












**Torbay and South Devon NHS Foundation Trust**  
**Council of Governors**

Via Microsoft Teams Video-Conference  
5 August 2020 14:00 - 5 August 2020 15:45

# AGENDA

#	Description	Owner	Time
1	<b>OPENING MATTERS</b>		14:00
1.1	<b>Chairman's welcome and apologies for absence</b> To receive	Chair	
1.2	<b>Declaration of interests</b> To receive	Chair	
2	<b>BUSINESS FROM PREVIOUS COUNCIL OF GOVERNORS' MEETING</b>		
2.1	<b>Minutes of Council of Governors' meeting held on 12 February 2020 and written resolution dated 6 May 2020 (enc)</b> To approve  02.1(i) - 2020.02.12 FINAL DRAFT CoG minutes.pd... 7  02.1(ii) - External auditor written resolution 06.05.20... 17	Chair	14:05
2.2	<b>Matters arising not covered elsewhere on the agenda</b> To receive	Chair	
3	<b>BUSINESS REPORTS</b>		
3.1	<b>Chairman's report (verbal)</b> To receive	Chair	14:10
3.2	<b>Chief Executive's report (enc)</b> To receive  03.2 - Chief Executive's CoG report.pdf 19	Chief Executive	14:15
4	<b>GOVERNANCE REPORTS</b>		
4.1	<b>Trust Constitution (enc)</b> To approve  04.1 - Trust Constitution.pdf 21	Company Secretary	14:45

#	Description	Owner	Time
4.2	<p><b>Company Secretary's Report (enc)</b></p> <p>To approve</p> <p> 04.2 - CoG Company Secretary's report.pdf 77</p>	Company Secretary	14:55
4.3	<p><b>Governors' Committee and Working Group Reports (enc)</b></p> <p> 04.3 - Governors' Cttee and Groups Reports.pdf 95</p>	Company Secretary	15:00
4.3.1	<p><b>Appendix 1 Quality and Compliance Committee (enc)</b></p> <p>To approve</p> <p> 04.3.1 - Appendix 1 Quality and Compliance Comm... 97</p>		
4.3.2	<p><b>Appendix 2 Membership Group Terms of Reference (enc)</b></p> <p>To approve</p> <p> 04.3.2 - Appendix 2 Membership Cttee draft ToR V... 99</p>		
4.3.3	<p><b>Appendix 3 Membership Group minutes held on 04.02.2020 (enc)</b></p> <p>To receive</p> <p> 04.3.3 - Appendix 3 2020.02.04_FINAL_Membershi... 105</p>		
5	<b>NON-EXECUTIVE DIRECTOR REPORTS</b>		
5.1	<p><b>Non-Executive Director Committee Reports:</b></p> <p>To receive</p>		15:10
5.1.1	<b>Governors' Nominations and Remuneration Committee (verbal)</b>	Sir R Ibbotson	
5.1.2	<b>NEDs' Nominations, Remuneration and Terms of Service Committee (verbal)</b>	Sir R Ibbotson	
5.1.3	<b>Audit Committee (verbal)</b>	Mrs S Taylor	
5.1.4	<b>Quality Assurance Committee (verbal)</b>	Mrs J Lyttle	
5.1.5	<b>Finance, Performance and Digital Committee (verbal)</b>	Mr C Balch	
5.1.6	<b>People Committee (verbal)</b>	Ms V Matthews	
6	<b>GOVERNOR ENGAGEMENT</b>		

#	Description	Owner	Time
6.1	<p>Feedback and questions from Members and Governors (enc)</p> <p>To receive</p> <p> 06.1 - Feedback and Questions from Members and... 109</p>	Chair	15:30
6.2	<p>Governor Communications Log (enc)</p> <p>To note</p> <p> 06.2 - Gov Comms Log.pdf 111</p>	Chair	15:40
7	<b>CLOSING MATTERS</b>		
7.1	Any other business	Chair	
7.2	Close of meeting	Chair	15:45*
	<p>Details of next Council of Governors' meeting: Wednesday 4 November 2020, 14:00 – 16:00.</p> <p>For information</p>		
	*A private meeting for Governors will take place at 15:45		
	Executive Directors, Non-Executive Directors and members of the public please leave the meeting at this point		

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**MINUTES OF THE COUNCIL OF GOVERNORS MEETING**

**HELD ON 12 FEBRUARY 2020 AT 2PM**

**IN THE ANNA DART LECTURE THEATRE, HORIZON CENTRE, TORBAY HOSPITAL**

Governors

* Nicole Amil	* Richard Ibbotson (Chair)	
Derek Blackford	Lesley Archer	Michael Birch
* Carol Day	Peter Coates	* Craig Davidson
* Lorraine Evans	* Chris Edwards	* Eileen Engelmann
Steven Harden	* Gary Goswell-Munro	* Annie Hall
* Lynne Hookings	Jonathan Hawkins	* David Hickman
* Mary Lewis	* Barbara Inger	* Michael James
Anna Pryor	* Paul Lilley	* Wendy Marshfield
* Elizabeth Welch	Rosemary Rowe	* John Smith

Directors

* Liz Davenport	Chief Executive	(CE)
Lesley Darke	Director of Estates and Commercial Development	(DECD)
Rob Dyer	Medical Director	(MD)
Judy Falcão	Director of Workforce and Organisational Development	(DWOD)
John Harrison	Chief Operating Officer	(COO)
Adel Jones	Director of Transformation and Partnerships	(DTP)
Dave Stacey	Chief Finance Officer	(CFO)
* (Jane Viner)	Chief Nurse and Deputy Chief Executive	(CN)
* Chris Balch	Non-Executive Director	(CB)
Jacqui Lyttle	Non-Executive Director / Senior Independent Director	(JL)
* Vikki Matthews	Non-Executive Director	(VM)
Paul Richards	Non-Executive Director	(PR)
* Robin Sutton	Non-Executive Director	(RS)
* Sally Taylor	Non-Executive Director / Vice Chair	(ST)
* Jon Welch	Non-Executive Director	(JW)

\* denotes member present / ( ) = present for part of meeting

In attendance:

Jane Downes	Company Secretary	(CoSec)
Monica Trist	Corporate Governance Manager and minute taker	(CGM)

## 1. OPENING MATTERS

### 1.1 Welcome and Apologies

Apologies were received from Derek Blackford, Peter Coates, Anna Pryor, Rosemary Rowe, Rob Dyer, Adel Jones, Dave Stacey, Jacqui Lyttle and Paul Richards.

### 1.2 Declaration of Interests

There were no declarations of interests.

## 2. BUSINESS FROM PREVIOUS COUNCIL OF GOVERNORS' MEETING

### 2.1 Minutes of the Meeting held on 18 December 2019

The minutes were approved as a true record of the meeting.

### 2.2 Matters arising not covered elsewhere on the agenda

There were no matters arising

## 3. BUSINESS REPORTS

### 3.1 Chairman's Report

The Chairman provided the following verbal report: -

**Use of Resources inspection** - Chairman advised this was currently being undertaken by the CQC - this would be the second inspection for the Trust, previous inspection having taken place in 2017. This process had been set up by the CQC to complement core services inspections.

**Devon Partnership Trust Chair** - Chairman reported that Mrs Julie Dent's term of office as Chair of Devon Partnership Trust would be ending shortly. Mrs Dent would be known to many present as the former Chair of Torbay Care Trust.

**Dartmouth Health and Wellbeing Centre** - BBC Spotlight had featured DECD's presentation to Dartmouth town council on 3 February. Good feedback had been received, and the Chief Executive would now be meeting with the local MP, Anthony Mangnall, to ensure that he was appropriately briefed and to explain the Trust approach to the provision of Health and Social Care in Dartmouth.

**League of Friends business breakfast** - Chairman thanked Mrs Welch and Mrs Hookings as members of the League of Friends for organising this event on 6 February, which had been well-attended by local businesses: many had expressed an interest in becoming more involved with the Trust, an approach which was very welcome.



**February Trust Board meeting** – This was attended by Dame Suzi Leather, STP Chair, who was keen to understand the FT structure and the role of governors, and how to take this into account when setting up a place-based Integrated Care system.

**Lescaze Dartington** – Chairman visited this location at the end of January – this Integrated Children’s Services site is now part of the Trust through the Children and Young People’s alliance. Chairman suggested that governors who have an interest in this area may find a visit to site useful, although this would need to be arranged in advance as Lescaze is a secure site.

**Named Link Governor** – In the absence of any volunteer for the role of Lead Governor, at the conclusion of Mrs Marshfield’s term of office at end of February, Carol Day has agreed to be the Trust’s named link governor with NHSI.

**Corona virus** – Chairman assured governors that the Trust had appropriate preparations in place. Chief Executive advised that a very strong NHS response was being provided and preparations were well-advanced. Very regular communications would be issued to staff with clear expectations. The Chief Nurse was leading on the implementation of any required actions with the Infection Control Team, to minimise any disruption to core services.

**Newly-elected MPs** – Chairman and Chief Executive would be contacting all four local MPS in the near future.

**Governor Elections** – these were now taking place and the Chairman extended his thanks on behalf of CoG for the service given by Mr Coates, Mr Lilley, Mrs Pryor and Mr Hickman over a number of years, as their terms of office come to an end.

Chairman extended special thanks on behalf of the CoG to Mrs Marshfield, Lead Governor, whose term of office was concluding at the end of February. He thanked her on behalf of the Board and the Trust for her commitment, time and effort on behalf of the Trust over a number of years.

### 3.2 **Chief Executive’s Report**

Chief Executive echoed the Chairman’s thanks to Mrs Marshfield, Lead Governor, for her contribution to the Trust.

Chief Executive confirmed that the new Chief Finance Officer, Mr Dave Stacey had commenced employment with the Trust: he had sent his apologies for today’s meeting as he was currently chairing the Trust’s Use of Resources assessment with the regulator.

The NHS operational plan had now been published with an emphasis on performance levels, particularly 52-week waits and the improvement of overall waiting times: the system was being asked to achieve 92% performance. There was no new guidance regarding financial requirements or control totals.

Chief Executive was pleased to inform governors of a very successful Registered Nurse Recruitment day held on 8 February, which had been attended by 36 people, with 22 interviews being held on the day: the event had provided a very positive showcase for the Trust.

Mrs Amil joined the meeting at this stage.

Chief Executive advised governors of the actions being taken following the coroner's inquest into the death of a 14-year old girl who had sadly died at Bristol Children's Hospital, following treatment at Torbay Hospital in October 2018. The Medical Director and Chief Executive had met with the clinical staff involved to ensure that appropriate support was provided for them and to identify any learning from this sad event.

Chief Executive took the opportunity to thank staff involved in the internal major incident which had occurred at the Trust, staff had worked tirelessly to effect an improvement in the very pressurised position being experienced through unprecedented demand, particularly in ED.

Members noted the contents of the Chief Executive's report.

## **4. GOVERNANCE REPORTS**

### **4.1 Company Secretary's report**

The Company Secretary highlighted key points from her report. She provided an update on the governor elections process currently taking place, with one public governor seat being contested in each of the Torbay, and Plymouth and South Hams constituencies, and a good level of interest from staff in the five staff governor vacancies. The elections would close on 28 February. Following the end of the Lead Governor's term of office, as there had been no volunteers for the role, Mrs Day had volunteered to be the nominated point of contact for the CoG and NHSI would be advised accordingly.

Company Secretary thanked governors who had taken part in the Task and Finish Group which had been set up to carry out a detailed review of the Trust's Constitution, and also all governors for the input which had been received. This work was now almost complete and following discussion with Chairman, Executive Directors and NEDs, a final version would be brought to May CoG for approval.

Governors were reminded of the various Governor Observer roles now available and were asked to consider whether they would like to register an interest in these at the appropriate time. The Company Secretary was collating the Governors' Register of Interests declarations and the register would be published on the Trust website once complete.

The Membership Group had asked for the Governor Engagement Feedback form to be brought to the CoG for formal approval and recommended this be used by all governors when any feedback is obtained from Trust Members or members of the public.

Expressions of interest were invited from governors wishing to attend the NHS Providers regional workshop being held in Taunton on 24 March – there were four places available. Mrs Inger asked about another NHS Providers event taking place at Bristol, she had expressed an interest in attending but had heard nothing further. Corporate Governance Manager would review this and arrange for Mrs Inger to be contacted outside the meeting.

Members received and noted the 2020/21 Council of Governors workplan and the schedule of 2020/21 meeting dates.

The CoG received and noted the Company Secretary's report.

## 4.2 **Lead Governor's report**

Mrs Marshfield thanked all present for the messages of thanks and goodwill she had received, as she came to the end of her term of office as governor.

She thanked governors for their input both with the various areas of current work described in the Company Secretary's report, and also during the various initiatives which had taken place during her time as lead governor, which had led to the development of an improved communications structure between the CoG and the Trust.

The monthly network meetings with the Chairman continue to be a valuable source of information for governors and Mrs Marshfield encouraged governor attendance at these meetings. The information provided by DECD at recent meetings regarding progress with the development of Health and Wellbeing Centres at Teignmouth and Dartmouth had been well-received.

It had been decided that constituency meetings minutes would now be taken to Governor pre-CoG meetings for all governors to discuss together.

The latest version of the Governors Comms Log was attached to the Lead Governor's report for noting by the CoG.

Finally, Mrs Marshfield thanked governors whose term of office was coming to an end, reiterated her thanks to current governors, and wished them and the Trust well for the future, as this would be her last formal meeting: she hoped the CoG and the Trust would continue to work together constructively for the benefit of members and the local population.

## 4.3 **Governors' Committee and Working Group Reports**

### 4.3.1 **Quality and Compliance Committee**

Mrs Marshfield confirmed the Committee had met on 29 January. She asked the COG to note that the Committee's terms of reference were due for review and that the January meeting would be the last for the majority of members, as their terms of office were coming to an end. Future decisions on governor observer roles would influence the make-up of the committee.

### 4.3.2 **Membership Group**

Company Secretary confirmed that the Group had met on 10 December and the notes of the meeting were included with today's meeting papers. The Chairman thanked Mrs Hookings for her work over the years as Chair of the Membership Group.

Mrs Hookings asked members to consider the recommendation in the minutes regarding a change of name from "Membership Group" to "Governors Engagement Group" to more accurately reflect the current business of the Group, whilst recognising that all governors were responsible for engaging with their members and feeding back to the Trust on information received. Company Secretary suggested that this proposal should be discussed further at 13 February Network meeting, and if confirmed, would be brought to the next CoG meeting for formal approval.

CoSec

## **5. NON-EXECUTIVE DIRECTOR REPORTS**

### **5.1 Non-Executive Director Committee Reports**

#### **5.1.1 Governors' Nominations and Remuneration Committee**

Chairman confirmed the Committee had met on 29 January, the key agenda item had been to review the NEDs' succession plan, looking at how best to ensure business continuity for the Board.

#### **5.1.2 NEDs' Nominations, Remuneration and Terms of Service Committee**

Chairman advised that the Committee had met to discuss arrangements for the recruitment of Chief Nurse, as Jane Viner would be retiring. The recruitment would be carried out at minimal cost, as with previous recruitment campaigns, but head-hunters would be used as required, owing to a shortage of potential applicants, although as much of the process would be carried out in house as possible.

Mrs Viner's position as Deputy Chief Executive would be reviewed as a separate issue.

Chief Executive confirmed that the Chief Nurse position was a statutory Board role, this was also the Professional Practice Lead role and responsible for closer working with the local authorities.

#### **5.1.3 Audit Committee**

Mrs Taylor confirmed that the Committee had met on 15 January, a detailed discussion had taken place on the Board Assurance Framework and the work of other committees and interaction with the Audit Committee.

A report had been received on progress with appointment of External Auditors and Mrs Taylor thanked governors for their involvement with the process.

A further item which had been discussed at length was the Patient Record system.

Governors noted the contents of the report on the work of the Audit Committee.

#### **5.1.4 Quality Assurance Committee**

There were no items to be reported to governors from QAC, which had taken place on 22 January, chaired by Mrs Lyttle

#### **5.1.5 Finance, Performance and Digital Committee (FPDC)**

Mr Balch reported on the meetings which had taken place in December and January, focussing on in-year performance. The 2019/20 Control Total had been revised mid-year, and FPDC had sought assurance that this revised control total would now be delivered.

The Committee had reviewed the action plan based on the KPMG report, which was being regularly updated: it was clear that both the Trust and the CCG shared this financial challenge.

Moving to 2020/21, the Committee had been provided with reports on the business planning and budgetary process, which were being developed to be achievable and to fit with STP requirements.

Various business cases had been reviewed and approved, including Windows 10 IT investment and a new business improvement system which would help to inform the Trust's decision-making process.

A process for the review of business cases which had previously been authorised would now take place at the committee, to ensure value for money and that objectives had been achieved.

There still remained a key area of risk around the Trust's IT Infrastructure and Estates position, with a need to ensure service continuity until the HIP2 project is complete – this was currently in a pre-election pause. It was important to ensure that replacement was not on a like for like basis but look to provide a futureproofed infrastructure. Chief Executive confirmed that to date, funding had been received to develop the business case, specialist input would be required to prepare a funding bid for DH and work would start shortly on this. Lead Governor asked how the Trust's Strategic Estates partner would be involved with this work, but Chief Executive advised this had yet to be determined. Chairman confirmed the Trust was just at the start of a lengthy process, ensuring that the project met the needs of the local population, took into account the Trust's position as an ICO, the use of AI and the views of younger members of the population. Chief Executive added there was also a requirement to consider how best to support people living longer and with complex needs. Mr Balch confirmed the business case would look at all the above planning issues, as well as considering required investment to maintain current business needs.

