unless named in Annex 1 to the Trust's Constitution</li> </ul>	2	60

**ANNEX 2: THE STAFF CONSTITUENCY**

(Paragraph 8.4 and 8.5)

<b>THE STAFF CONSTITUENCIES</b>			
<b>Constituency Name</b>	<b>Area of the Constituency</b>	<b>No of Governors to be Elected</b>	<b>Minimum No of Members</b>
Clinical	<ul style="list-style-type: none"><li>Registered medical practitioners and registered dentists</li><li>Registered nurses and registered midwives</li></ul>	4	60
Non-Clinical	<ul style="list-style-type: none"><li>Healthcare professionals (not included above)</li><li>Social workers</li><li>Support staff</li></ul>	2	60



**ANNEX 4: COMPOSITION OF COUNCIL OF GOVERNORS**

(Paragraphs 14.2 and 14.3)

<b>Public Governors</b>		<b>19</b>
Essex Mid & South	9	
North East Essex & Suffolk	3	
West Essex & Herts	5	
Milton Keynes, Bedfordshire & Luton, and Rest of England	2	
<b>Staff Governors</b>		<b>6</b>
Clinical	4	
Non-Clinical	2	
<b>Appointed and Partnership Governors</b>		<b>5</b>
Essex County Council	1	
Southend Borough Council	1	
Thurrock Council	1	
Anglian Ruskin and Essex Universities (joint appointment)	1	
Third Sector / Voluntary Sector	1	
<b>Total Council of Governors</b>		<b>30</b>

## ANNEX 4.1: NOT USED

## ANNEX 5: THE MODEL ELECTION RULES

(Paragraph 15.2)

The Model Election Rules 2014 are included as a separate document to this constitution. (<https://nhsproviders.org/resource-library/briefings/model-election-rules>)

## ANNEX 6: ADDITIONAL PROVISION – COUNCIL OF GOVERNORS

(Paragraphs 17.3, 18.2 and 24.1)

### 1. Roles and Responsibilities of the Council of Governors

The roles and responsibilities of the Council of Governors which are to be carried out in accordance with the constitution, the Trust's license and Monitor's *NHS Foundation Trust Code of Governance* include

#### 1.1 General Duties

- 1.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, including ensuring that the Board of Directors acts so that the Trust does not breach the terms of its license. "Holding the Non-Executive Directors to account" includes scrutinising how well the Board is working, challenging the Board in respect of its effectiveness, and asking the Board to demonstrate that it has sufficient quality assurance in respect of the overall performance of the Trust, questioning Non-Executive Directors about the performance of the Board and of the Trust and making sure to represent the interests of the Trust's members and of the public in doing so
- 1.1.2 to represent the interests of the members of the Trust and the interests of the public

#### 2.1 Non-Executive Directors, Chief Executive and Auditor

- 2.1.1 to approve the policies and procedures for the appointment and removal of the Chair and Non-Executive Directors on the recommendation of the Nomination Committee of the Council of Governors
- 2.1.2 to appoint the Chair and Non-Executive Directors
- 2.1.3 to remove the Chair and the Non-Executive Directors. However, the Council should only exercise its power to remove the Chair or any Non-Executive Directors after exhausting all means of

engagement with the Board

- 2.1.4** to approve the policies and procedures for the appraisal of the Chair, and Non-Executive Directors on the recommendation of the remuneration committee of the Council of Governors. All Non-Executive Directors should be submitted for re-appointment at regular intervals.. The Council of Governors should ensure planned and progressive refreshing of the Non-Executive Directors
- 2.1.5** to decide the remuneration of Non-Executive Directors and the Chair and to approve changes to the remuneration, allowances and other terms of office for the Chair and the Non-Executive Directors having regard to the recommendations of the Remuneration Committee of the Council of Governors
- 2.1.6** to approve the appointment of the Chief Executive of the Trust
- 2.1.7** to approve the criteria for the appointment, removal and reappointment of the auditor
- 2.1.8** to appoint, remove and reappoint the auditor, having regards to the recommendation of the Audit Committee

### **3.1 Strategy Planning**

- 3.1.1** to provide feedback to the Board of Directors on the development of the strategic direction of the Trust, as appropriate
- 3.1.2** to collaborate with the Board of Directors in the development of the forward plan
- 3.1.3** where the forward plan contains a proposal that the Trust will carry out activities other than the provision of goods and services for the purposes of the NHS in England, to determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions and notify its determination to the Board of Directors
- 3.1.4** where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the NHS in England, approve such a proposal
- 3.1.5** to approve the entering into of any significant transaction (as

defined in this constitution) in accordance with the 2006 Act and the constitution

