



Torbay and South Devon
NHS Foundation Trust

Torbay and South Devon NHS Foundation Trust

Constitution

Approved by Council of Governors 4 May 2022

Torbay and South Devon NHS Foundation Trust Constitution

----- TABLE OF CONTENTS

<i>Paragraph</i>	<i>Page no</i>
1. Interpretation and definitions.....	4
2. Name.....	4
3. Principal purpose.....	4
4. Powers.....	5
5. Membership and constituencies.....	5
6. Application for membership.....	5
7. Public Constituency.....	5
8. Staff Constituency.....	6
9. Automatic membership by default – staff.....	6
10. Restriction on membership.....	7
11. Annual Members’ Meeting.....	7
12. Council of Governors – composition.....	7
13. Council of Governors – election of governors.....	7
14. Council of Governors – tenure.....	8
15. Council of Governors – disqualification and removal.....	8
16. Council of Governors – vacancies.....	9
17. Council of Governors – duties of governors.....	9
18. Council of Governors – meetings of governors.....	10
19. Council of Governors – standing orders.....	10
20. Council of Governors – referral to the Panel.....	10
21. Council of Governors - conflicts of interest of governors.....	10
22. Council of Governors – travel expenses.....	11
23. Council of Governors – further provisions (optional).....	11
24. Board of Directors – composition.....	11
25. Board of Directors – general duty.....	12
26. Board of Directors – qualification for appointment as a non-executive director.....	12
27. Board of Directors – appointment and removal of chairman and other non-executive directors.....	12

28. Not Used.....	13
29. Board of Directors – appointment of vice chairman.....	13
30. Board of Directors - appointment and removal of the Chief Executive and other executive directors.....	13
31. Not used	13
32. Board of Directors – disqualification.....	13
33. Board of Directors – meetings.....	15
34. Board of Directors – standing orders.....	15
35. Board of Directors - conflicts of interest of directors.....	15
36. Board of Directors – remuneration and terms of office.....	16
37. Registers.....	17
38. Admission to and removal from the registers.....	17
39. Registers – inspection and copies.....	17
40. Documents available for public inspection.....	18
41. Auditor.....	19
42. Audit committee.....	19
43. Accounts.....	19
44. Annual report, forward plans and non-NHS work.....	20
45. Presentation of the Annual accounts and report to the governors and members.....	20
46. Instruments.....	21
47. Amendment of the constitution.....	21
48. Mergers etc. and significant transactions.....	22
49. Indemnity.....	23
ANNEX 1 – THE PUBLIC CONSTITUENCIES.....	24
ANNEX 2 – THE STAFF CONSTITUENCY.....	25
ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS.....	26
ANNEX 4 – NOT USED	28
ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS....	29
ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS.....	35
ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS.....	41
ANNEX 8 – ANNUAL MEMBERS’ MEETING.....	42
ANNEX 9 – FURTHER PROVISIONS.....	47

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.

Model Election Rules means the rules for the conduct of elections for the member of council of governors of NHS foundation trusts, which at the date of this Constitution are published by NHS Providers.

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.

3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

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

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

3.3.2 the promotion and protection of public health.

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

4. Powers

4.1 The powers of the Trust are set out in the 2006 Act.

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

4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

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 by NHS Providers form part of this constitution.
- 13.3 A subsequent variation of the Model Election Rules by NHS Providers, or any other subsequent body with the authority to do so, 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 a period of three (3) 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. An elected governor may hold office (whether for the same constituency or class or for different constituencies or classes) for consecutive terms up to a maximum period of nine (9) years. Terms of office are consecutive where there is a break of not more than 12 months between them.
- 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.
- 14.7 Prior to an election for any elected governor position, the Chair may, having consulted the Lead Governor and acting reasonably in all the circumstances, determine that the term of office for the governor elected shall be shorter than 3 years in order to ensure that turnover of governors at future elections will not be excessive. Notice of this decision shall be given prior to the election.

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 the Trust or another foundation trust has been terminated for cause.
 - 15.1.8 Further provisions about eligibility are set out in Annex 5.
- 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 to represent the interests of the members of the Trust as a whole and

the interests of the public. This will be achieved in line with NHSE/I guidance.

- 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.

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 other non-executive directors; and
 - 24.2.3 executive directors.
- 24.3 One of the executive directors shall be the Chief Executive.
- 24.4 The Chief Executive shall be the Accounting Officer.
- 24.5 One of the executive directors shall be the 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 or 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 fulfilment 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 Trust has four (4) Public Constituencies as follows:

Areas comprising the Public Constituency	Local Authority areas/or local authority electoral areas falling within the following Electoral Wards	Minimum number of Members	Number of elected Governors
South Hams 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)
Rest of the South West Peninsula	All electoral wards in Cornwall, Devon, Somerset and Bristol not included in the above Public Constituencies	Ten (10)	One (1)

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 **33** Governors comprised as set out below and illustrated in the following table:

- Eighteen (18) Governors elected by members of the Trust from the Public Constituencies with each Public Constituency electing 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 South Hams and Plymouth, Torbay or Teignbridge Public Constituencies set out at Annex 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:

Public Constituency	Number of Public Governor seats	
South Hams and Plymouth		3
Teignbridge		7
Torbay		7
Rest of the South West Peninsula		1
	Sub Total	18
Staff Constituency		
	Number of Staff Governor seats	
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
	Sub Total	6
Appointed Governors' Constituency		
Devon County Council		1
South Hams District Council		1
Teignbridge District Council		1
Torbay District Council		1
NHS Devon Clinical Commissioning Group		1
Devon Partnership NHS Trust		1
University of Exeter Medical School		1
Plymouth University Peninsula School of Medicine and Dentistry		1
Voluntary Sector: Devon Carers		1
	Sub Total	9
	Total	33

ANNEX 4 – NOT USED

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 South Hams and Plymouth, Torbay or Teignbridge Public Constituencies 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 or employee of another NHS body as defined in section 275 of the 2006 Act (unless they are an appointed Governor of the Trust appointed by the NHS body for which they are an employee 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; or
- 3.1.13** being a Staff Governor and/or member of the Staff Constituency they have a current and unexpired written warning which has been imposed following disciplinary action by the Trust. Spent disciplinary warnings will not preclude eligibility to be a Governor. If a Staff Governor is suspended from duties for any reason they will also be suspended as a Staff Governor for the duration of their suspension. Whilst a Staff Governor is under suspension, the Staff Governor cannot attend meetings of the Council of Governors, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of paragraph 4.1.3 of this Annex 5. For the avoidance of doubt, a member will not be precluded from eligibility as a Governor by reason of

their suspension or as the subject of an ongoing disciplinary procedure and/or fact finding investigation.

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 subject to paragraph 4.7 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 28th 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 advisor's 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. If no Governor is willing to act as Chair or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.
- 1.10** The quorum for a members' meeting shall be twenty (20) members present and entitled to vote. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven (7) days until such time as the Board of Directors determine.
- 1.11** No such meeting shall become incompetent to transact business by lack of a quorum arising after the chair has been taken.
- 1.12** The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.13** A resolution put to the vote at a members' meeting shall be decided on a show of hands, 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.