#### **5.1.6 People Committee**

Mrs Matthews, as Chair, provided the governors with information on the work of the People Committee. Lead Governor asked for assurance that the People Committee were looking at the issues of Recruitment and Retention, Training and Education and Sickness Absence. Mrs Matthews confirmed that all these were included on the Committee workplan. The People Committee had a very broad agenda, as Healthcare is a very people-related business, but the need to focus on items of the most strategic importance was recognised, together with ongoing Workforce issues.

The Committee would provide assurance to the Board and to governors that workforce strategies being implemented were appropriate. Mrs Matthews described the Committee's membership with good representation from the Executive Team, Workforce and OD and the Trust's ISU structure. The Terms of Reference had now been set and a workplan developed for the Committee, which would regularly review the Board Assurance Framework and people-related risks.

Mrs Matthews provided assurance to the Governors that the Trust sickness absence rate was reviewed at every meeting: this currently stood at 4.8%, which was similar to other Trusts nationally. The Committee would look at reasons for sickness absence and ensure that the Trust's Sickness Management Policy was fit for purpose and being applied consistently.

The issue of Recruitment, especially for Nurses and hard to fill specialties, was a key item on the national People Plan. The focus would be on new job roles and how to develop skillsets for the future, alongside developing our own staff wherever possible.

A deep dive would be undertaken into Appraisals, to ensure that the quality of appraisals was improved, not just that they were taking place: the current appraisal rate was 78%.

Mr Lilley, as Governor Observer on People committee and formerly the Workforce and OD group for three years, provided assurance to the CoG on the good work being carried out by the Committee, with the NEDs holding staff to account and appropriate deep dives and scrutiny into people-related issues being conducted.

Chairman thanked Mr Lilley for his comments, confirming that the People Committee had been established to address various workforce issues – staff engagement would also be key.

Mrs Day asked for confirmation that the important area of Agency usage would be reviewed and that the Committee considered people issues relating to the whole organisation, including Community staff, rather than being solely acute-focussed and Mrs Matthews provided this assurance – COO and System Leads were members of the Committee. Mrs Taylor asked for confirmation that areas around Inclusion and Diversity were being considered and Mrs Matthews confirmed that these were also on the committee's workplan. Chairman confirmed that these and similar areas could also be discussed at the governors' monthly Network meetings, and he would feed

back any issues raised by governors to Mrs Matthews, Committee Chair, as appropriate.

## **6. MEMBER AND GOVERNOR QUESTIONS**

### **6.1 Questions from Members and Governors**

There were no questions from members or governors

## **7. CLOSING MATTERS**

### **7.1 Any other business**

There were no items of any other business

### **7.2 Close of meeting**

Chairman closed the meeting at 15.20 hours

#### **Details of next Council of Governors' meeting:**

Wednesday 6 May 2020, 14:00–16:00 in the Anna Dart Lecture Theatre, Horizon Centre, Torbay Hospital.





## WRITTEN RESOLUTION OF THE COUNCIL OF GOVERNORS

### **Background:**

In accordance with the Constitution of Torbay and South Devon NHS Foundation Trust:  
Annex 2 Council of Governors Standing Orders: Section 19 Decisions without Meetings:

*“Approval of decisions without meetings (except for amendments under rule 18) where all Governors have been notified of the proposal and a majority of those eligible to vote have approved the resolution in writing within not less than four days”, is permitted.*

### **Resolution in writing:**

#### **IT IS RESOLVED THAT:**

Grant Thornton UK LLP is appointed as the Trust’s external auditor with effect from 1 July 2020 for a term of 3 years, with the option of two further extensions of one year.

**Passed by the Council of Governors**

**6 May 2020**

*Working with you, for you*



<b>COUNCIL OF GOVERNORS</b>				
<b>Report title:</b> Chief Executive's Report		<b>Meeting date:</b> 5 August 2020		
<b>Report appendix</b>	n/a			
<b>Report sponsor</b>	Chief Executive			
<b>Report author</b>	Company Secretary			
<b>Report provenance</b>	Reviewed by Executive Directors			
<b>Purpose of the report and key issues for consideration/decision</b>	<p>The Council of Governors meetings are clearly a key part of our governance arrangements and throughout the Covid-19 pandemic we have endeavoured to maintain/enhance our usual communication programme with Governors via regular briefings, email, bespoke newsletters and virtual meetings. The Company Secretary's Report provides more detail on the arrangements in place to keep all our Governors engaged in the work of the Trust as far as possible.</p> <p>I am mindful of the important role that Governors provide in actively seeking feedback from members of the public and the support Governors are able to provide to the Trust in communicating key messages.</p> <p>I acknowledge that Governors have asked about the timing of restarting services and so my intention at this Council of Governors' meeting is to provide, along with my Executive colleagues, a presentation outlining the National Reset Planning Guidance and our response as a Trust and as system partners, to recover activity and step-up our services.</p>			
<b>Action required (choose 1 only)</b>	<b>For information</b> <input type="checkbox"/>	<b>To receive and note</b> <input checked="" type="checkbox"/>	<b>To approve</b> <input type="checkbox"/>	
<b>Recommendation</b>	The Council of Governors is asked to receive and note the Chief Executive's Report.			
<b>Summary of key elements</b>				
<b>Strategic objectives supported by this report</b>	<b>Safe, quality care and best experience</b>	X	<b>Valuing our workforce</b>	X
	<b>Improved wellbeing through partnership</b>	X	<b>Well-led</b>	X

<b>Is this on the Trust's Board Assurance Framework and/or Risk Register</b>	<b>Board Assurance Framework</b>	X	<b>Risk score</b>	20
	<b>Risk Register</b>		<b>Risk score</b>	
	BAF Objective 1: To develop and implement robust recovery plans in response to the Covid-19 Pandemic to ensure provision of safe, quality care and best patient experience			
<b>External standards affected by this report and associated risks</b>	<b>Care Quality Commission</b>	X	<b>Terms of Authorisation</b>	X
	<b>NHS Improvement</b>	X	<b>Legislation</b>	
	<b>NHS England</b>	X	<b>National policy/guidance</b>	X

<b>COUNCIL OF GOVERNORS</b>	
<b>Report title:</b> Foundation Trust Constitution	<b>Meeting date:</b> 5 August 2020
<b>Report appendix</b>	Appendix 1: Legal compliance schedule Appendix 2: Constitution
<b>Report sponsor</b>	Company Secretary
<b>Report author</b>	Company Secretary
<b>Report provenance</b>	Council of Governors Task and Finish Group Board of Directors – 29 July 2020
<b>Purpose of the report and key issues for consideration/decision</b>	<p>The Council of Governors agreed last year to establish a task and finish group for the purpose of reviewing the Constitution. The task and finish group have met on several occasions to review each section of the Constitution and completed their review in February 2020.</p> <p>The Constitution Task and Finish Group confirmed the changes as outlined below and recommended approval to the Board of Directors. Following discussion with the Board on 1 April, it was agreed that the composition of the Council of Governors should remain the same for the time being. The proposed re-draft of the Constitution has therefore reverted to the existing composition of the Council of Governors.</p> <p>In the intervening period, the Council of Governors meeting due to take place in May was cancelled in accordance with national instructions due to Covid-19.</p> <p>Whilst this pause took place, the opportunity was taken to commission a legal review of the Constitution to ensure it enabled meetings to be held electronically and was also legally compliant, which in respect of the latter, legal advisors confirmed was the case in all but one respect (see Appendix 1). The section in question related to the South Hams and Plymouth (East) public constituency whereby the description needed to reflect the electoral areas covered by this constituency rather than postcodes as currently stated. This change has now been made along with other changes reflecting current best practice.</p> <ul style="list-style-type: none"> <li>• Quorum changes COG: changed from 12 governors to one-third of COG membership.</li> <li>• Additional provisions included: holding meetings by telephone or electronic means, provision for written resolutions and recording of meetings.</li> <li>• Included updates in accordance with CQC Fit and Proper Person Regulations relevant to directors and Governors.</li> </ul>

	<ul style="list-style-type: none"> <li>• Clarity regarding chairing of meetings in Chair's absence, when the public may be excluded from meetings, notice required for Annual Members Meetings.</li> <li>• Document re-formatted to conform to NHSI/NHSE Model Constitution format.</li> </ul> <p>In accordance with the Constitution, any amendments to the Constitution require approval by a majority of the Board of Directors prior to approval by the Council of Governors.</p> <p>The Board of Directors agreed at the Board meeting held on 29 July 2020 to recommend approval of the revised Constitution to the Council of Governors.</p> <p>The attached Constitution (see Appendix 2) is therefore presented for approval. Once approved the revised Constitution will be submitted to NHSI/NHSE for publication on their website.</p>			
<b>Action required</b>	<b>For information</b> <input type="checkbox"/>	<b>To receive and note</b> <input type="checkbox"/>	<b>To approve</b> <input checked="" type="checkbox"/>	
<b>Recommendation</b>	The Council of Governors is asked to approve the revised Constitution.			
<b>Summary of key elements</b>				
<b>Strategic objectives supported by this report</b>	<b>Safe, quality care and best experience</b>		<b>Valuing our workforce</b>	
	<b>Improved wellbeing through partnership</b>		<b>Well-led</b>	X
<b>Is this on the Trust's Board Assurance Framework and/or Risk Register</b>	<b>Board Assurance Framework</b>	n/a	<b>Risk score</b>	
	<b>Risk Register</b>	n/a	<b>Risk score</b>	
<b>External standards affected by this report and associated risks</b>	<b>Care Quality Commission</b>		<b>Terms of Authorisation</b>	X
	<b>NHS Improvement</b>	X	<b>Legislation</b>	X
	<b>NHS England</b>		<b>National policy/guidance</b>	X

Provision in the constitution	Is the provision a mandatory constitutional requirement?	Is the provision a statutory duty or power or other obligation?	Source of statutory duty, power or other obligation			Constitution legally compliant?	Reference in constitution		
			Core NHS	Sched 7 NHS	Other		Core constitution	Schedule	Notes
Validity of act of the trust is not affected by any vacancy among the directors or by any defect in the appointment of any director	No	Yes	36(5)			Yes	24.9		
Half of governors voting must approve amendment of constitution	No	Yes	37(1)(a)			Yes	47.1.1		
Half of directors voting must approve amendment of constitution	No	Yes	37(1)(b)			Yes	47.1.2		
Trust must inform NHS of amendments of constitution	No	Yes	37(4)			Yes	47.4		
Principal purpose of the trust is provision of the NHS in England	No	Yes	43(1)			Yes	3.1		
The Trust's income from the provision of goods and services for the NHS in England is greater than other income	No	Yes	43(2A)			Yes	3.2		
The trust may undertake additional income activities	No	Yes	43(3)			Yes	3.4		
The trust may implement a proposal to increase its non-NHS income by 5% or more if half the governors voting agree	No	Yes	43(3D)			Yes	44.7		
The trust may do anything which appears to be necessary or expedient for the purpose of or in connection with its functions	No	Yes	47(1)			Yes	4.1		
The trust's constitution specifies the description of significant transaction or that it contains no such description	No	Yes	51A			Yes	48.3		
The trust's constitution specifies that the trust may enter a significant transaction only if more than half the governors voting approve	No	Yes, but only if the constitution expressly excludes a description of significant transaction	51A			Yes	48.2		
The trust's constitution excludes a description of significant transaction	Yes, if the constitution does not require the CoG to approve significant transactions	Yes, if the constitution does not require the CoG to approve significant transactions	51A			N/A	N/A		
The trust's constitution specifies that a significant transaction excludes a statutory transaction	No	No			Good practice	Yes	48.3		
The trust's constitution specifies that the trust may enter a statutory transaction (merger, acquisition, separation or dissolution) only if more than half the governors approve	No	Yes	56(1A), 56A(2), 56B(2) or 57A(2)			Yes	48.1		
If the trust is established as a result of merger, its constitution specifies that on the grant of application, the directors of the applicant trust(s) may exercise its powers until a board of directors is appointed	No	Yes	56(11)			N/A	N/A		
If the trust is established as a result of acquisition, its constitution specifies that on the grant of application the directors may exercise the functions of a person whom the constitution specifies is a director but who is yet to be appointed	No	Yes	56A(5)			N/A	N/A		
If the trust is established as a result of separation, its constitution specifies that on the grant of application, the proposed directors may exercise its powers until a board of directors is appointed	No	Yes	56B(5)			N/A	N/A		
Contested elections for public and patient members of the council of governors must be by secret ballot	No	Yes	59(5)			Yes	13.4		
The trust must take steps to secure that membership of any public and patients' (if any) constituency is representative of those eligible for membership	No	Yes				Yes	12.3		
The trust must exercise its functions effectively, efficiently and economically	No	Yes				Yes	4.1		
The constitution names the trust	Mandatory	Yes		2(1)		Yes	2		
The trust's name includes the words 'NHS foundation trust'	Mandatory	Yes		2(1)		Yes	2		
The constitution specifies its principal purpose	Mandatory	Yes		2(2)		Yes	3		
All areas of public constituencies are electoral areas	Mandatory	Yes				Yes subject to confirming South Hams and Plymouth public constituency	Annex 1		
The constitution specifies the minimum number of members of each constituency or each class	Mandatory	Yes		5		Yes	Annex 1		
The constitution provides for opt out membership of the staff constituency	No	Yes		6(2)		Yes	9.1.2		
The constitution provides for opt out membership of the patients' constituency	No	Yes		6(3)		N/A	N/A		
Minimum age for membership	No	No			Good practice	Yes	10.3		
The constitution specifies prescribed statutory circumstances in which a person may not become or continue as a member	No	Yes		8(1)		Yes	Annex 9		
The constitution provides for other circumstances in which a person may not become or continue as a member	No	Yes		8(2)		Yes	10		
The constitution includes provision to suspend a member	No	No			Good practice	Yes	Annex 9, para 2.2.8		
More than half the governors must be elected public and / or patient governors	No	Yes		9(1)		Yes	Annex 3		
At least three governors are staff governors	No	Yes		9(2)		Yes	Annex 3		
At least one governor is appointed by a qualifying local authority	No	Yes		9(4)		Yes	Annex 3		
At least one governor is appointed by a university that provides a medical or dental school to one of the trust's hospitals	No	Yes		9(6)		N/A	N/A		
The council of governors should appoint one of themselves to the lead governor	No	No			Code of Governance Appendix B	Yes	5 Annex 9, para 5		
The maximum term of office of an elected governor is three years	No	Yes		10(1)		Yes	14.1		
The constitution specifies the maximum period for which an elected governor may hold office	No	No			Good practice	Yes			
The constitution specifies the general duties of the council of governors	No	Yes		10A		Yes	17		
The constitution specifies the trust will take steps to secure that governors are equipped with skills and knowledge they require	No	Yes		10B		Yes	17.2		
The governors may require one or more directors to attend a meeting	No	Yes		10C		Yes	18.4		
The trust may pay travelling and other expenses to governors	No	Yes		11		Yes	22 and 6		

The council of governors should meet at least four times a year	No	No			Code of Governance A.5.1	Yes		1.1		
Validity of CoG's decision-making is not affected by any vacancy among the governors or by any defect in the appointment of any governor or the calling of a meeting	No	No			Good practice	Yes			Annex 6, para 1.14	
The constitution provides for the chairman to preside at meetings of the council of governors. (NB the chairman is not a member of the council of governors and therefore does not have a vote.)	Mandatory	Yes	12			Yes		1.7		
The constitution provides for meetings of the CoG to be open to members of the public	Mandatory	Yes	13(1)			Yes		18.3		
The constitution provides for members of the public to be excluded from a meeting of the CoG or special reasons	No	Yes	13(2)			Yes		18.3		
The constitution makes provision as to conduct for elections for membership of the CoG	Mandatory	Yes	14(1)(a)			Yes		13.1		
The constitution makes provision as to appointment of persons to membership of the CoG	Mandatory	Yes	14(1)(b)			Yes		6		
The constitution makes provision as to practice and procedure of the CoG	Mandatory	Yes	14(1)(c)			Yes			Annex 6	
The constitution makes provision as to removal of a member of the CoG	Mandatory	Yes	14(1)(d)			Yes		15		
The constitution provides a process for a governor to appeal against removal	No	Yes			Code of Governance, B.6.6	Yes			Annex 6, para 4.5	
The constitution provides for the trust's board of directors to exercise its powers	Mandatory	Yes	15(2)			Yes		4.2		
Constitution provides for three or more persons authorised by the BoD to exercise discharge powers under s23 Mental Health Act 1983 (as amended by s45 Mental Health Act 2007)	No	Yes			§23 MHA 1983	Yes		4.4		
The constitution provides for any of the trust's powers to be delegated to a committee of directors or to an executive director	No	Yes	15(3)			Yes		4.3		
The constitution provides for the board to consist of executive and non-executive directors	No	Yes	16(1)			Yes		24.1		
The constitution provides for the NEDs to outnumber the EDs	No	No			Code of Governance	Yes		24.8		
The constitution provides for the executive directors to include the CEO (accounting officer), finance director, registered medical practitioner or registered dentist, and registered nurse or registered midwife	No	Yes	16(1)(a) and (2)			Yes		24.2		
The constitution provides for one of the non-executive directors to be chairman	No	Yes	16(1)(b)			Yes		24.2.1		
The constitution provides for the CoG at a general meeting to appoint the chairman and other NEDs	No	Yes	17(1)			Yes		27.2		
The constitution provides for removal of a NED to require approval of three quarters of the CoG	No	Yes	17(2)			Yes		27.4		
The constitution provides for the NEDs to appoint or remove the CEO	No	Yes	17(3)			Yes		30.1		
The constitution provides for a committee of the chairman, CEO and other NEDs to appoint or remove the EDs	No	Yes	17(4)			Yes		30.4		
The constitution provides for the CEO's appointment to require the CoG's approval	No	Yes	17(5)			Yes		30.2		
The constitution provides for the CoG at a general meeting to decide remuneration etc of NEDs	No	Yes	18(1)			Yes		36.1		
The constitution provides for a committee of NEDs to decide remuneration etc of the EDs	No	Yes	18(2)			Yes		36.2		
The constitution provides that the general duty of the BoD and each director individually to act with a view to promoting the trust's success so as to maximise the benefits for the members of the corporation as a whole and for the public	No	Yes	18A			Yes		25		
The constitution provides for duties of a director to avoid conflicts of interest and not to accept benefits from third parties	No	Yes	18B			Yes		35.1.1		
The constitution provides for directors to declare interests	No	Yes	18C			Yes		35.5		
The constitution provides for the BoD to send to the CoG copies of agendas of meetings and minutes of meetings	No	Yes	18D			Yes		33.2		
The constitution provides for meetings of the BoD to be open to members of the public	No	Yes	18E(1)			Yes		33.1		
The constitution provides for members of the public to be excluded from a meeting of the BoD for special reasons	No	Yes	18E(2)			Yes		33.1		
The constitution provides for the trust to have prescribed registers	Mandatory	Yes	20(1)			Yes		37		
The constitution provides for admission to and removal from registers	No	Yes	20(2)			Yes		38		
The constitution provides for dealing with directors' and governors' conflicts of interest	No	Yes	21			Yes		21 and 35		
The constitution provides for public inspection of prescribed documents	No	Yes	22			Yes		39.1 and 40		
The constitution provides for the trust to have an auditor	No	Yes	23(1)			Yes		41.1		
The constitution provides for the CoG to appoint or remove the auditor at a general meeting	No	Yes	23(2)			Yes		41.2		
The constitution provides for the trust to have an audit committee comprising NEDs	No	Yes	23(6)			Yes		42		
The constitution provides for the trust to keep accounts etc	No	Yes	24(1)			Yes		43		
The constitution provides for the trust to prepare annual accounts	No	Yes	25(1)			Yes		43		
The constitution provides for the trust to prepare an annual report	No	Yes	26(1)			Yes		44.1		
The constitution provides for the trust to give annual forward planning information to NHSI	No	Yes	27(1)			Yes		44.2		
The constitution provides for the trust to hold a members' annual meeting	No	Yes	27A(1)			Yes		11.1		
The constitution provides for the members at an annual meeting to decide whether to approve a constitutional amendment affecting the CoG's powers or duties	No	Yes	27A(4)			Yes		47.3.2		
The constitution provides for the CoG at a general meeting to approve the annual accounts, any auditor's report and the annual report	No	Yes	28(1)			Yes		45.1		