- 3.1.6** to approve proposals from the Board of Directors for merger, acquisition, dissolution or separation in accordance with 2006 Act and the constitution
- 3.1.7** when appropriate, to make recommendations for the revision of the constitution and approve any amendments to the constitution in accordance with the 2006 Act and the constitution
- 3.1.8** to receive the Trust's annual accounts, any report of the auditor on them, and the annual report at a general meeting of the Council of Governors

#### **4.1 Representing Members and the Public**

- 4.1.1** to prepare and from time to time review the Trust's membership engagement strategy and policy
- 4.1.2** to notify Monitor, via the Lead Governor, if the Council is concerned that the Trust is at risk of breaching the terms of its license, and if these concerns cannot be resolved at local level
- 4.1.3** to report to the members annually on the performance of the Council of Governors
- 4.1.4** to promote membership of the Trust and contribute to opportunities to recruit members in accordance the membership strategy
- 4.1.5** to seek the views of stakeholders and feed back to the Board of Directors.

(Paragraphs 17.3 and 24.1)

#### **4. Eligibility to be a Governor**

- 4.1** A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if:
  - 4.1.1** they are a Director of the Trust, or a director of another health service body
  - 4.1.2** they are the spouse, partner, parent or child of a member of the Board of Directors for the Trust

- 4.1.3 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986
- 4.1.4 they are subject to a Sexual Offenders Order under the Sexual Offences Act 2003
- 4.1.5 they are included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list maintained under the laws of Scotland or Northern Ireland
- 4.1.6 they are undergoing a period of disqualification from a statutory health or social care register
- 4.1.7 they have been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000
- 4.1.8 they have been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service body
- 4.1.9 they are a vexatious complainant as determined in accordance with the Trust's complaints procedure
- 4.1.10 within 5 years prior to his nomination for election or appointment to the Council of Governors, they have had their office of Governor terminated for the reasons set out in paragraphs 5.1.4 – 5.1.9 of this Annex 6.

(Paragraph 17)

## **5. Termination of Office and Removal of Governors**

- 5.1 People holding office as a Governor shall cease to do so if:
  - 5.1.1. they resign by notice in writing to the Trust Secretary
  - 5.1.2 in the case of elected Governors, they cease to be member of the area of the constituency or class of the constituency by which they were elected
  - 5.1.3. in the case of an appointed or partnership Governor, the appointing organisation terminates the appointment of the individual
  - 5.1.4. they consistently and unjustifiably fail to attend the meetings of the Council of Governors in line with the Governor attendance policy as agreed by the Council of Governors
  - 5.1.5. they have refused without reasonable cause to undertake any training which the Trust requires all Governors to undertake



- 5.1.6. they have failed to sign and deliver to the Trust Secretary a statement in the form required confirming acceptance of the code of conduct for Governors
  - 5.1.7. they have failed to complete a submission identifying any conflict of interest or they have knowingly provided false or misleading information in this regard.
  - 5.1.8. they have committed a serious breach of the code of conduct for Governors or fails to abide by the Council of Governors standing orders
  - 5.1.9. they have acted in a manner detrimental to the interests of the Trust
  - 5.1.10. they have expressed opinions which are incompatible with the values of the Trust
  - 5.1.11. they are incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs
- 5.2 Governors who are to be removed under any of the grounds set out in paragraph 5.1 above (with the exception of sub-paragraph 5.1.1 – 5.1.3) above shall be removed from the Council of Governors by a resolution approved by the majority of the remaining Governors present and voting
- 5.3 There shall be a working group/committee of the Council of Governors whose function shall be to:
- 5.3.1 receive and consider concerns about the conduct of any governor and/or
  - 5.3.2 consider whether there are grounds to remove a Governor from office and to make recommendations to the Council of Governors. Membership of the working group/committee shall be determined from time to time
- 5.4 If the Council of Governors receives a complaint in writing about any Governor or is asked to consider whether an individual is eligible to become or remain a Governor, the working group shall investigate the matter and make a recommendation to the Council of Governors, which may include a recommendation that a Governor is removed from office pursuant to paragraph 5.2 above