The constitution provides for a trust to combine a para 27A meeting with a para 28 meeting	No	Yes		28A	Yes	45.3		
The constitution provides for authentication of the fixing of the trust's seal	Mandatory	Yes		29(1)	Yes	46.2		



**Torbay and South Devon**  
NHS Foundation Trust

## **Torbay and South Devon NHS Foundation Trust**

### **Constitution**

[Approved xxx 2020]

# Torbay and South Devon NHS Foundation Trust Constitution

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## 1. Interpretation and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

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

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

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

**Annual Members Meeting** is defined in paragraph 11 of the constitution.

**constitution** means this constitution and all annexes to it.

**Monitor** is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.

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.

## 2. Name

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

## 3. Principal purpose

**3.1** The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England<sup>1</sup>.

**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:

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<sup>1</sup> The principal purpose is as set out in sub-section 43(1) of the 2006 Act and must be included in the constitution by virtue of paragraph 2(2). The paragraphs which follow reflect other provisions in section 43.

**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.

**4.4** Where the Trust is exercising functions of the managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an executive director of the Trust nor an employee of the Trust.

#### **5. Membership and constituencies**

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

**5.1** a public constituency; and

**5.2** a staff constituency.

#### **6. Application for membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust.

#### **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 An individual who is 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 he is 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 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

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.

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 six (6) 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.

8.6 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.

## 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;

shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.



**9.2** The Secretary shall make the final decision about the Constituency an individual shall be eligible to be a member.

**10. Restriction on membership**

**10.1** 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.

**10.2** 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.

**10.3** An individual must be at least fourteen (14) years old to become a member of the Trust.

**10.4** 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.

**11. Annual Members' Meeting**

**11.1** 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.

**11.2** Further provisions about the Annual Members' Meeting are set out in Annex 8 – Annual Members' Meeting.

**12. Council of Governors – composition**

**12.1** The Trust is to have a Council of Governors which shall comprise both elected and appointed governors.

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

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

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

- 13.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of single transferable vote (STV) polling and the Model Election Rules shall be construed accordingly.
- 13.2** The Model Election Rules as published from time to time NHS Providers form part of this constitution. The Model Election Rules are attached at Annex 4.
- 13.3** A subsequent variation of the Model Election Rules by 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).
- 13.4** An election, if contested, shall be by secret ballot.

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

- 14.1** An elected governor may hold office for three (3) consecutive terms up to a maximum period of nine (9) years.
- 14.2** An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.3** An elected governor shall be eligible for re-election at the end of his term.
- 14.4** An appointed governor may hold office for a period of up to nine (9) years.
- 14.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 14.6** An appointed governor shall be eligible for re-appointment at the end of his term.

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

- 15.1** The following may not become or continue as a member of the Council of Governors:
- 15.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 15.1.2** a person who has made a composition or arrangement with, or granted a

- trust deed for, his creditors and has not been discharged in respect of it;
- 15.1.3 a person who within the preceding five years has been convicted of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
  - 15.1.4 a person is the subject of a sex offenders order;
  - 15.1.5 a person in relation to whom a moratorium period under debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 15.1.6 a person whose tenure as a governor has been terminated in accordance with paragraph 4.4 and/or 4.5 of Annex 5; or
  - 15.1.7 a person whose tenure as a governor of another foundation trust has been terminated for cause.

15.1A Further provisions about eligibility are set out in Annex 6.

15.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.

15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

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

16.1 Where membership of the Council of Governors ceases for reasons of removal or resignation, public and staff governors shall be replaced in accordance with the following procedure:

16.2 Replacement will be by selecting the person with the next highest allocation of votes in the previous election for the constituency or class represented. The replacement governor shall serve the remainder of the term of office vacated by the previous governor. If there is no such person, then the seat shall remain vacant until the next annual election is held.

## 17. **Council of Governors – duties of governors**

17.1 The general duties of the Council of Governors are:

17.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and

17.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

17.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

17.3 The remuneration of governors by their respective employer.

**18. Council of Governors – meetings of governors**

18.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 27 below) or, in his absence, the Vice Chairman (appointed in accordance with the provisions of paragraph 29 below), shall preside at meetings of the Council of Governors.

18.2 In the absence of either the Chairman or Vice Chairman at a meeting of the Council of Governors, the governors present shall nominate another non-executive director to preside at that meeting.

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

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

**19. Council of Governors – standing orders**

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

**20. Council of Governors – referral to the Panel**

Not used

**21. Council of Governors – conflicts of interest of governors**

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes 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.

**22. Council of Governors – travel expenses and remuneration**

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust. Governors shall not be entitled to receive remuneration.

**23. Council of Governors – further provisions**

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

**24. Board of Directors – composition**

**24.1** The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

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

**24.2.1** a non-executive Chairman;

**24.2.2** not less than five (5) and no greater than eight (8) other non-executive directors; and

**24.2.3** not less than four (4) and no more than seven (7) executive directors.

**24.3** One of the executive directors shall be the Chief Executive.

**24.4** The Chief Executive shall be the Accounting Officer.

**24.5** One of the executive directors shall be the chief finance officer.

**24.6** One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

**24.7** One of the executive directors is to be a registered nurse or a registered midwife.

**24.8** The non-executive directors and Chairman together shall be greater than the total number of executive directors.

**24.9** The validity of any act of the Trust is not affected by any vacancy among

the directors of by any defect in the appointment of any director.

**25. Board of Directors – general duty**

The general duty of the Board of Directors and of each director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

**26. Board of Directors – qualification for appointment as a non-executive director**

**26.1** A person may be appointed as a non-executive director only if:

**26.1.1** he is a member of a Public Constituency; or

**26.1.2** where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university; and

**26.1.3** he is not disqualified by virtue of paragraph 32 below.

**26.2** The Chairman and non-executive directors must on appointment and for each and every term of office, meet the Independence Criteria. In the event a non-executive director or the Chairman has served on the Board for more than nine (9) years, he shall be replaced and the Council of Governors shall appoint a non-executive director in his place.

**26.3** The Independence Criteria means that the Chairman and non-executive directors on appointment and throughout their term of office must not:

**26.3.1** have been an employee of the Trust within the last five (5) years;

**26.3.2** receive or have received additional remuneration from the Trust (apart from a director's fee), participate in the Trust's performance related pay scheme (if any) or be, or have been a member of the Trust's pension scheme;

**26.3.3** have any close family tie with any director, senior employee or professional advisor to the Trust;

**26.3.4** not have any significant business link with any director of the Trust, including through involvement in any company or body; or

**26.3.5** have served on the Trust Board of Directors for more than nine years from the date of their first appointment.

**26.4** The Chairman may not previously have been the Chief Executive of the Trust.

**27. Board of Directors – appointment and removal of chairman and other non-executive directors**

- 27.1** A nominations committee shall be established to make recommendations to the Council of Governors on the appointment of the Chairman and Council of Governors.
- 27.2** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the Trust and the other non-executive directors.
- 27.3** Appointment of the Chairman or a non-executive director shall require the approval of a majority of the members of the Council of Governors.
- 27.4** Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

**28.** **Not used**

**29.** **Board of Directors – appointment of Vice Chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Vice Chairman. If the Chairman is unable to discharge his duties as Chairman of the Trust, the Vice Chairman shall be Acting Chairman of the Trust.

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

- 30.1** The non-executive directors shall appoint or remove the Chief Executive.
- 30.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 30.3** Not used
- 30.4** A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors. The Chairman shall act as the chair of such committee.

**31.** **Not used**

**32.** **Board of Directors – disqualification**

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

- 32.1** a person who falls within the definition of an “unfit person” as defined by the Trust’s Provider Licence, the Health and Social Care Act (2012) (Regulated Activities) Regulations and the Trust’s Constitution;
- 32.2** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 32.3** a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 32.4** a person who within the preceding five years has been convicted of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 32.5** a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 32.6** a person who has had their name removed, by a direction under section 151 of the 2006 Act from any relevant list, and has not subsequently had his name included on such a list;
- 32.7** a person who is the subject of a sex offender’s order;
- 32.8** a person who on the basis of disclosure obtained through a DBS check, he is not considered suitable by the Chairman on the advice of the Trust’s director responsible for human resources;
- 32.9** a person whose tenure of office as an officer 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 pecuniary interests;
- 32.10** a person who within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health from any paid employment with a health service body;
- 32.11** in the case of a non-executive director, he no longer satisfies paragraph 26;
- 32.12** a person who has been removed from trusteeship of a charity;
- 32.13** a person who is the spouse, partner, or child of a member of the Board of Directors;
- 32.14** in the case of a non-executive director, a person who has refused without reasonable cause to fulfill any training requirement established by the Board of Directors or refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors;
- 32.15** on the basis of disclosures obtained through an application by the Disclosure Barring Service, they are not considered suitable by the Chairman on the advice of the Trust’s director responsible for human resources; or
- 32.16** in the case of a non-executive director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board



of Directors, or refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.

**33. Board of Directors – meetings**

**33.1** 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.

**33.2** 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 (and prior to the next meeting), the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors. A meeting held in private shall not be covered by this clause.

**34. Board of Directors – standing orders**

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.

**35. Board of Directors - conflicts of interest of directors**

**35.1** The duties that a director of the Trust has by virtue of being a director include in particular:

**35.1.1** 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; or

**35.1.2** 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.

**35.2** The duty referred to in sub-paragraph 35.1.1 is not infringed if:

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

**35.2.2** the matter has been authorised in accordance with the constitution.

**35.3** The duty referred to in sub-paragraph 35.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

**35.4** In sub-paragraph 35.1.2, “third party” means a person other than:

- 35.4.1** the Trust; or
- 35.4.2** a person acting on its behalf.
- 35.5** 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.
- 35.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 35.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 35.8** 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.
- 35.9** A director need not declare an interest:
- 35.9.1** if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 35.9.2** if, or to the extent that, the directors are already aware of it; or
- 35.9.3** if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered:
- 35.9.3.1** by a meeting of the Board of Directors; or
- 35.9.3.2** by a committee of the directors appointed for the purpose under the constitution.
- 35.10** A matter shall have been authorised for the purposes of paragraph 35.2.2 if:
- 35.10.1** the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a director from being counted as participating in the decision-making process;
- 35.10.2** the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 35.10.3** the director's conflict of interest arises from a permitted clause (as determined by the Board of Directors) from time to time.
- 36. Board of Directors – remuneration and terms of office**
- 36.1** 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 Chairman and the other non-executive directors.

**36.2** 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, other executive directors, and other senior staff.

**37. Registers**

The Trust shall have:

**37.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

**37.2** a register of members of the Council of Governors, the class of constituency of which they are a member and an address through which they may be contacted (which may be the Secretary);

**37.3** a register of interests of governors;

**37.4** a register of directors, their capacity on the board and an address through which they be contacted (which may be the Secretary); and

**37.5** a register of interests of the directors.

**38. Admission to and removal from the registers**

**38.1** The Secretary (or their nominee) shall add to the register of members the name of an individual who is accepted as a member of the Trust under the provisions of this Constitution as soon as is reasonably practicable.

**38.2** The Secretary (or their nominee) shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of the Constitution as soon as is reasonably practicable.

**39. Registers – inspection and copies**

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

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

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

**39.3.1** they are to be available for inspection free of charge at all reasonable

- times; and
- 39.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 39.4** 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.

**40. Documents available for public inspection**

- 40.1** The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 40.1.1** a copy of the current Constitution;
- 40.1.2** a copy of the latest annual accounts and of any report of the auditor on them;
- 40.1.3** a copy of the latest annual report; and
- 40.1.4** a copy of the latest information as to its forward planning.
- 40.2** 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:
- 40.2.1** 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;
- 40.2.2** a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;
- 40.2.3** a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;
- 40.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- 40.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 40.2.6** 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;
- 40.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 40.2.8** a copy of any final report published under section 65I (administrator's

- final report);
- 40.2.9** 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; and
- 40.2.10** a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

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

**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. Auditor**

**41.1** The Trust shall have an auditor.

**41.2** The Council of Governors shall appoint or remove the auditor, on the recommendation of the Audit Committee, at a general meeting of the Council of Governors.

#### **42. Audit Committee**

The Trust shall establish a committee of non-executive directors (comprising of at least three (3) independent non-executive directors) as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

#### **43. Accounts**

**43.1** The Trust must keep proper accounts and proper records in relation to the accounts.

**43.2** Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

**43.3** The accounts are to be audited by the Trust's auditor.

**43.4** 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.

**43.5** The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

#### **44. Annual report, forward plans and non-NHS work**

- 44.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 44.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 44.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 44.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 44.5 Each forward plan must include information about:
- 44.5.1 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
  - 44.5.2 the income it expects to receive from doing so.
- 44.6 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:
- 44.6.1 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
  - 44.6.2 notify the directors of the Trust of its determination.
- 44.7 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.

#### **45. Presentation of the annual accounts and reports to the governors and members**

- 45.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 45.1.1 the annual accounts;
  - 45.1.2 any report of the auditor on them;
  - 45.1.3 the annual report;
  - 45.1.4 membership information, and any report on progress of the membership

strategy; and  
**45.1.5** register of governors' interest.

**45.2** The documents listed in 45.1.1, 45.1.2, and 45.1.3 shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

**45.3** The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 45.1 with the Annual Members' Meeting.

## **46. Instruments**

**46.1** The Trust shall have a seal.

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

## **47. Amendment of the constitution**

**47.1** The Trust may make amendments of its Constitution only if:

**47.1.1** more than half of the members of the Council of Governors of the Trust voting approve the amendments; and

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

**47.2** Amendments made under paragraph 47.1 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.

**47.3** 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):

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

**47.3.2** 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.

**47.4** Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor’s functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

**48. Mergers etc. and significant transactions**

**48.1** The Trust may only apply for a merger, acquisition, separation or dissolution (any of which is a statutory transaction) with the approval of more than half of the members of the Council of Governors.

**48.2** The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

**48.3** “Significant transaction” means a transaction which is not a statutory transaction but meets any one (1) of the following criteria:

**48.3.1** the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust’s annual turnover before acquisition;

**48.3.2** the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the Trust’s annual turnover before the disposition; or

**48.3.3** the transaction has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust’s annual turnover before the transaction.

**48.4** For the purpose of this paragraph, in assessing the value of any contingent liability for the purposes of paragraph 48.3 the directors:

**48.4.1** must have regard to all circumstances that the directors know, or ought to know, affect, or may affect, the value of the contingent liability;

**48.4.2** may rely on estimates of the contingent liability that are reasonable in the circumstances; and

**48.4.3** may take account of the likelihood of the contingency occurring.

**48.5** The views of the Council of Governors will be taken into account before the Trust enters into any proposed transaction which would exceed the threshold of 10% for any of the criteria set out in paragraph 48 above.

**48.6** A transaction excludes:



- 48.6.1** a transaction in the ordinary course of business, including the renewal, extension, or entering into an agreement in respect of healthcare services carried out by the Trust; and
- 48.6.2** any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services.

#### **49. Indemnity**

49.1 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, the Council of Governors, the Board of Directors, and the Secretary.