- 5.5 The Council of Governors may decide that whilst the working group is carrying out its investigation, the Governor concerned shall be suspended from office. Suspension is a neutral act and any decision to suspend the Governor concerned shall not be seen as an indicator of, or have any bearing on, the eventual recommendation of the working group
- 5.6 If the Council of Governors decides to terminate a Governor's tenure of office pursuant to paragraph 5.2 above, the Governor may apply in writing to the Council of Governors within seven (7) days of the date of the decision, for the decision to be referred to an independent assessor
- 5.7 The decision of the Council of Governors to terminate the tenure of office of the Governor concerned shall not take effect until the later of:
- 5.7.1 seven (7) days after the date of decision; or
- 5.7.2 where the Governor applies for the decision to be referred to an independent assessor in accordance with paragraph 5.6 above, the date on which the independent assessor determines the matter
- 5.8 The Governor shall be suspended from office (if they have not already been suspended from office pursuant to paragraph 5.5 above) with effect from the date of the Council of Governors' decision until the later of the two dates set out in paragraph 5.7 above
- 5.9 On receipt of an application under paragraph 5.6 above the Council of Governors and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on the identity of the independent assessor within twenty-one (21) days of the date upon which the application is received by the Council of Governors, then the Council of Governors shall request the Chartered Institute of Arbitrators to nominate an independent assessor
- 5.10 The independent assessor will consider the evidence and conclude whether the decision to remove the Governor was reasonable or otherwise
- 5.11 The independent assessor's decision will be binding on the parties. If the independent assessor finds that the decision of the Council of Governors to remove the governor was not reasonable, the decision of the Council of Governors will be rescinded
- 5.12 The Trust shall bear the independent assessor's costs unless the

independent assessor determines that such costs shall be shared between the Trust and the Governor.

**ANNEX 7: STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

(Paragraph 19.1 and 20)

Standing Orders For The Practice And Procedure Of The Council Of Governors are included as a separate document to this constitution.

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**ANNEX 8: STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

(Paragraph 35)

Standing Orders For The Practice And Procedure Of The Board Of Directors are included as a separate document to this constitution.

## **ANNEX 9 – FURTHER PROVISIONS**

(Paragraph 49)

### **1. SIGNIFICANT TRANSACTIONS**

- 1.1 In accordance with section 51A of the National Health Service Act 2006, the Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction
- 1.2 For the purpose of this paragraph 1 and subject to paragraph 1.4 below, “Significant Transaction” means a “transaction” as defined in paragraph 1.3 below which meets any one of the following tests:
  - 1.2.1 the assets which are the subject of the transaction exceed 25% of the total fixed assets of the Trust (Asset Test); or
  - 1.2.2 the income of the Trust will increase or decrease by more than 25% following the completion of the relevant transaction (Income Test); or
  - 1.2.3 the gross capital of the company or business being acquired or divested represents more than 25% of the total 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 capital is determined by reference to its balance sheet) (Gross Capital Test); or
  - 1.2.4 the Asset Test, the Income Test and the Gross Capital Test are not satisfied but the transaction, in the reasonable opinion of the Board of Directors:
    - (a) would impact on the manner in which health services are delivered by the Trust and/or the range of health services the Trust delivers; or
    - (b) exceeds a total value of £10,000,000 (£10 million) and has an overall risk rating which in the reasonable opinion of the Board of Directors is considered to be significant. The Board of Directors will assess the significance of the overall risk of the transaction against the applicable Trust’s own risk management framework in force at the time the risk assessment is conducted by the Board of Directors
- 1.3 “Transaction” means any agreement (including an amendment to an agreement) entered into by the Trust in respect of a merger, demerger, joint venture, divestment, or any other arrangement for the acquisition, disposal or delivery of health services, but, for the avoidance of doubt, it does not include:

- 1.3.1 an agreement entered into or changes to the health services carried out by the Trust following a reconfiguration of the health services led by the commissioners of such health services; or
- 1.3.2 a grant of public dividend capital or the entering into a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the trust
- 1.3.3 For the purpose of this paragraph 1.3 the following definitions apply:
  - (a) “merger” means a transaction that involves one organisation acquiring / transferring the assets and liabilities of another, either wholly or in part;
  - (b) “demerger” means a transaction that involves the disaggregation of a single corporate body into two or more new corporate bodies;
  - (c) “joint venture” means a transaction involving an agreement between two or more parties to undertake economic activity together which establishes a separate legal entity.; and
  - (d) “divestment” means a transaction that involves the disposal, in whole or in part, of an organisation’s business, services or assets and liabilities where the Board of Directors has made a decision to do so.

1.4 A transaction is not a Significant Transaction if it is:

- 1.4.1 a transaction which is a statutory merger, acquisition, separation or dissolution under sections 56, 56A, 56B or 57A of the National Health Service Act 2006; or
- 1.4.2 a transaction in the ordinary course of current business from time to time (including the expiry, termination, renewal, extension of, or the entering into an agreement in respect of the health services carried out by the Trust).
- 1.4.3 a transaction that involves the disposal, in whole or in part, of an organisation’s business services or assets and liabilities where the Board of Directors has not made a decision and therefore is outside Trust control.