## **ANNEX 1 – THE PUBLIC CONSTITUENCIES**

The Public Constituency is divided in to three (3) classes as follows:

<b>Areas comprising the Public Constituency</b>	<b>Local Authority areas/or local authority electoral areas falling within the following Electoral Wards</b>	<b>Minimum number of Members</b>	<b>Number of elected Governors</b>
South Hams and Plymouth	South Hams Local Authority City of Plymouth Unitary Authority Electoral wards: Plympton Chaddlewood, Plympton St Mary, Plympton Erle, Plympton Dunstock and Plymstock Radford	Five hundred (500)	Three (3)
Torbay	Torbay Unitary Authority	Five hundred (500)	Seven (7)
Teignbridge	Teignbridge District Council	Five hundred (500)	Seven (7)

## **ANNEX 2 – THE STAFF CONSTITUENCY**

The Staff Constituency is divided in to six (6) classes as follows:

Classes comprising the Staff Constituency	Minimum number of Members	Number of elected Governors
Coastal Integrated Service Unit	One hundred (100)	One (1)
Moor to Sea Integrated Service Unit	One hundred (100)	One (1)
Newton Abbot Integrated Service Unit	One hundred (100)	One (1)
Paignton and Brixham Integrated Service Unit	One hundred (100)	One (1)
Torquay Integrated Service Unit	One hundred (100)	One (1)
Trustwide Operations and Corporate Services Integrated Service Unit	One hundred (100)	One (1)

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

The Council of Governors shall comprise 32 Governors comprised as set out below and illustrated in the following table:

- Seventeen (17) Governors elected by members of the Trust from the Public Constituency with each area appointing the number of Governors as set out in the table below:
- Six (6) Governors selected by the Staff Constituency, with the following number of Governors elected from each class within the Staff Constituency by that class:

Coastal Integrated Service Unit	1
Moor to Sea Integrated Service Unit	1
Newton Abbot Integrated Service Unit	1
Paignton and Brixham Integrated Service Unit	1
Torquay Integrated Service Unit	1
Trustwide Operations and Corporate Services Integrated Service Unit	1

- One (1) Governor appointed by each of the following local authorities or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency set out at Appendix 1:

South Hams District Council  
Teignbridge District Council  
Torbay Unitary Authority

- One (1) Governor appointed by Devon County Council
- One (1) Governor appointed by NHS Devon Clinical Commissioning Group
- One (1) Governor appointed by Devon Partnership NHS Trust
- One (1) Governor appointed by each of the following universities:

University of Exeter Medical School  
Plymouth University Peninsula School of Medicine and Dentistry

- One (1) Governor appointed by Devon Carers Strategy Board and/or Torbay Carers Strategy Steering Group

**Table:**

<b>Public Constituency</b>	<b>Number of Public Governor seats</b>	
South Hams and Plymouth		<b>3</b>
Teignbridge		<b>7</b>
Torbay		<b>7</b>
	<b>Sub Total</b>	<b>17</b>
<b>Staff Constituency</b>		
	<b>Number of Staff Governor seats</b>	
Coastal Integrated Service Unit		<b>1</b>
Moor to Sea Integrated Service Unit		<b>1</b>
Newton Abbot Integrated Service Unit		<b>1</b>
Paignton and Brixham Integrated Service Unit		<b>1</b>
Torquay Integrated Service Unit		<b>1</b>
Trustwide Operations and Corporate Services Integrated Service Unit		<b>1</b>
	<b>Sub Total</b>	<b>6</b>
<b>Appointed Governors' Constituency</b>		
Devon County Council		<b>1</b>
South Hams District Council		<b>1</b>
Teignbridge District Council		<b>1</b>
Torbay District Council		<b>1</b>
NHS Devon Clinical Commissioning Group		<b>1</b>
Devon Partnership NHS Trust		<b>1</b>
University of Exeter Medical School		<b>1</b>
Plymouth University Peninsula School of Medicine and Dentistry		<b>1</b>
Voluntary Sector: Devon Carers		<b>1</b>
	<b>Sub Total</b>	<b>9</b>
	<b>Total</b>	<b>32</b>

**ANNEX 4 –THE MODEL ELECTION RULES**

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

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

**1.1** The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with the Constitution:

- 1.1.1.** to appoint, and if appropriate, to remove the Chair;
- 1.1.2.** to appoint, and if appropriate, remove the other non-executive directors;
- 1.1.3.** to decide the remuneration and allowances and conditions of office of the Chairman and other non-executive directors;
- 1.1.4.** to approve the appointment of the Chief Executive;
- 1.1.5.** to appoint, and if appropriate, remove the auditor;
- 1.1.6.** receive the Trust's annual accounts, and any report of the auditor on them, and the annual report;
- 1.1.7.** in preparing the Trust's annual plan, the Board of Directors must have regard to the views of the Council of Governors;
- 1.1.8.** to decide whether the Trust's private patient work would significantly interfere with the Foundation Trust's principal purpose, which is to provide goods and services for the health service in England, or performing the Foundation Trust's other functions;
- 1.1.9.** to approve any proposed increase in non-NHS income of 5% of the Trust's total income in any one financial year;
- 1.1.10.** to hold the non-executive directors, individually and collectively, to account for the performance of the Board of Directors;
- 1.1.11.** to represent the interests of the members of the Trust as a whole and the interests of the public;
- 1.1.12.** to act in the best interests of the Trust and to adhere to its values and code of conduct;
- 1.1.13.** to regularly feedback information about the Trust, its vision and its performance to the constituencies and stakeholder organisations that either elected them or appointed them;
- 1.1.14.** to prepare and review on an annual basis the Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive directors; and
- 1.1.15.** when appropriate, to make recommendations for the revision of this Constitution.

### **2. Appointed Governors**

#### **Local Authority Governors**

**2.1** The Chairman, having consulted with Devon County Council, South Hams District Council, Teignbridge District Council and Torbay Unitary Authority,

or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency, is to adopt a process for agreeing the appointment of one (1) Local Authority Governor from each of those local authorities.

### **Partnership Governors**

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

### **General Provisions**

- 2.3** Appointed Governors:

- 2.3.1** appointed Governors shall normally hold office for a period of three (3) years commencing on the date such appointment is to have effect;
- 2.3.2** appointed Governors are eligible for re-appointment at the end of that period; and
- 2.3.3** appointed Governors may not where re-appointed hold office for longer than nine (9) consecutive years, and shall not be eligible for re-appointment if they have already held office for more than six (6) consecutive years. One year is consecutive with another unless there is a period of not less than one year between them.

- 2.4** Additional Roles and Responsibilities of Appointed Governors Subject always to the overriding principle that the Governors' first responsibility is to the Council of Governors and the Trust:

- 2.4.1** the roles and responsibilities of the Appointed Governors which are to be carried out in accordance with the Constitution include:
- 2.4.1.1** to further the relationship between the organisation that the Appointed Governors represent and the Trust;
- 2.4.1.2** to bring to the Council of Governors a greater understanding of the organisation that the Appointed Governors represents;
- 2.4.1.3** to speak with authority for the organisation they represent and be able to explain its policies; and
- 2.4.1.4** to represent the Trust to the organisation they represent.

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

- 3.1** A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if:
- 3.1.1** they are a director of the Trust, or a Governor or director of a NHS body as defined in section 28(6) of the 2006 Act (unless they are an appointed Governor appointed by the NHS body for which they are a Governor or director);
- 3.1.2** they are the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the Trust;
- 3.1.3** being a member of the Public Constituency they refuse to sign a declaration in the form specified by the Secretary, of particulars of their



- qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
- 3.1.4** they are a vexatious complainant within the meaning of paragraph 1.1.2 in Appendix 9;
  - 3.1.5** on the basis of disclosures obtained through an application to the Disclosure Barring Service, they are not considered suitable by the Chairman on the basis of advice from the Trusts' director responsible for human resources;
  - 3.1.6** They have not within the preceding two (2) years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment within a NHS Body;
  - 3.1.7** they are a person whose tenure of office as the Chair or as a member or director of a NHS Body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of pecuniary interests;
  - 3.1.8** they are a person who has had his or her name removed or been suspended from any list (including any performers list maintained by a clinical commissioning group) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not had subsequently had his or her name included in such list or had his or her suspension lifted or qualification reinstated;
  - 3.1.9** they are incapable by reason of mental disorder, illness or injury of carrying out their functions as a Governor and it is anticipated that such incapacity will continue for a period of six (6) months or the remainder of the Governor's tenure of office;
  - 3.1.10** they have within the preceding five (5) years been:
    - 3.1.10.1** made subject to a Hospital Order under section 37 of the Mental Health Act (MHA) whether or not subject to restriction under section 41;
    - 3.1.10.2** made subject to restrictions under section 41;
    - 3.1.10.3** made subject to a transfer direction under the Criminal Procedure (insanity) Act 1964 as amended; and/or
  - 3.1.11** they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation; or
  - 3.1.12** they have been excluded from the Trust's premises on the grounds of having been violent and/or abusive towards staff, patients and/or visitors or are subject to an anti-social behaviour order.

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

- 4.1** A person holding office as a Governor shall immediately cease to do so if:
  - 4.1.1** they resign by notice in writing to the Secretary;
  - 4.1.2** they are under sixteen (16) years of age;
  - 4.1.3** they fail to attend two (2) consecutive meetings, unless the Chairman, in consultation with the Council of Governors, is satisfied that:
    - 4.1.3.1** the absences are due to reasonable causes; and

- 4.1.3.2** they will be able to start attending meetings of the Council of Governors again within such a period as is considered reasonable.
- 4.1.4** in the case of an elected Governor, they cease to be a member of the Constituency or class or area of the Constituency by which they were elected, which for the avoidance of doubt, includes in respect of a Public Governor a Governor moving their principal residence from one area within the Public Constituency to another or they are an elected member of a Devon County Council, South Hams District Council, Teignbridge District Council of Torbay Unitary Authority;
- 4.1.5** in the case of an Appointed Governor, the appointing organisation terminates the appointment;
- 4.1.6** they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
- 4.1.7** they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;
- 4.1.8** they have failed to sign and deliver a letter of acceptance in the form required by the Secretary, and/or it becomes apparent that any information provided by the person in respect of their eligibility to be a Governor or such letter of acceptance is or becomes inaccurate;
- 4.1.9** they are removed from the Council of Governors under the following provision:
- 4.1.9.1** a Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that he or she has committed a serious breach of the code of conduct for Governors, or he or she has acted in a manner detrimental to the interests of the Trust, and the Council of Governors consider that it is not in the best interests of the Trust for him or her to continue as a Governor. The Governor concerned may make representation on his or her own behalf to the Council of Governors.
- 4.1.10** a declaration is made pursuant to paragraph 4.4.5 below.
- 4.2** Each Governor shall be responsible for ensuring that they are eligible to become or continue as a Governor of the Trust.
- 4.3** If a Governor has been disqualified pursuant to paragraphs 4.1.2, 4.1.5 or 4.1.6 they shall only be eligible for re-election after a period of three (3) years.
- 4.4** Without prejudice to paragraph 4.2 of this Appendix 5:
- 4.4.1** where the Trust is on notice that a Governor may be disqualified from membership in accordance with this Constitution, the Secretary shall carry out all reasonable enquiries to determine whether or not the Governor in question is so eligible;
- 4.4.2** the Secretary, following their enquiries pursuant to paragraph 4.4.1 above, if, satisfied that the person may be so disqualified, shall give notice in writing to that person that the Trust proposes to declare the person disqualified;

- 4.4.3** in the notice sent by the Secretary pursuant to paragraphs 4.4.2 above, the Secretary shall specify the grounds on which it appears to them that the person is disqualified and give that person a period of at least 14 but no more than 28 days in which to make representations, orally or in writing, on the proposed disqualification;
- 4.4.4** Any representations pursuant to paragraph 4.4.3 above shall be made to, and considered by, a committee of the Directors, which in this case shall determine the proposal; and
- 4.4.5** if no representations pursuant to paragraph 4.4.4 above are received within the specified time or the committee of Directors upholds the proposal to disqualify the Governor having heard representations, the Secretary shall immediately declare that the person in question is disqualified and notify him or her in writing to that effect. On such declaration that person's tenure of office shall be terminated and he or she shall cease to act as a Governor.
- 4.5** If a Governor is aggrieved at his or her disqualification under paragraph 4.4, then s/he may apply in writing within 7 days (time of the essence) to the Secretary for the decision to be referred to an independent assessor. The independent assessor will then consider the evidence and conclude whether the proposed removal is reasonable or otherwise. On receipt of an application the Secretary and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If they fail to agree on an independent assessor within 21 days of the date upon which the application is received, then the Trust Secretary shall request the Centre for Effective Dispute Resolution to nominate the independent assessor. The independent assessor's decision will be binding and conclusive on the parties.
- 4.6** Pending a final decision to be made in accordance with the provisions in paragraphs 4.4 and/or 4.5, the Chair or (following its appointment) the committee of Directors may in his, her or their absolute discretion suspend a Governor.
- 4.7** Pending a final decision to be made in accordance with the provisions in paragraphs 4.4 and/or 4.5, a Governor may not resign without the agreement of the Chair or (following its appointment) the committee of Directors if the Secretary has given notice in writing to that Governor under paragraph 4.4.2 that the Trust proposes to declare the Governor disqualified.

## **5. Vacancies amongst Governors**

- 5.1** Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions apply:
- 5.1.1** where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the appointing organisation appoints a

- replacement to hold office for the remainder of that term of office of the Governor who is being replaced; or
- 5.1.2** where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
- 5.1.2.1** to call an election to fill the seat at the next annual election for the remainder of the terms of office of the Governor who is being replaced; or
- 5.1.2.2** to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and be subject to election.

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

- 6.1** The Trust may reimburse Governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.
- 6.2** The Trust may at their discretion decide to reimburse the cost and expense of a Governor's carer arrangements necessarily and reasonably incurred in such Governor carrying out their duties as the Board of Directors decides.
- 6.3** In respect of a Staff Governor who is an employee of the Trust, the Board of Directors shall seek to facilitate such employee's reasonable participation as a Staff Governor during normal working hours to the extent reasonably necessary for the performance of their duties as a Staff Governor (including reasonable time off from his or her contracted duties) and shall not make any corresponding deduction from salary.
- 6.4** Governors are not to receive remuneration from the Trust otherwise than as set out in paragraphs 6.1 and/or 6.2 and/or 6.3 above of this Appendix 5.

## **7. Governors' Code of Conduct**

- 7.1** The Trust from time to time publish a Governors' code of conduct and each Governor shall be required to follow and observe such code of conduct's provisions.

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

**1. Meetings of the Council of Governors**

- 1.1** The Council of Governors is to meet a minimum of four (4) times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen (14) days' written notice of the date and place of every meeting of the Council of Governor to all Governors. Notice of the Council of Governor's meetings will be made public by whatever communications method the Trust determines.
- 1.2** Meetings of the Council of Governors may be called by the Secretary, or by the Chair.
- 1.3** Meetings of the Council of Governors may be called by ten (10) Governors, which shall include at least one (1) elected Governor and one (1) appointed Governor, who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request.
- 1.4** The Secretary shall call a meeting on at least seven (7) but no more than twenty-eight (28) days' notice.
- 1.5** If the Secretary fails to call such a meeting following notice pursuant to paragraph 1.3 above then the Chair of ten (10) Governors, which ever is the case, shall call such a meeting.
- 1.6** At least one-third of Governors shall form quorum for the Council of Governors.
- 1.7** Meetings of the Council of Governors' shall be chaired by the Trust Chair. On matters concerning the succession of the Chair, the Senior Independent Director will preside.
- 1.8** The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisers to attend a meeting of the Council of Governors.
- 1.9** Any Governor who is unable to attend the Council of Governors meeting should advise the Secretary in advance of the meeting.
- 1.10** Any Governor who is not able to be present in person may participate in a

Council of Governor's meeting by means of conference telephone or any other such electronic means, which allows all participating in the meeting to hear each other. A Governor so participating shall be deemed to be present in person at such meeting and shall be entitled to vote and counted in the quorum. Such a Council of Governor's meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the Chair is located.

**1.11** Subject to the Constitution and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.

**1.12** Not used

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

**1.14** All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid notwithstanding any vacancy or any defect in the calling of the meeting, or the election or appointment of the Governors attending the meeting.

**1.15** 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 the whole or part of such meeting in the following circumstances:

**1.15.1** where the Council of Governors by resolution decides for reasons of commercial confidentiality for other special reasons arising from the business of the meeting; or

**1.15.2** wherever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted.

**1.16** The Chairman may exclude a member of the public if they are interfering with or preventing the proper conduct of the meeting.

### **Proposing Council of Governors' motions**

**1.17** Questions on notice are defined as questions from Governors about matters which are directly in relation to matters over which the Council of Governors had powers or duties, or which affect the services provided by

the Trust.

- 1.18** A Governor may ask a question which is not related to items on the forthcoming Council of Governors' agenda.
- 1.19** An answer may take the form of: a direct oral answer; where the information is in a publication of the Trust or other published work by reference to that publication; where the reply cannot be conveniently be given orally in the form of a written answer circulated later to the questioner and the Council of Governors; or by brief oral answer supplemented by a written answer circulated later to the questioner and the Council of Governors.
- 1.20** Approval to speak at Council of Governors' meetings will be given by the Chair. Unless in the opinion of the Chair it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature, complexity and importance, no proposal speech, nor any reply, may exceed three minutes. in the interests of time, the Chair may limit the number of replies which are heard.
- 1.21** A person who has spoken on a motion may not speak again whilst it is the subject of debate, except in exercise of right of reply, on a point of order, or, at the discretion of the Chair.
- 1.22** Supplementary questions for clarification may be asked at the discretion of the Chair.
- 1.23** Motions may only be submitted by Governors and must be received by the Secretary in writing at least fourteen (14) days before the meeting date, together with any relevant supporting paper. Except for motions which can be moved without notice under 1.23, written notice of every motion signed or transmitted by at least two (2) Governors, is required. The Secretary shall acknowledge such motions.
- 1.24** Urgent motions may be submitted before the commencement of meetings of the Council of Governors, provided that the motions are signed or transmitted by at least two (2) Governors. Consideration of urgent motions shall be at the discretion of the Chair.
- 1.25** The following motions may be moved without notice: accuracy of the minutes; change the order of business in the agenda; refer something to an appropriate body or individual; appoint a working group arising from an item on the agenda; receive reports or adopt recommendations made by the Board of Directors; withdraw a motion; amend a motion (without

substantially altering the intention of the motion); proceed to the next business; that the question now be put; adjourn a debate; adjourn a meeting; suspend a Council of Governors procedure rule (for the duration of the meeting); exclude the public and press; give the consent of the Council of Governors where its consent is required by the Constitution; or, not hear further a Governor or to exclude them from the meeting.

### **Proposing Council of Governors' Written Resolutions**

- 1.26** The Secretary, the Chair, or ten (10) Governors, including one Elected Governor and one Appointed Governor, who give written notice to the Secretary specifying the business to be carried out may propose a Council of Governors' written resolution.
- 1.27** The following may not be passed as a written resolution: the removal of a Non-Executive Director or Chair; removal of the auditor; or, approval of a significant transaction.
- 1.28** A Council of Governors' written resolution is proposed by giving written notice of the proposed resolution to each Governor. Notice by post, delivery in person, fax or email shall constitute written notice.
- 1.29** Notice of a proposed Council of Governors written resolution must indicate:
- 1.29.1** the proposed resolution;
  - 1.29.2** how to signify agreement to the resolution; and
  - 1.29.3** the date by which it is proposed that the Council of Governors should adopt it. A proposed written resolution shall lapse if not adopted by the 28<sup>th</sup> day from circulation.
- 1.30** References in this paragraph to eligible Governors are to members of the Council of Governors who would have been entitled to vote on the matter had it been proposed at a meeting of the Council of Governors.
- 1.31** A decision may not be taken in accordance with this paragraph if the eligible governors would not have formed a quorum at such a meeting.
- 1.32** The resolution is deemed to have been passed when the required majority (simple majority, or 75% majority if a special resolution) as appropriate of eligible Governors have signed their agreement to it.
- 1.33** Where decisions of the Council of Governors are taken by means other than at a face-to-face meeting or by written resolution, such decisions shall be recorded by the Secretary in permanent written form.



## **2. Disclosure of interests**

- 2.1** Members of the Council of Governor's shall disclose to the Council of Governor's any material interests as defined below held by a Governor, and shall withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue (and if advertently they do remain and vote, their vote shall not be counted).
- 2.2** Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 2.3** Subject to the exceptions below, a material interest in a matter is where a Governor:
- 2.3.1** holds any directorship, including non-executive directorship, (with the exception of dormant companies) of a company;
  - 2.3.2** holds any interest or position in any firm or company or business;
  - 2.3.3** has any interest in an organisation providing health and social care services to the National Health Service; or
  - 2.3.4** holds any position of authority in a charity or voluntary organisation in the field of health and social care;

and such organisation is, in connection with the matter, trading with the Trust or entering into a financial arrangement with the Trust, or is likely to be considered as a potential contractor to the Trust.

- 2.4** The exceptions which shall not be treated as material interests are as follows:
- 2.4.1** shares held in any company where the value of those securities does not exceed £25,000 or the number of shares held does not exceed 5% of the total number of issued shares in a company whose shares are listed on any public exchange;
  - 2.4.2** an employment contract with the Trust held by a Staff Governor;
  - 2.4.3** an employment contract with a local authority held by a Local Authority Governor;
  - 2.4.4** an employment contract with a partnership organisation held by a Partnership Governor; or
  - 2.4.5** any travelling or other expenses or allowances payable to a Governor.

### **3. Declaration**

An Elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Council of Governors. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors.

### **4. Council of Governors Committees, Sub-Committees and Groups**

**4.1** The Council of Governors shall establish a nominations committee for the purpose of discharging its duties in accordance with the 2006 Act and the NHS Foundation Trust Code of Governance. The nominations committee will decide the remuneration and allowances and other terms and conditions of office of the Chairman and other non-executive directors.

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

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

The Standing Orders for the Board of Directors must provide for:

- 1.1** Provision for the composition, membership, tenure and role of members of the Board of Directors.
- 1.2** Provision for the conduct of meetings including:
  - 1.2.1** Notices of motions, petitions, the withdrawal of motions and motions to rescind resolutions;
  - 1.2.2** Voting, which may not provide for voting otherwise than on the basis of one vote for each Director apart from the Chair of the meeting;
  - 1.2.3** Provision for proxies;
  - 1.2.4** Chairing the meeting in the absence of the Trust Chair;
  - 1.2.5** Powers of the Chair to determine the conduct of the meeting;
  - 1.2.6** Circumstances where persons other than Directors may be allowed to speak at meetings;
  - 1.2.7** Quorum;
  - 1.2.8** Provision for a record of attendance and the requirement for minutes of the meetings to be kept;
  - 1.2.9** Provision for the approval of decisions without meetings;
  - 1.2.10** Provision for meetings to be held using telephone or electronic means;
  - 1.2.11** Provision for the establishment of committees, sub-committees and working groups which must include; an Audit Committee comprising Non-Executive Directors, an Executive Nominations and Remuneration Committee, comprising Non-Executive Directors and the Chief Executive; and a Charitable Funds Committee;
  - 1.2.12** Provision for the appointment of Chair, Non-Executive Directors, Executive Directors and Secretary, and the appointment of Vice-Chair and Senior Independent Director;
  - 1.2.13** Provision for requiring the declarations of interests and providing for the conduct of Directors when an interest is material;
  - 1.2.14** Provision requiring the adherence to the Nolan Principles and NHS Standard of Business Conduct as published from time to time;
  - 1.2.15** Provisions governing the procurement of works, goods and services, and tendering and contract procedures;
  - 1.2.16** Provision regarding the use of the seal of the Foundation Trust and the execution of documents; and
  - 1.2.17** Provision for the exercise of functions by delegation, including financial instructions.

- 1.3** This appendix 7 is to be read in conjunction with the Foundation Trust's standing orders which contain additional provisions.

## **ANNEX 8 – ANNUAL MEMBERS MEETING**

- 1.1** The Trust shall hold a members' meeting for all members (called the Annual Members Meeting) within six months of the end of the financial year of the Trust.
- 1.2** Any members' meeting other than the Annual Members' Meeting shall be called a 'Special Members Meeting'.
- 1.3** Both Annual Members' Meetings and Special Members' Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust's Auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.4** The Board of Directors may convene an Annual Members' Meeting or a Special Members' meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members' meeting.
- 1.5** The agenda shall set out the business to be conducted at the meeting. No business other than that set out in the Agenda shall be considered at any members' meeting.
- 1.6** The Board of Directors (or at least one (1) member of the Board of Directors) shall present to the members of the Annual Members' Meeting:
  - 1.6.1** the annual accounts;
  - 1.6.2** any report of the auditor on them;
  - 1.6.3** the annual report;
  - 1.6.4** a report on steps taken to secure that (taken as a whole) the actual membership of the Trust is representative of those eligible for such membership;
  - 1.6.5** the progress of the membership plan; and
  - 1.6.6** the results of any election and appointments to the Council of Governors, and any other reports or documentation it considers necessary or otherwise required.
- 1.7** The Trust shall give notice of all members' meetings:
  - 1.7.1** by notice prominently displayed at the Trust's headquarters;
  - 1.7.2** by notice on the Trust's website;

- 1.7.3** by notice communicated by email to the Trust members; and
- 1.7.4** to the Council of Governors, Board of Directors and the Trust's Auditors, stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the relevant meeting).
- 1.8** Accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
- 1.9** The Chair or in his or her absence, the Deputy Chair, shall preside at all members' meetings of the Trust. If neither the Chair nor the Deputy Chair is present, the Governors present shall elect one of the Non-Executive Directors to act as Chair. If no Non-Executive Director is present, the Governors present shall elect one of their number to act as the meeting Chair. In no Governor is willing to act as Chair or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.
- 1.10** The quorum for a members' meeting shall be twenty (20) members present and entitled to vote. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven (7) days until such time as the Board of Directors determine.
- 1.11** No such meeting shall become incompetent to transact business by lack of a quorum arising after the chair has been taken.
- 1.12** The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.13** A resolution put to the vote at a members' meeting shall be decided on a show of hands, including without limitation a vote on an amendment to the Constitution in relation to the powers and duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust).

- 1.14** Every member registered who is present shall have one vote. No proxies will be admissible.
- 1.15** The Trust's Auditor shall act as scrutineers in event of any voting.
- 1.16** No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 1.17** If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date, and/or place.
- 1.18** In the case of a members' meeting is adjourned or postponed for fourteen (14) days or more, at least seven (7) working days' notice shall be given, specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 1.19** The Board of Directors may make any such arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.
- 1.20** Any approval to speak at a members' meeting must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. No proposal, speech or any reply may exceed three (3) minutes unless the Chair directs otherwise. In the interests of time, the Chair may, in his or her absolute discretion, limit the number of replies, questions or speeches which are heard at any one members' meeting.
- 1.21** A person who has already spoken on a matter at a members' meeting may not speak again at that meeting in respect of the same matter except (i) in exercise of a right of reply or (ii) on a point of order, or (iii) at the Chair's discretion.
- 1.22** The ruling of the chair on any matter of procedure or a point of order shall be final.
- 1.23** The proceeding of members' meetings shall not be recorded and no person present shall make a recording of the meetings, other than in written

format.

- 1.24** The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at members' meetings.
- 1.25** The minutes of members' meetings shall be presented to the next meeting of the Council of Governors.
- 1.26** The Board of Directors may make any arrangements and impose any restriction it considers necessary and/or appropriate to ensure the security of a members' meeting.
- 1.27** Any member who is not able to be present in person may participate in an members' meeting by means of conference telephone or any other such electronic means, which allows all participating in the meeting to hear each other. A member so participating shall be deemed to be present in person at such meeting and shall be entitled to vote and be counted in the quorum. Such a members' meeting shall be deemed to take place where the largest group of those participating is assembled, or if there is no such group, where the Chair is located.



## **ANNEX 9 – FURTHER PROVISIONS**

### **1. Restriction on Membership**

- 1.1 An individual who:
  - 1.1.1 has threatened, harassed, harmed or abused staff, patients and/or visitors of the Trust; or
  - 1.1.2 has been a vexatious complainant. For the purposes of this paragraph a vexatious complainant is an individual who is found by the Trust (applying the relevant policy), to have abused or used inappropriately the Trust's complaints procedure.

### **2. Termination of Membership**

- 2.1 A member shall cease to be a member if:
  - 2.1.1 they resign by notice to the Secretary;
  - 2.1.2 they die;
  - 2.1.3 they are expelled from membership under this constitution;
  - 2.1.4 they cease to be entitled under this constitution to be a member of the Public Constituency (if a member of the Public Constituency) or of any of the classes of the Staff Constituency (if a member of the Staff Constituency); and/or
  - 2.1.5 it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors they fail to demonstrate that they wish to continue as a member of the Trust.
- 2.2 A member may be expelled by a resolution approved by not less than two thirds of the Governors present and voting at the meeting of the Council of Governors. The following procedure is to be adopted:
  - 2.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
  - 2.2.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
    - 2.2.2.1 subject to the disputes procedure set out in paragraph 3 dismiss the complaint and take no further action;
    - 2.2.2.2 for a period not exceeding twelve (12) months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or
    - 2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

- 2.2.3 If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the company must be sent to the member complained of not less than one (1) month before the meeting with an invitation to answer the complaint and attend the meeting.
- 2.2.4 At a meeting of the Council of Governors, the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 2.2.5 If the member complained of fails to attend the meeting of the Council of Governors without due cause the meeting may proceed in their absence.
- 2.2.6 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting of the Council of Governors that the resolution to expel them is carried.
- 2.2.7 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governor present and voting at a meeting of the Council of Governors.
- 2.2.8 Pending a final decision to terminate membership in accordance with the provisions in this paragraph 2.2, the Chair may in his, her or their absolute discretion suspend a member.

### **3. Dispute Resolution Procedure**

- 3.1 Every unresolved dispute which arises out of this Constitution between the Trust and:
  - 3.1.1 a member;
  - 3.1.2 any aggrieved person who has ceased to be a member within the six (6) months prior to the date of the dispute;
  - 3.1.3 any person bringing a claim under this Constitution; or
  - 3.1.4 an office-holder of the Trust;

shall first be referred to the Secretary who shall decide on the point in issue.

- 3.2 If the member or applicant (as the case may be) is aggrieved at the decision of the Secretary he or she may appeal in writing within 14 Clear Days of the Secretary's decision to the Council of Governor whose decision shall be final.
- 3.3 In the event of a dispute between the Council of Governors and the Board of Directors:
  - 3.3.1 In the first instance, the Chair, on the advice of the Secretary, and such

other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

**3.3.2** If the Chair is unable to resolve the dispute, the Chair shall refer the dispute to the Secretary who shall appoint a joint special committee of the Board of Directors and the Council of Governors, comprising equal numbers of Directors and Governors, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute; and

**3.3.3** If the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

**3.4** In the event of any dispute in relation to this Constitution that concerns anything other than membership, or disputes between the Council of Governors and the Board of Directors, the dispute shall be referred to the Chair who shall decide on the point of issue.

**3.5** If the member or complainant (as the case may be) is aggrieved at the decision of the Chair he or she may appeal in writing 14 Clear Days of the Chair's decision to the Board of Directors, whose decision shall be final.

#### **4. Indemnity**

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

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

**4.3** The Foundation Trust may take out insurance, either through the NHS Litigation Authority or otherwise, in respect of directors and officers liability arising by reason of the Foundation Trust acting as a corporate trustee of an NHS charity.

#### **5 Appointment of Lead Governor**

The Council of Governors may appoint annually one of its' Public Governors to be Lead Governor. The Governor appointed shall undertake

the duties as stated in the NHS Foundation Trust Code of Governance, and such other duties as may be assigned from time to time.

<b>COUNCIL OF GOVERNORS MEETING</b>															
<b>Report title:</b> Company Secretary's Report		<b>Meeting date:</b> 5 August 2020													
<b>Report appendix</b>	Appendix 1: Nominations and appointment process – Lead Governor and Deputy Lead Governor Appendix 2: Lead Governor and Deputy Lead Governor role descriptions Appendix 3: Council of Governors' Development Programme 2019/20 Appendix 4: Council of Governors' Register of Interests Appendix 5: Council of Governors 2020 Workplan														
<b>Report sponsor</b>	Company Secretary														
<b>Report author</b>	Company Secretary														
<b>Report provenance</b>	n/a														
<b>Purpose of the report and key issues for consideration/decision</b>	The report provides corporate governance updates on matters of relevance to the Council of Governors.														
<b>Action required</b>	<b>For information</b> <input type="checkbox"/>	<b>To receive and note</b> <input checked="" type="checkbox"/>	<b>To approve</b> <input type="checkbox"/>												
<b>Recommendations</b>	To receive and note the items as shown in the Company Secretary's Report.														
Summary of key elements															
<b>Strategic objectives supported by this report</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"><b>Safe, quality care and best experience</b></td> <td style="width: 20px;"></td> <td style="padding: 5px;"><b>Valuing our workforce</b></td> <td style="width: 20px;"></td> </tr> <tr> <td style="padding: 5px;"><b>Improved wellbeing through partnership</b></td> <td></td> <td style="padding: 5px;"><b>Well-led</b></td> <td style="text-align: center; padding: 5px;">X</td> </tr> </table>			<b>Safe, quality care and best experience</b>		<b>Valuing our workforce</b>		<b>Improved wellbeing through partnership</b>		<b>Well-led</b>	X				
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<b>Improved wellbeing through partnership</b>		<b>Well-led</b>	X												
<b>Is this on the Trust's Board Assurance Framework and/or Risk Register</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"><b>Board Assurance Framework</b></td> <td style="padding: 5px;">n/a</td> <td style="padding: 5px;"><b>Risk score</b></td> <td style="width: 20px;"></td> </tr> <tr> <td style="padding: 5px;"><b>Risk Register</b></td> <td style="padding: 5px;">n/a</td> <td style="padding: 5px;"><b>Risk score</b></td> <td></td> </tr> </table>			<b>Board Assurance Framework</b>	n/a	<b>Risk score</b>		<b>Risk Register</b>	n/a	<b>Risk score</b>					
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<b>External standards affected by this report and associated risks</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"><b>Care Quality Commission</b></td> <td style="width: 20px;"></td> <td style="padding: 5px;"><b>Terms of Authorisation</b></td> <td style="text-align: center; padding: 5px;">X</td> </tr> <tr> <td style="padding: 5px;"><b>NHS Improvement</b></td> <td style="text-align: center; padding: 5px;">X</td> <td style="padding: 5px;"><b>Legislation</b></td> <td></td> </tr> <tr> <td style="padding: 5px;"><b>NHS England</b></td> <td style="text-align: center; padding: 5px;">X</td> <td style="padding: 5px;"><b>National policy/guidance</b></td> <td style="text-align: center; padding: 5px;">X</td> </tr> </table>			<b>Care Quality Commission</b>		<b>Terms of Authorisation</b>	X	<b>NHS Improvement</b>	X	<b>Legislation</b>		<b>NHS England</b>	X	<b>National policy/guidance</b>	X
<b>Care Quality Commission</b>		<b>Terms of Authorisation</b>	X												
<b>NHS Improvement</b>	X	<b>Legislation</b>													
<b>NHS England</b>	X	<b>National policy/guidance</b>	X												

<b>Report title: Company Secretary's Report</b>		<b>Meeting date:</b> 5 August 2020
<b>Report sponsor</b>	Company Secretary	
<b>Report author</b>	Company Secretary	

## Introduction

The report provides corporate governance updates on matters of relevance to the Council of Governors.