(Paragraphs 6.2 and 12.4)

## **2. TERMINATION OF MEMBERSHIP**

**2.1** A member shall not become or continue to be a member if:

- 2.1.1 it is reasonably suspected by the Board that in the five years prior to the individual’s application for membership of the Trust or during the

period of their membership of the Trust, they have been involved as a perpetrator in what the Board reasonably considers to be a sufficiently serious incident of intimidation, threat, harassment, assault or violence against:

- a) any of the Trust's employees or other persons who exercise functions for the purpose of the Trust, or against any volunteers; or
- b) any employee of another health service body or any person who exercises functions for the purposes of another health service body or against any person who volunteers with another health service body; or
- c) any service user or carer or visitor to the Trust or any service user, carer or visitor to any other health service body

2.1.2 they have been excluded from the Trust's premises within the previous five years

2.1.3 they are expelled from membership by resolution of the Council of Governors

2.1.4 they cease to be eligible under this Constitution to be a member

2.1.5 they die

2.2 It is the responsibility of members to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. Members who become aware of their ineligibility shall inform the Trust as soon as practicable and their names shall be removed from the Register of Members

2.3 Where the Trust has reason to believe that members cease to be eligible for membership or their membership can be terminated under this constitution, the Trust Secretary shall carry out reasonable enquiries to establish if this is the case.



## **ANNEX 10: ANNUAL MEMBERS' MEETING**

(Paragraphs 13 and 46)

### **1. Interpretation**

- 1.1. Save as permitted by law, the Chair shall be the final authority on the interpretation of these standing orders (on which the Chair shall be advised by the Chief Executive and the Trust Secretary)

### **2. General Information**

- 2.1. The purpose of the standing orders for Annual Members' Meetings is to ensure that the highest standards of corporate governance and conduct are applied to all Annual Members' Meetings
- 2.2. All business shall be conducted in the name of the Trust

### **3. Attendance**

- 3.1. Each member shall be entitled to attend an Annual Members' Meeting

### **4. Meetings in Public**

- 4.1. Meetings of the Annual Members' Meetings must be open to the public subject to the provisions of paragraph 4.2 below
- 4.2. The Chair may exclude members of the public from an Annual Members' Meeting if they are interfering with or preventing the reasonable conduct of the meeting
- 4.3. Annual Members' Meetings shall be held annually at such times and places as the Chair may determine

### **5. Notice of Meetings**

- 5.1. Before each Annual Members' Meeting, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an officer of the Trust authorised by the Chair to sign on their behalf, shall be served upon every member at least 10 clear days before the meeting and posted on the Trust's website and displayed at its headquarters
- 5.2. The Annual Report and Accounts shall be circulated to Governors and published on the website at the earliest and appropriate opportunity. Copies of the Annual Report and Accounts shall be sent to any member upon written request to the Trust Secretary and shall be available for inspection by a member free of charge at the place of the meeting

## **6. Setting the Agenda**

- 6.1. The Chair shall determine the agenda for Annual Members' Meetings which must include the business required by the Act

## **7. Chair of Annual Members' Meetings**

- 7.1. The Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair or Acting Chair shall preside. If neither the Chair, Vice-Chair nor Acting Chair is present the Directors and Governors shall elect one of their number to act as Chair

## **8. Chair's Ruling**

- 8.1. Statements of members made at Annual Members' Meetings shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final

## **9. Voting**

- 9.1. Decisions at meetings shall be determined by a majority of the votes of the members present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote subject to the Act
- 9.2. All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands
- 9.3. In no circumstances may an absent member vote by proxy

## **10. Suspension of Standing Orders**

- 10.1. Except where this would contravene any statutory provision, any one or more of these standing orders may be suspended at an Annual Members' Meeting, provided that a majority of members present vote in favour of suspension
- 10.2. A decision to suspend the standing orders shall be recorded in the minutes of the meeting
- 10.3. A separate record of matters discussed during the suspension of the standing orders shall be made and shall be available to the members
- 10.4. No formal business may be transacted while the standing orders are suspended
- 10.5. The Trust's Audit Committee shall review every decision to suspend the standing orders

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

- 11.1. These standing orders may be amended in accordance with paragraph 48 of the constitution

## **12. Record of Attendance**

- 12.1. The Trust Secretary shall keep a record of the names of the members present at an Annual Members' Meeting

## **13. Minutes**

- 13.1. The minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it
- 13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting
- 13.3. The minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website

## **14. Quorum**

- 14.1. No business shall be transacted at an Annual Members' Meeting unless at least 20 members are present.