### 1. 2020 Election Report

- 1.1 The annual elections for the Council of Governors concluded earlier in the year and the following Governors were elected.

Dr Jonathon Shribman	Public Governor	South Hams Constituency
Cristian Muniz	Staff Governor	Coastal Integrated Service Unit
Steven Harden	Public Governor	Torbay Constituency
John Kiddey	Public Governor	Torbay Constituency
Andrew Stilliard	Public Governor	Torbay Constituency

**Action required: To receive and note the 2020 election report.**

### 2. Appointment of Lead Governor and Deputy Lead Governor

- 2.1 The Council of Governors approved the appointment of Carol Day, Deputy Lead Governor, as the point of contact for the Regulator at the Council of Governors meeting held on 12 February 2020. The appointment was on the basis that this was an interim arrangement until a substantive Lead Governor was in place, and that a call for expressions of interest would take place once the 2020 elections had concluded and new Governors were in place.
- 2.2 The purpose of this item is to announce a call for expressions of interest for the Lead Governor and Deputy Lead Governor position.
- 2.3 The Council of Governors have agreed previously the process for the annual appointment of the Lead Governor and Deputy Lead Governor. For ease of reference the nominations and appointment process is shown in Appendix 1.
- 2.4 A role description for both the Lead Governor and Deputy Lead Governor is attached in Appendix 2.
- 2.5 Governors are requested to forward their interest in either the Lead Governor or Deputy Lead Governor roles to the Company Secretary by Friday 21 August 2020.

**Actions required: To note the nominations and appointment process and the role descriptions for the Lead Governor and Deputy Lead Governor roles; and to forward expressions of interest to the Company Secretary by 21 August 2020.**

**3. Council of Governors Development Programme 2019/20**

- 3.1 The Council of Governors established a task and finish group to oversee and monitor progress against the Council of Governors Development Programme for 2019/20 (attached as Appendix 3).
- 3.1 The meetings were well attended by Governors and good progress has been made against the action plan.
- 3.2 The action to bring to the COG’s attention is the review of the Constitution by the task and finish group, which has been both thorough and robust. Approval of the proposed changes is shown as a separate agenda item for this meeting.

**Action required: To note progress and agree closure of the Council of Governors Development Programme for 2019/20.**

**4. Appointments of Governor Observers to Trust Board Committee’s and Groups**

- 4.1 A refresh of the appointments of Governor observers to Trust Board sub-committees has taken place since the previous Council of Governors meeting. As a reminder to Governors, the current Governor observers are shown below:

Audit Committee	Elizabeth Welch
Finance, Performance and Digital Committee	Dr Jonathan Shribman
People Committee	Chris Edwards
Quality Assurance Committee	Craig Davidson
Charitable Funds Committee	Mary Lewis

**Action required: To note the Governor observer appointments.**

**5. Council of Governors Register of Interests**

- 5.1 The Constitution (paragraph 20) requires Governors to declare any personal, pecuniary or family interests which may influence or be perceived to influence their judgement. Interests that must be declared are any that are relevant and material.
- 5.2 Governors would have declared any such interests on appointment and periodically thereafter, however it is seen as good governance for those

declarations to be refreshed on an annual basis and a register of declarations to be maintained.

- 5.3 The current Register of Interests is attached in Appendix 4 and will be published following the Council of Governors meeting.

**Action required: To receive and note the Council of Governors Register of Interests.**

## **6 Annual Members Meeting**

- 6.1 Governors will be aware that as part of the Covid-19 national guidance issued, all Foundation Trusts were advised to defer annual members meetings until September. Governors were duly informed via the Governor newsletter that the Trust had received this advice and the annual members meeting originally scheduled for 30 July would be deferred to September.
- 6.2 The Council of Governors are asked to note the revised date for the Annual Members Meeting of 16 September 2020.
- 6.3 Governors are also asked to note that the Trust is planning to conduct the Annual Members Meeting via video-conference due to the current Covid-19 rules on social-distancing.

**Action required: To note that the Annual Members Meeting will be held at 12 noon on 16 September 2020 via video-conference.**

## **7 Engagement with Governors during Covid-19**

- 7.1 In response to the emerging Covid-19 Pandemic, we have maintained, and in some cases, enhanced arrangements to try and keep all our Governors engaged in the work of the Trust as far as possible.
- 7.2 Given the ongoing arrangements for coming on to hospital sites, which are unlikely to change in the near future, we have summarised below the communications programme which we hope have achieved the following aims, and will continue to do so.
- to enable members of the Council to remain engaged and informed
  - to support the Council to carry out its statutory duty of holding the NEDs to account for the performance of the Board
  - to enable Governors to act as a conduit for the views of member and members of the public to be fed-back to the Trust



No.	Engagement	Actions
1.	Keeping Governors informed	<ul style="list-style-type: none"> <li>- Sharing Covid-19 staff bulletins and weekly staff updates</li> <li>- Access to the Covid-19 vlog and monthly vlog by the Chief Executive</li> <li>- Weekly (currently reverted to fortnightly) Governor Newsletter incorporating Covid-19 Q&amp;A section and bespoke message from the Chairman</li> <li>- Informal monthly Governor Network meetings, including presentation from Executive Director and guest speakers</li> <li>- Reminder to Governors that they can submit feedback and/or queries to the Trust at any time</li> <li>- Reminder to Governors of the mechanism for providing feedback (and questions) from members/public and the form that can be used for providing feedback</li> </ul>
2.	Holding meetings by video-conference until such time as face-to-face meetings are possible on site	<ul style="list-style-type: none"> <li>- Suitable platform in place for virtual meetings (MS Teams) including dial-in facility ensuring equitable access for all Governors</li> <li>- IT status of all Governors established to ensure equitable access for all Governors</li> <li>- Bespoke training provided by IT and Membership Manager for Governors</li> <li>- MS Teams tested ahead of meeting</li> <li>- Shared meeting guidance and etiquette for video-conference attendees and dial-in attendees</li> <li>- COG meeting agenda to focus on essential and timely matters</li> <li>- Papers prepared and issued one week in advance to ensure good preparations</li> <li>- As far as possible, Governors requested to submit questions in advance</li> <li>- Date of the Annual Members meeting deferred to September in accordance with national guidance</li> </ul>
3.	Enable Governors to participate in Trust governance arrangements	<ul style="list-style-type: none"> <li>- Items requiring time-critical approval by the Council of Governors actioned in accordance with pre-agree timeline ie approval of the appointment of external auditor</li> <li>- Governor observers invited to observe virtually their usual Committee meeting from May onwards</li> <li>- Governor Nominations and Remuneration Committee continued with the programme of work via telephone conference and latterly MS Teams</li> <li>- Membership Group and Quality Assurance Committee meetings held via MS Teams</li> </ul>

**Action required: To note the engagement programme with Governors during Covid-19**

## **8 2020 Council of Governors Work Plan**

8.1 The 2020 work plan for the Council of Governors is presented for information at Appendix 5.

**Action required: To receive and note the 2020 Council of Governors work plan.**

## Appendix 1

### Appointment of Lead Governor and Deputy Lead Governor

#### Role

Governors are asked to note that all foundation trusts are required to nominate a Lead Governor. An extract from the NHS Code of Governance in relation to the role of the nominated Lead Governor is set out in Appendix 2, along with the role description for the Lead Governor and Deputy Lead Governor.

#### Eligibility

The role of Lead Governor and Deputy Lead Governor is restricted to nominations from public governors only.

#### Term of Office

The appointment is for one term of one year. Governors are eligible for re-appointment.

#### Nominations process

Governors expressing interest may submit (up to) a 200 word supporting statement detailing experience, skills and abilities in order to gain supporting votes.

#### Election process

All governors will be invited to vote for their preferred candidate. Governors will have one vote each.

There will be two separate election processes: one for the election of Lead Governor and one for the election of Deputy Lead Governor.

Where there is just one candidate for either/both position(s), that candidate will be elected unopposed. If there are no candidates for the position of Lead Governor, the Chairman will consult with Governors. If there are no candidates for the position of Deputy Lead Governor, the position will remain vacant.

#### Timetable

Nominations for the role of Lead Governor and Deputy Lead Governor should be submitted to Jane Downes, Company Secretary by Friday 21 August 2020. Voting packs will be issued (if required) by 28 August 2020, for return by Friday 18 September 2020.

The election results will be announced week commencing 21 September 2020 and ratified at the next Council of Governors meeting.

## Appendix 2

### Extract from The NHS Foundation Trust Code of Governance

#### The role of the nominated Lead Governor

##### Appendix B: The role of the nominated lead governor

The lead governor has a role to play in facilitating direct communication between the Independent Regulator and the NHS foundation trust's council of governors. This will be in a limited number of circumstances and, in particular, where it may not be appropriate to communicate through the normal channels, which in most cases will be via the chairperson or the trust secretary, if one is appointed.

It is not anticipated that there will be regular direct contact between Monitor and the council of governors in the ordinary course of business. Where this is necessary, it is important that it happens quickly and in an effective manner. To this end, a lead governor should be nominated and contact details provided to Monitor, and then updated as required. The lead governor may be any of the governors.

The main circumstances where Monitor will contact a lead governor are where Monitor has concerns as to board leadership provided to an NHS foundation trust, and those concerns may in time lead to the use by Monitor's board of its formal powers to remove the chairperson or non-executive directors. The council of governors appoints the chairperson and non-executive directors, and it will usually be the case that Monitor will wish to understand the views of the governors as to the capacity and capability of these individuals to lead the trust, and to rectify successfully any issues, and also for the governors to understand Monitor's concerns.

Monitor does not, however, envisage direct communication with the governors until such time as there is a real risk that an NHS foundation trust may be in significant breach of its licence. Once there is a risk that this may be the case, and the likely issue is one of board leadership, Monitor will often wish to have direct contact with the NHS foundation trust's governors, but at speed and through one established point of contact, the trust's nominated lead governor. The lead governor should take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action. The lead governor will then be able to communicate more widely with other governors.

Similarly, where individual governors wish to contact Monitor, this would be expected to be through the lead governor.

The other circumstances where Monitor may wish to contact a lead governor is where, as the regulator, we have been made aware that the process for the appointment of the chairperson or other members of the board, or elections for governors, or other material decisions, may not have complied with the NHS foundation trust's constitution, or alternatively, whilst complying with the trust's constitution, may be inappropriate.

In such circumstances, where the chairperson, other members of the board of directors or the trust secretary may have been involved in the process by which these appointments or other decisions were made, a lead governor may provide a point of contact for Monitor.

Accordingly, the NHS foundation trust should nominate a lead governor, and to continue to update Monitor with their contact details as and when these change.

## LEAD GOVERNOR ROLE DESCRIPTION

The NHS Foundation Trust Code of Governance advises that Foundation Trusts should nominate a lead governor.

### Primary Role

The primary purpose of the Lead Governor is to facilitate direct communication between the Independent Regulator and the Council of Governors. The Regulator does not however envisage direct communication with Governors until such time as there may be a real risk of the Foundation Trust breaching its licence or constitution and the Council's concerns cannot be satisfactorily resolved. Once there is a risk that this may be the case, and the likely issue is one of board leadership, the Regulator will often wish to have a direct contact with the Foundation Trust's Governors, but at speed and through one established point of contact – the Foundation Trust's nominated lead governor.

### Role Description

A full description of the role of the nominated lead governor as stated in the NHS Foundation Trust Code of Governance is shown above.

The nominated lead governor will also:

- Represent the Council of Governors and act as their named Governor on their behalf.
- Be a member of the nominations committee that oversees the arrangements for appointing (and removing, if necessary), the Chair and Non-Executive Directors, and considers the remuneration, allowances and other terms and conditions of office of the Chair and Non-Executive Directors.
- Provide input to the annual appraisal of the Chair and Non-Executive Directors.
- Meet with the Chair, (and Chief Executive as appropriate), to discuss matters relating to the Council of Governors.
- Meeting routinely with the Chair, Company Secretary and Deputy Lead Governor to plan the agenda for Council of Governors meetings.
- Present the Lead Governor's Report to the quarterly Council of Governors.
- Present the Annual Governor's Report to Members at the Annual Members Meeting.

## DEPUTY LEAD GOVERNOR ROLE DESCRIPTION

The role of Deputy Lead Governor is not a statutory role under the NHS Foundation Trust Code of Governance.

### **Primary Role**

The primary purpose of the Deputy Lead Governor is to provide the Foundation Trust with a point of contact for the Council of Governors should the Lead Governor be unavailable for a period of time or has a conflict of interest.

The Deputy Lead Governor will also meet routinely with the Chair, Company Secretary and Lead Governor to plan the agenda for the Council of Governors meetings.

## **PERSON SPECIFICATION FOR LEAD GOVERNOR**

To fulfil the role, the Lead Governor will:

1. Have the confidence of Governor colleagues
2. Have the ability to influence and challenge constructively as appropriate
3. Be committed to the values and success of the Foundation Trust
4. Understand the role of the Independent Regulator and the basis on which the Regulator action may take regulatory action
5. Ensure that individual views of Governors are respected
6. Be able to commit the time as necessary



Council of Governors Development and Delivery Programme 2019/20					
Key Activity		Q1 2019/20	Q2 2019/20	Q3 2019/20	Q4 2019/20
<b>Development Objective 1: Representing members and the public - Engagement Plan</b>					
1	Develop a Member Events Programme			Completed	
2	Design an e-newsletter for distribution to members, public, stakeholders and for posting on the website			Completed	
3	Establish a regular generic activity update from Governors to members			Action transferred to Membership Group	
4	Refresh the Governor section of the website			Ongoing	
5	Utilise the membership database for surveys about Trust services			Completed	
6	Increase communications via social media			Completed	
7	Align Board to Council meetings to focus on strategy/forward planning			Completed	
<b>Development Objective 2: Holding NEDs to account: - Involvement Plan</b>					
8	Allocate discussion time on the agenda for COG and B2C meetings			Completed	
9	Timetable COG agenda setting meetings between Chairman & Lead Governor/Deputy Lead Governor			Completed	
<b>Development Objective 3: Supporting Governors – Training and Development Plan</b>					
10	Establish monthly Governor 'network' meetings comprising Chairman's Briefing, information on 'hot topics', developmental sessions and Governor information/feedback session			Completed	
11	Issue fortnightly briefing update to Governors			Completed	
12	Establish programme of bespoke training sessions focussing on the role of the Governor			(Delivered via Network meetings) Completed	
<b>Development Objective 4: Constitution - Review</b>					
13	Review to focus on: composition of the Council of Governors, meeting best practice/regulations and general update			Completed	

**Key:**

<b>Red</b>	<b>Amber</b>	<b>Green</b>
<b>Action not started</b>	<b>Action underway/progressing</b>	<b>Action completed</b>

July 2020

v.5

**Appendix 4**

**REGISTER OF GOVERNORS' INTERESTS AS AT 31 MARCH 2020**

**SOUTH HAMS AND PLYMOUTH PUBLIC CONSTITUENCY**

Governor name	Declared interests
Craig Davidson	Member – Dartmoor Together (social enterprise group)
Mary Lewis	None
Jonathan Shribman	Employed by Devon Doctors Ltd RNLI Medical Adviser, Dartmouth GP – COVID-19 111 Service Ad-hoc GP Locum – South Hams practices

**TEIGNBRIDGE PUBLIC CONSTITUENCY**

Governor name	Declared interests
Carol Day	None
Chris Edwards	Director – Capacity for Change Ltd
Eileen Engelmann	None
Annie Hall	None
Barbara Inger	None
Michael James	None
John Smith	None

**TORBAY PUBLIC CONSTITUENCY**

Governor name	Declared interests
Michael Birch	<ul style="list-style-type: none"> <li>• Director – English Indoor Bowling Association</li> <li>• Director – Disability Bowls England</li> </ul>
Gary Goswell-Munro	To be confirmed
Steven Harden	None
Lynne Hookings	<ul style="list-style-type: none"> <li>• Member – Torbay Community Grants Panel (part of Torbay Community Development Trust)</li> <li>• Vice President, Torbay Hospital League of Friends</li> </ul>
John Kiddey	To be confirmed
Andrew Stilliard	None
Elizabeth Welch	Treasurer – Torbay Hospital League of Friends

**STAFF CONSTITUENCY**

Governor name	Declared interests
Cristian Muniz (Coastal)	None

## APPOINTED GOVERNORS

Governor name	Declared interests
Jonathan Hawkins (Devon County Council)	None
Lorraine Evans (Teignbridge Council)	Employed by Devon Doctors Limited
Nicole Amil (Torbay Council)	Councillor – Torbay Council
Rosemary Rowe (South Hams DC)	None
Derek Blackford (NHS Devon CCG)	Employed by NHS Devon CCG as Associate Director of Finance

Appendix 5

Council of Governors 2020 Workplan

Agenda item	12 Feb Quarterly meeting	11 March Board to Council (private)	6 May Quarterly Meeting (deferred)	8 July Board to Council (private)	5 August Quarterly meeting	16 Sept Annual Members Meeting	4 Nov Quarterly meeting	16 Dec Board to Council (private)	Jan 2021 Quarterly meeting
Chairman's Report	X		(deferred)		X		X		X
Chief Executive's Report	X		(deferred)		X		X		X
Annual Quality Account (deferred)						X			
Annual Report and Accounts						X			
Annual Plan		X		X				X	
Annual Plan Governor feedback		X		X				X	
Forward Agenda Plan	X		(deferred)		X		X		X
Governor events – feedback	X		(deferred)		(deferred)		X		X
Lead Governor's Report	X		(deferred)		(deferred)		X		X
Feedback from Cttee's/Working Groups	X		(deferred)		X		X		X
Governor's Communication Log	X		(deferred)		X		X		X
Auditors Report to Governors						X			
Register of Interests	X								
Lead/Deputy Governor appt. process									
Appointment of Lead/Deputy Governor									X
Re-appointment of Chair/NEDs	X				X				
Company Secretary's Report	X		(deferred)		X		X		X
Annual cttee/group membership review							X		
Membership Strategy – annual update									X
Elections update report	X						X		X
Election results report	X		(deferred)						
External Auditor appointment	X		X				X		X
Ad hoc reports/presentations	X		(deferred)		X		X		X

July 2020



<b>COUNCIL OF GOVERNORS</b>	
<b>Report title:</b> Governors' Working Committee and Group Reports	<b>Meeting date:</b> 5 August 2020
<b>Report appendix</b>	Appendix 1: Quality and Compliance Committee Appendix 2: Membership Group Terms of Reference Appendix 3: Membership Group Minutes – 4 February 2020
<b>Report sponsors</b>	Committee/Group Chair
<b>Report author</b>	Company Secretary
<b>Report provenance</b>	Proposals sponsored by Quality and Compliance Committee and Membership Group
<b>Purpose of the report and key issues for consideration/decision</b>	<p>This report provides updates on activities, including proposed governance changes, applicable to the Quality and Compliance Committee and the Membership Group.</p> <p>(i) Quality and Compliance Committee</p> <p>At the Quality and Compliance Committee held on 10 July 2020, Committee members discussed the ongoing purpose and relevance of the Committee, particularly given the revised governance and communication arrangements now in place.</p> <p>Committee members were mindful that the Committee had been in place since 2011 and therefore in presenting a proposal to dissolve the Committee to the Council of Governors, wished to assure the Council of Governors that its role and duties have now been absorbed in to either current governance arrangements or included in the scope of other meetings (see Appendix 1).</p> <p>(ii) Membership Group Terms of Reference</p> <p>The Membership Group have undertaken a review of the Terms of Reference and propose a number of changes as outlined below:</p> <ul style="list-style-type: none"> <li>• the name of the Membership Group to change to Membership Committee to reflect the requirement as set out in the NHSFT Code of Governance for dialogue with members and the local community</li> <li>• the Terms of Reference have been reformatted in to the Trust standard terms of reference</li> <li>• the requirement for an annual review of the Terms of Reference</li> <li>• clarity on the administrative support requirements</li> <li>• description of the constitution, powers, purpose and authority of the Membership Group/Committee</li> </ul>

	<ul style="list-style-type: none"> <li>reference in the membership section to a preference for Governor members from each of the public constituencies.</li> </ul> <p>The final draft Terms of Reference is attached as Appendix 2.</p> <p>(iii) Membership Group Meeting held 4 February 2020 The notes from the meeting of the Membership Group held on 4 February 2020 are attached as Appendix 3.</p>		
<b>Action required</b>	<b>For information</b> <input type="checkbox"/>	<b>To receive and note</b> <input type="checkbox"/>	<b>To approve</b> <input checked="" type="checkbox"/>
<b>Recommendation</b>	<p>The Council of Governors is asked to:</p> <p>(i) approve the proposal to dissolve the Quality and Compliance Committee with immediate effect;</p> <p>(ii) approve the proposed name change of the Membership Group to Membership Committee and the updated Terms of Reference; and</p> <p>(iii) receive and note the minutes of the Membership Group dated 4 February 2020.</p>		
<b>Summary of key elements</b>			
<b>Strategic objectives supported by this report</b>	<b>Safe, quality care and best experience</b>		<b>Valuing our workforce</b>
	<b>Improved wellbeing through partnership</b>		<b>Well-led</b> X
<b>Is this on the Trust's Board Assurance Framework and/or Risk Register</b>	<b>Board Assurance Framework</b>	n/a	<b>Risk score</b>
	<b>Risk Register</b>	n/a	<b>Risk score</b>
<b>External standards affected by this report and associated risks</b>	<b>Care Quality Commission</b>		<b>Terms of Authorisation</b> X
	<b>NHS Improvement</b>	X	<b>Legislation</b> X
	<b>NHS England</b>	X	<b>National policy/guidance</b> X



## Appendix 1

### Proposal to dissolve Quality and Compliance Committee

The Quality and Compliance Committee in presenting a proposal to the Council of Governors to dissolve the Committee, request that the following be noted.

The original terms of reference have been reviewed and the Committee wish to give the following assurances that its role and duties have been absorbed in to either current governance arrangements or included in the arrangements for other meetings.

- Monitoring CQC performance and action plan – *now delivered through Governor membership of the CQC Assurance Group*
- Represent Governors' views and identify priorities for the Quality Account – *suggest this is included as a discussion item for the Governor Network meeting and ratified by the Council of Governors*
- Review of Governor Observer Reports – *now circulated to all Governors via the Governor Newsletter*
- Receiving presentations from guest speakers – *now included as part of the Governor Network meeting programme*
- Considering items for COG and Board to Council – *items for COG and Board to Council included in the COG workplan and presented to Council of Governors at each meeting. Agenda setting meeting held with Chairman, Company Secretary, Lead Governor and Deputy Lead Governor*
- Consider format and items for Annual Members Meeting – *planning for Annual Members Meeting reported to Council of Governors and Membership Group.*

**The Council of Governors is therefore asked to approve the proposal to dissolve the Quality and Compliance Committee with immediate effect.**





## TERMS OF REFERENCE

### MEMBERSHIP COMMITTEE

<b>Version:</b>	<b>1.2</b>
<b>Approved by:</b>	<b>Membership Group</b>
<b>Date approved:</b>	<b>7 July 2020</b>
<b>Approved by:</b>	<b>Council of Governors (TBC)</b>
<b>Date approved:</b>	<b>5 August 2020 (TBC)</b>
<b>Date issued:</b>	<b>TBC</b>
<b>Review date:</b>	<b>July 2021</b>

## **TORBAY AND SOUTH DEVON NHS FOUNDATION TRUST**

### **MEMBERSHIP COMMITTEE TERMS OF REFERENCE**

#### **1. Constitution**

- 1.1 The Membership Committee ('the Committee') is formally established as a Committee of the Council of Governors of Torbay and South Devon NHS Foundation Trust.
- 1.2 The Committee will adhere to, and be cognisant of the Trust values at all times.

#### **2. Authority**

- 2.1 The Committee is constituted as a Standing Committee of the Trust's Council of Governors. Its constitution and terms of reference are subject to amendment by the Council of Governors.
- 2.2 The Committee derives its power from the Council of Governors and has no powers, other than those specifically delegated in these terms of reference.

#### **3. Purpose**

- 3.1 The purpose of the Committee is to support Governors in fulfilling their statutory duty to represent the interests of Foundation Trust Members and the public, specifically in relation to feeding 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.
- 3.2 The Committee will provide assurance to the Council of Governors of the achievement of the objectives set out in the Membership Development Plan.

#### **4. Powers**

- 4.1 The Committee is authorised by the Council of Governors to investigate any activity within its terms of reference.
- 4.2 The Committee is accountable to the Council of Governors and any changes to these terms of reference must be approved by the Council of Governors.

## 5. Duties and Responsibilities

5.1 The main aims of the Committee are:

- 5.1.1 Develop the Membership Development Plan on behalf of the Council of Governors.
- 5.1.2 Propose actions to ensure the Council of Governor's statutory duty in relation to engagement is met.
- 5.1.3 In line with Regulator guidance, the Trust's Provider Licence and the Trust's Constitution, ensure efficient mechanisms are in place for Governors to gain member and public views and feedback to the Trust.
- 5.1.4 Ensure effective production of membership communications.
- 5.1.5 Ensure membership is representative of the population served by the Trust.

5.2 In order to achieve these aims, the Committee will:

- 5.2.1 Ensure Governors' involvement in the implementation of the Trust's Membership Development Plan.
- 5.2.2 Regularly review the Trust's membership data by receiving and analysing reports from the Trust's membership database.
- 5.2.3 Support the production of the Trust's '*Healthy Futures*' magazine and be involved in reviewing content relating to Governors.
- 5.2.4 Work with the Membership Office to ensure Governors have the opportunity to engage with members and the public, for example:
  - Surveys
  - Website and social media
  - Events covering relevant topics ('*medicine for members*')
  - Links with GP Surgery Patient Participation Groups
  - External hosted events
- 5.2.5 Develop mechanisms by which Governors can provide feedback to the Trust, particularly in light of Covid-19 considerations.

## 6. Membership

- 6.1 Membership of the Committee shall consist of public, staff and appointed Governors, who will self-nominate to join.
- 6.2 Whilst not mandatory, membership should ideally include a Public Governor from each public constituency.
- 6.3 A Governor shall act as Committee Chair. In their absence, one of the other Governors present shall be nominated and appointed as acting Chair for the meeting.

6.4 The following shall be invited to attend meetings of the Committee:

- Company Secretary
- Corporate Governance Manager
- Membership Manager
- Diversity and Inclusion Lead
- Representative from the Communications Team

6.5 Other members/attendees may be co-opted or requested to attend as considered appropriate.

## **7. Quorum**

7.1 The quorum necessary for the transaction of business shall be three Governors, plus either the Company Secretary or Corporate Governance Manager

7.2 A duly convened meeting at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Committee.

7.3 Deputies can attend, but will not count towards the quorum.

## **8. Administration**

8.1 The Committee shall be supported by the Corporate Governance team whose duties in this respect will include:

- In consultation with the Committee Chair and Company Secretary develop and maintain the Committee workplan.
- Collation of papers and drafting of the agenda for agreement by the Chair of the Committee.
- Taking the minutes and keeping a record of matters arising and issues to be carried forward.
- Advising the group of scheduled agenda items.
- Agreeing the action schedule with the Chair and ensuring circulation.

## **9. Meetings**

9.1 Meetings will be held on the following basis:

- Meetings will be held at least quarterly, with additional meetings held when necessary.
- Meeting duration will be no longer than two hours.
- Items for the agenda should be sent to the Committee Secretary a minimum of 7 days prior to the meeting. Urgent items may be raised under 'any other business'.
- The agenda will be issued to the Committee members and attendees, one week prior to the meeting date, together with the action schedule and other associated papers.

## **10. Reporting**

10.1 The Committee will provide a report to the Council of Governors in support of its work on engagement with members and the public. The report shall include matters requiring to be drawn to the attention of the Council of Governors.

10.2 The Committee will receive reports in accordance with the work plan.

## **11. Review of Terms of Reference**

11.1 In order that the Committee can be assured that it is operating at maximum effectiveness in discharging its responsibilities as set out in these terms of reference and, if necessary, to recommend any changes to the Council of Governors, the Terms of Reference shall be reviewed on an annual basis and approved by the Council of Governors.





**NOTES OF THE MEMBERSHIP GROUP MEETING**

**HELD AT 2PM ON TUESDAY 04 FEBRUARY 2020**

**IN MEETING ROOM, FIRST FLOOR, HORIZON CENTRE, TORBAY HOSPITAL**

**Members**

- Annie Hall (AH)
- # Lynne Hookings (LH)
- \* Barbara Inger (BI)
- \* Mary Lewis (ML)
- Anna Pryor, Staff Governor (AP)
- \* Eileen Engelmann (EE)

\* Denotes member present

# Denotes attended part of the meeting

**In attendance**

John Smith, Governor (JS) - Observer

Monica Trist, Corporate Governance Manager (CGM) and **Chair for this meeting**

Sally-Ann Reay, Membership Manager (MM) and note taker

Debbie Maynard, Diversity & Inclusion Officer/Organisational Development Advisor (DM)

	ACTION
<p>1. <b><u>Chair of the Membership Group – discussion</u></b> CGM asked if any responses had been received from Governors volunteering to take up the position of Chair of the Membership Group, which had been raised at the last meeting and at the December 2019 Council of Governors. As no one had volunteered it was <b>agreed</b> that for this meeting CGM would take the Chair and review this item again at the end of the meeting.</p>	<b>CGM</b>
<p>2. <b><u>Apologies</u></b> Apologies were received from Jane Downes (JD), Anna Pryor (AP) and Annie Hall (AH). Lynne Hookings was due to attend the latter half of the meeting due to prior commitments. John Smith said he was attending this meeting as an observer, but also if permitted, would ask questions and the Chair agreed that this was acceptable.</p>	
<p>3. <b><u>Minutes of the last meeting held on 10 December 2019 and action tracker</u></b> The notes of the meeting held on 10 December 2019 were confirmed as accurate, subject to the addition of action item (LH) against Item 9 on page 3.</p>	<b>MM</b>

#### 4. **Matters arising**

See separate action tracker for updates or else covered on the main agenda.

#### 5. **Feedback from:**

##### 5.a **Update from the Working with Us Panel**

Membership Group noted the report provided by the Working with Us Panel. Mr Smith asked what title Jo Jackson held and MM responded that Jo Jackson held the title "Experts through Experience Lead". CGM gave an update on the Northumbria Project system, which was now combined into business as usual feedback process. CGM reminded the group that there would be an opportunity to put any questions to Jo Jackson regarding the work of the Working With Us Panel at the March Network meeting.

##### 5.b **Membership engagement**

MM had circulated the Programme of Members events spreadsheet and explained the details around the last minute cancellation by the Apprenticeship team with regard to the 3 February 2020 Trust Annual Apprenticeship Open Day. The Apprenticeship Team were planning to reschedule and MM thanked those Governors from the Membership Group who had originally agreed to cover the rota on 3 February 2020. LH was disappointed that the Trust were not invited to attend the event on 5 February 2020 at the ERC and MM responded that the Apprenticeship Team were booked in and had agreed to take Trust membership leaflets with them to that event.

BI and LH expressed concern at the apparent lack of formal engagement events. CGM responded that the Trust would be holding more public events in the forthcoming year to engage with the local population about any new Hospital design and these would provide good opportunities for engagement and membership recruitment.

BI asked that the Membership Box be refreshed so that more up to date material available and the out of date items removed. CGM apologised and agreed that this update would be done by herself and MM.

**CGM &  
MM**

BI showed a copy of the Autumn 2019 Healthy Futures magazine produced by the Communications Team and asked that feedback be given to the Communications Team that she was disappointed that insufficient contact details were provided, aside from social media details.

**MM**

#### 6 **Feedback Form Summary from Diabetes Members Event (11 Nov 2019)**

MM said that feedback from the event had been extremely positive but also contained some useful learning points for future events which would be incorporated into the planned Members event for Dementia scheduled for 01 May 2020. This was at planning stage with Rhoda Allison. BI asked to see the original forms and CGM said the feedback summary contained the essential information from forms received and summarised via five bar gate

system. BI asked for the summary to be included with the next Governors newsletter for information.

MM

## 7. **Feedback and Engagement Meetings schedule for 2020**

CGM said that further to the last meeting, DM had asked Steve Carr if a Governor representative from the Membership Group could attend the Trust Feedback and Engagement meetings and this had been agreed. The list of meeting dates was attached for discussion on who would represent the group. DM gave further information about the working of the Feedback and Engagement meetings. Governors felt this could be a useful link regarding feedback themes raised by their constituents. MM was asked to contact Steve Carr to find out if only one Governor allowed to attend, if that person/s needed to be the same for continuity purposes and if they would be allowed to contribute or just observe. Once this feedback obtained a decision would be able to be made as to attendance by a Governor representative/s.

MM

Mr Smith mentioned the excellent booklet produced recently by Healthwatch with regard to NHS Complaints and CGM offered to email to DM. CGM added that the Feedback and Engagement team (incorporating PALS/Complaints) would attend the March Network meeting.

CGM

## 8 **Annual Workplan**

CGM explained that the style of annual workplan had been updated by MM to reflect the new format agreed by the Company Secretary for all committees. The Group noted the Annual Workplan and CGM said that if any other items were required this could be picked up at future meetings.

## 9. **Update on Noticeboards/acrylic leaflet stands**

MM gave a verbal update on plans for Membership noticeboards (with wall mounted A5 acrylic stands) at main entrance areas in Torbay Hospital, after consultation with Karen Robertson (Estates), Infection Control team and Company Secretary. Infection Control advice was that glass protected screens were essential and approximate costings had been obtained from Procurement team and Company Secretary had agreed the budget spend. MM explained the possible option for Level 2 entrance area which would involve agreement by the League of Friends and BI said she would visit the area suggested and feedback whether this was considered a suitable place.

BI

## 10. **Annual Members Meeting 2020**

MM said that whilst the date of 30 July 2020 was reserved in TREC, the Chief Executive and Chairman diaries were only free from 10am to 12noon, but a small Members Event was still being planned to help influence attendance. CGM said that further work was required on AMM planning. LH suggested that a taster stall for Bayview restaurant always attracted people.

## 11. **Process to obtain Engagement Themes**

MM tabled a draft Governor Engagement Feedback form for discussion to help Governors gather key themes to influence Trust business planning and potentially take to the Feedback and Engagement Group. Two minor changes were requested. The group felt this was useful for Governors and should be included with the Council of Governor papers with an introduction from the Company Secretary. CGM confirmed that forms should be emailed to the Foundation Trust generic email account and would be collated. BI added that she felt the Governor Communications Log process was not working well due to the time delays in responses.

MM

CGM

## 12. **Membership Leaflet Redesign**

MM outlined planning and consultation with different teams such as Data Protection Office, Accessible Information Service team and Diversity & Inclusion Officer. MM had gone through various best practice examples that Governors' had brought from London event last year and used these to guide the draft. MM showed a sample eight sided A5 sized brochure with a tear off strip. Advice was being sought as to how the official licensed post office freepost address can be printed. MM handed out an enlarged version of the form which would align the paper application form and the online form via Civica enabling streamlined processes for the Foundation Team office and reduce need for manual entry. Debate centred on the equality and diversity data and DM explained why this was considered best practice for a public sector organisation and would enable her to report back on the required standards going forward. It was agreed to put this on the agenda for further discussion and the MM would in the meantime continue drafting the other pages of the redesign. LH reminded the group that the offer of free printing only stood for 3 months from 12 January 2020.

MM

## 13. **Items from Membership Group to take forward to CoG**

The following items were noted to be taken forward to the February 2020 Council of Governors meeting:

CGM

- a) Include the Governor Engagement Feedback Form within the Company Secretary Report

## 14. **Any Other Business**

CGM referred to the first item on the agenda and asked if any of the Governors on the Group wished to take on the role of Chair of the Group. There were no expressions of interest received.

## 15. **To agree date of next meeting –**

It was agreed that the next meeting would be held on **Tuesday 07 April 2020 at 2pm in the Members Room, Hengrave House, Torbay Hospital.**

<b>COUNCIL OF GOVERNORS</b>															
<b>Report title:</b> Feedback and Questions from Members and Governors		<b>Meeting date:</b> 5 August 2020													
<b>Report appendix</b>	Appendix 1: Governor Questions														
<b>Report sponsor</b>	Company Secretary														
<b>Report author</b>	Membership Manager														
<b>Report provenance</b>	Council of Governors standing agenda item														
<b>Purpose of the report and key issues for consideration/decision</b>	Governors have the opportunity to submit questions on notice to the Trust.  This appendix lists the questions received. Responses will be provided verbally by Directors at the Council of Governors meeting, as per previous practice.														
<b>Action required</b>	<b>For information</b> <input type="checkbox"/>	<b>To receive and note</b> <input checked="" type="checkbox"/>	<b>To approve</b> <input type="checkbox"/>												
<b>Recommendation</b>	The Council of Governors is asked to receive and note Governor Questions on notice.														
<b>Summary of key elements</b>															
<b>Strategic objectives supported by this report</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"><b>Safe, quality care and best experience</b></td> <td style="width: 20px;"></td> <td style="padding: 5px;"><b>Valuing our workforce</b></td> <td style="width: 20px;"></td> </tr> <tr> <td style="padding: 5px;"><b>Improved wellbeing through partnership</b></td> <td style="text-align: center;">X</td> <td style="padding: 5px;"><b>Well-led</b></td> <td></td> </tr> </table>			<b>Safe, quality care and best experience</b>		<b>Valuing our workforce</b>		<b>Improved wellbeing through partnership</b>	X	<b>Well-led</b>					
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## **COUNCIL OF GOVERNORS MEETING - 05 AUGUST 2020**

### **Questions from South Hams and Plymouth (East) Governors:**

1. We are agreed that Governors need to hear the Trust's plans to address the CQC report. With the chancellor reportedly reeling back from "anything it takes for the NHS", it's clear that balancing the books is going to be very difficult given the uncertainty of a potential Covid relapse and of course more costly services because of need for universal precautions and distancing. Could the Trust comment on the current position please?
2. Governors have a concern about what appears to be a slow restarting of "normal" working and continued costs associated with the Covid crisis e.g. Mount Stuart and communication on these matters with Governors, patients and the general public. Could the Trust provide governors with assurance on the current position please?
3. Could governors please be advised of progress with the Dartmouth Health and Wellbeing Centre and information on how Fleet care home has been used during lockdown and expectations for future use.

### **Question from Teignbridge Governor:**

4. **a)** What are the criteria for obtaining a Covid-19 test through the 0300 helpline and are referrals from a GP accepted?  
**b)** With specific reference to the Lymington Road Torquay Test centre, why were 6 members of staff required to carry out the process

<b>COUNCIL OF GOVERNORS</b>															
<b>Report title:</b> Governor Communications Log		<b>Meeting date:</b> 5 August 2020													
<b>Report appendix</b>	Appendix 1: Governor Communications Log														
<b>Report sponsor</b>	Company Secretary														
<b>Report author</b>	Membership Manager														
<b>Report provenance</b>	Council of Governors standing agenda item														
<b>Purpose of the report and key issues for consideration/decision</b>	The Council of Governors receives as a standing item, the Governor Communications Log. This lists any questions raised by Governors and the answers received, since the previous CoG meeting.														
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ID	Date Requested	Governor	Constituency	Summary Description	Executive Lead	Response Date	Summary Response	Status
67	Tues 10 March 2020	Jonathan Shribman	South Hams	At the Network Meeting held on 10 March 2020, we heard from the Feedback and Engagement Team. Are there statistics available from the Feedback and Engagement Team regarding the number of complaints/concerns raised about the non-receipt of outpatient letters?	J Viner – CN	Fri 20 March 2020	We have checked with the Feedback and Engagement Team and they have not received any complaints/concerns about the non-receipt of outpatient letters.	Responded
68	Mon 23 March 2020	Lynne Hookings	Torbay	I hear from the news that we have had 3 deaths so far, have we many patients suffering with Covid-19 in the hospital?	M Trist - CGM	Fri 27 March 2020	In response to a number of queries from Governors, please be aware that the Trust is required to make a regular return on the number of reported COVID-19 cases, which is then included in the data on the Public Health England website. To see the most up to date information on the number of COVID-19 cases please refer to the Public Health England website – see link below (press control and click): <a href="https://www.gov.uk/government/publications/covid-19-track-coronavirus-cases">https://www.gov.uk/government/publications/covid-19-track-coronavirus-cases</a> . This is compiled using information submitted on a regular basis by all Trusts. (Extra Information: On the right hand site of the PHE website there is a table, with some "headings" below the graph. If you click on "UTLA" this does contain a separate figure for Torbay).	Responded
69	Friday 20 March 2020	Craig Davidson	South Hams	Governance question at present concerns planned outpatient therapy for cancer and other life threatening disease. I have just heard from a SH resident who, in place of an OP visit, was phoned to be told his planned RT in April is indefinitely postponed for what was described as policy reasons not clinical safety. Could governors be advised what the policy plans are and be assured on the patient safety aspects?	J Harrison - COO	Fri 27 March 2020	With respect to patients, the communications would have been on a one-to-one basis as arrangements were changed. GPs are all aware of the situation although we are following this up with formal communications through the CCG. Please see below the communication information that went out on the 18 March which gives detail about the activity stand down:  <u>Communication relating to risk assessment and planned reduction in clinical activity across the Trust.</u> On Monday 16th March, Gold command made the decision to stand down all but urgent activity and planned activity that could result in harm to patients. With effect from midday Monday to close of play Wednesday 17th March. The purpose of the 'pause' in activity was to give teams headroom to understand the present situation and to adapt pandemic flu plans to the present and expected situation. The amount of activity and the positivity of thought has been truly impressive and a good deal of progress has been made. Thank you for that. The task now is to coordinate all of that information to develop clear triggers and the plan for stepping down clinical activity in a way that is coherent and consistent across the Trust. It has been agreed that we will treat those patients who are highest risk but in doing so we must take account of potential impact on interdependent services both within the Trust and in the wider community. The template describes 5 categories of clinical activity based on the risk of interruption of service for up to 22 weeks. Category 1: Urgent Care Category 2: Risk of death if service not maintained Category 3: Risk of serious morbidity if service not maintained Category 4: Low risk of harm (with mitigating actions) Category 5: No risk of harm (with safeguards in place) The latest letter from the Chief Medical Officer and Sir Simon Stevens states that it is expected that all 'routine' surgery and other activity will cease from 15th April. We have responsibility for determining what activity we can safely undertake in the interim. There is, however, an expectation that we will undertake as much activity as we can to give us headroom for the coming weeks and that the activity will be focussed on activity which gives greatest risk reduction. This process is likely to take us to 27th March at least. Further guidance will be issued relating to further changes running up to 15th April.	Responded
70	Thurs 02 April 2020	Craig Davidson	South Hams	Some questions were raised via Lee Baxter, Operational Manager, Moor to Sea in regard to the situation with intermediate care and care homes during Covid-19.	J Downes - CoSec	Thurs 02 April 2020	The NHS nationally is managing the response to COVID-19 through well-established major incident procedures, including setting up local incident command centres. As part of these arrangements, we have a dedicated team focussing specifically on our response across community services (Care at Home), and Lee Baxter has a leading role to play within this team. With reference to your comment about providing updates and information to stakeholders on COVID-19, please be aware that stakeholder groups across our communities have been necessarily stood down until further notice in order to support the freeing-up of our management capacity and resources. Whilst we appreciate that this may create an information gap, we are planning to circulate a regular update* on key developments to our partners and stakeholders. I hope this will provide some of the assurance that you would normally receive through regular meetings. Please be assured that we will re-visit plans for a campaign to promote greater understanding of intermediate care once the COVID-19 situation de-escalates.  * Our Communications Team are finalising a local stakeholder briefing for stakeholders and the community in the form of a newsletter. The newsletter will be published shortly and will be issued to stakeholder groups, MP's, Councillors, Volunteer sector, FT members (via email) and Governors. The newsletter will also be available for wider sharing with local communications.	Responded
71	Wed 15 April 2020	Craig Davidson	South Hams	A series of questions were raised with regard to the Press Release about a Dartmouth Care Home re-opening to take patients discharged from hospitals. The series of questions and answers are listed below:	J Downes - CoSec	Wed 15 April 2020	Q: How will Fleet be staffed? A: Fleet have recruited their own staff group.  Q: The public will want assurance it will not be diverting staff away from the Trust. A: This won't divert staff away from the Trust, However, clearly as with any care home if we needed to support we would.  Q: What will be the arrangements for medical supervision of the transferred patients? A: This will be the same as with any person in a care home and will be registered with the local GP Practice. This may be permanent or as a temporary resident.  Q: The press release suggests a mixture of social and healthcare need, presumably including some low risk COVID patients. A: There maybe be some post-Covid patients if they are outside of the infectious period and receive negative swab.  Q: Can we be assured that Fleet will have appropriately trained and equipped staff? A: Fleet are in the process of registering with CQC. The provider is a well-established provider who understands their requirements and responsibilities.	Responded



72	Thurs 21 May 2020	Craig Davidson	South Hams	With regard to Dartmouth Health & Wellbeing Centre there doesn't appear to be any record at South Hams DC of this having been submitted yet. Could we have an update on where this project is stuck. Concerned that unless contractor already appointed that the build will not start this year.	L Darke – DECD	Fri 22 May 2020	<p>You will be pleased to know that the team have continued to work on the Dartmouth plans despite, and at the same time as, the enormous pressures of dealing with the Covid 19 pandemic. The pandemic though has affected all of us and particularly the availability of senior staff at South Hams DC to approve the Planning pack. There has been a delay for which they have apologised. As it is the Council's scheme clearly they needed to sign it off at Executive level before it was submitted.</p> <p>You will be pleased to know that this has very recently been approved by South Hams DC and on 26 May the final direction for it to be submitted via the planning portal was given. This is now expected to be submitted week commencing 1 June. If it is anything other than that, the Trust will let you know.</p> <p>Clearly we are anticipating that the building industry will be in a position to respond accordingly, but we should all be aware that Covid 19 is affecting a number of different areas of our lives including building material supply lines and workforce availability. This may further be adversely affected if we have another COVID spike going into Winter. We will of course do our best as always to drive this project forward at pace to completion.</p>	Responded
73	Wed 03 June 2020	Craig Davidson	South Hams	Dartmouth Health & Wellbeing Centre (HWC) - There is a rumour that planning consent has been submitted but we cannot see it on the shdc site. Please clarify. Could you also let me know who is now project lead for ICO?	L Darke – DECD	Wed 03 June 2020	<p>Director of Estates &amp; Commercial Development (DECD) has confirmed that the planning application was submitted to the portal on the 29th May 2020.</p> <p>The Trust and GP's have jointly worked on and signed-off the detailed design to ensure it can be delivered within the cost envelope. Our Health Infrastructure Partner ('HIP') is project managing the project for us on behalf of the Council, and the application for the Council owned development has now been submitted to their own planning department for approval.</p> <p>The DECD has extended her retirement date to the end of July. Her deputy Helen Elkington is the Trust senior management representative for the Project and is the Trust management link with HIP. Dave Stacey the CFO is the Executive link with Dartmouth.</p>	Responded
74	Tues 23 June 2020	John Kiddey	Torbay	<p>Can we expect a statement from the hospital management on the implications of the un-lockdown announced today in Parliament? Residents will want to know what the effects might be if tens of thousands of tourists are now able to stay in hotels, B and B's and caravan/camping sites. This is especially the case when our "R" rate is said to be near 1.</p> <p>I recall the topic being mentioned at the first board meeting I attended and I was re-assured by (for example) the decision to keep the Nightingales open in case of a spike in summer. However, the facts are now changing radically and we face a new future.</p> <p>Not being sure of the protocol, I thought I would approach you and ask if, and when, we governors might be told about the likely risks and the mitigation measures so that we are informed on behalf of the public.</p>	A Jones - DoTP	Wed 24 June 2020 (also supplementary response on 01 July 2020)	<p><u>With regard to the process</u>, you are quite correct in submitting the question in the first instance to the Foundation Trust mailbox.</p> <p>We direct Governor questions to the appropriate Lead Director/Senior Manager and add these to the Governors Comms Log, which is submitted formally to the quarterly Council of Governors meeting. Regular updates are also circulated to the governors between meetings through the newsletter.</p> <p><u>With regard to your question regarding a statement from the Trust relating to the recent Government announcement around the relaxing of lockdown</u> – as the question regarding the "R" rate is a public health issue, this is the responsibility of Torbay Council and any statement would be issued by their Director of Public Health. Accordingly we have forwarded your comments to them and will forward any reply received. In addition further communication may be forthcoming from NHS Devon CCG and I have included their public website address link here (<a href="http://devonccg.nhs.uk">devonccg.nhs.uk</a>).</p> <p><u>You mention the Exeter Nightingale and the possibility of a summer spike in numbers</u> – and I can assure you that whilst the number of cases is currently lower, we are well prepared if there is a spike, and we are continuing to work with colleagues across Devon, including the Councils, as a key part of this. I have attached a copy of the latest Nightingale Times (Issue 4) which you might find of interest.</p> <p><u>Supplementary response of 01.07.2020 received from Torbay Council Public Health Team:</u> In May we reviewed the projected implications of increasing tourism numbers. At that time we predicted that the number of cases of Covid-19 across the whole of Devon would increase during June, but we were not sure how much of any increase would be attributable to tourism. Despite the increasing tourist footfall in June the number of new COVID19 cases has continued to fall.</p> <p>Overall tourism in June is expected to be lower compared with previous years (a drop of 50-80%) due to the removal of the option for overnight accommodation. This means tourism had a lesser impact on healthcare demand in June – in a usual year it would account for 10-15% of demand in summer months. Whilst we have seen an uptick in the number of non-residents accessing A&amp;E services due to accidents and injuries sustained during holidays we have not seen COVID19 cases entering the hospital through non-residents.</p> <p>With the easing of restrictions during July we are expecting more 'day trip' visitors and overnight visitors. This may lead to an increase in the number of cases in the community, due to local residents mingling with visitors, for example at popular outdoor destinations like beaches and Dartmoor. If our local residents and visitors continue to follow social distancing guidelines then they are at very low risk from catching COVID19 from any infected persons whether they are visitors or local residents. We are working in partnership through our Torbay Local Outbreak Management Plan to support the national test, trace and contain programme, working with local settings both to prevent outbreaks and respond quickly and effectively where suspected or confirmed cases are identified.</p> <p>There is also a News release available on the Council website at - <a href="https://www.torbay.gov.uk/news/pr8089/">https://www.torbay.gov.uk/news/pr8089/</a></p>	Responded
75	Wed 01 July 2020	Barbara Inger	Teignbridge	Asked at Network Meeting: How many Covid patients at Totnes Hospital.	J Harrison - COO	Tues 14 July 2020	Jayne Carroll, Interim Director of Operations confirmed that there were no Covid patients at Totnes Hospital.	Responded
76	Wed 01 July 2020	Mary Lewis	South Hams	Asked at Network Meeting: When MIU and X-ray services would be restored at Totnes Hospital.	J Harrison - COO	Tues 14 July 2020	Jayne Carroll, Interim Director of Operations responded that stepping up these services is being considered as part of our recovery planning, in liaison with the CCG, the major constraint being the availability of the workforce as staff have had to be redeployed to support our COVID response.	Responded

77	Friday 17 July 2020	John Kiddey	Torbay	<p><u>Question please for hospital management:</u></p> <p>The chairman of The House of Commons Health Select Committee, Jeremy Hunt made the following statement this week to the Secretary of State for Health, Matt Hancock:</p> <p>"I want to ask the secretary of state about the worrying variation in coronavirus mortality rates between hospitals which appear to range from 12.5% to 80%.</p> <p>"Now there may be some issues of deprivation or ethnicity, but some of that variation is likely to be a failure in some hospitals to adopt best practice, which is what the 'Getting It Right First Time' programme led by Professor Tim Briggs does."</p> <p>What has been the percentage deaths in Torbay Hospital?</p>	J Harrison - COO	Wed 29 July 2020	<p>Every death from COVID is a tragedy for the family and loved ones and it is important clinical experience and data is used to learn and improve. This learning happened from the outset with clinical teams from TSD working internally, regionally and with national and international experiences all brought together to maximise the effectiveness of treatments as rapidly as possible.</p> <p>The following information provides a response to the Governors question regarding the number of cases and deaths at TSD FT.</p> <p>Total positive patient tests: 346  Total admitted positives: 109 – (about two thirds discharged prior to admission)  Total reported RIPs: 39 – (around 11% of total positive patients)</p> <p>We do not have the definition of the calculation that was behind the numbers quoted at the Health Select Committee of between 12.5% and 80% mortality rate however it is hoped that the figures above provide sufficient detail in response to the question.</p>	Responded
78	Tuesday 21 July 2020	Annie Hall	Teignbridge	Does having the flu jab make your immune system more susceptible to having Covid-19?	Currie - AMD	Mon 27 July 2020	There is no credible evidence that having a flu jab has any negative effect on your susceptibility to Covid-19.	Responded