

**NHS Foundation Trust**

**Model Core Constitution**

**(updated as per the Health and Social Care Act 2012)**

April 2013

## **Introduction**

Section 35(1) of the National Health Service Act 2006 (the 2006 Act) as amended by the Health and Social Care Act 2012 (the 2012 Act) provides that Monitor may grant authorisation as a foundation trust only if Monitor is satisfied that certain criteria are met. These include, in particular, the requirement of Section 35(2)(a) that the constitution will be in accordance with Schedule 7 of the 2006 Act and will otherwise be appropriate.

The model core constitution has been prepared by Monitor to reflect the requirements of Schedule 7 and what Monitor considers "otherwise appropriate", as set out in Appendix B8 of Monitor's publication, *Applying for NHS Foundation Trust Status: Guide for Applicants*. To assist NHS trusts in their application for foundation trust status and to facilitate Monitor's scrutiny of those applications and examination of draft constitutions, Monitor requires all applicant trusts to prepare their constitutions on the basis of this model core constitution. While applicant trusts may propose additions or amendments to the model core constitution, Monitor requires that any departure from the model core:

- a) be in accordance with Schedule 7;
- b) be clearly indicated as a tracked change; and
- c) be accompanied by an explanation for the intended departure from the model core.

The *NHS Foundation Trust Model Core Constitution* starts on page 4 of this document.

## **Interpretation**

Unless otherwise stated, all references are to paragraph numbers in Schedule 7 of the 2006 Act as amended by the 2012 Act.

Unless otherwise stated, the Model Core Constitution reflects the relevant provisions of the 2006 Act as amended by the 2012 Act.

Where square brackets appear in the Model Core Constitution, these indicate either that relevant details are to be inserted where indicated, or that the text within the square brackets may or may not be appropriate, depending on the circumstances of the particular trust.

## NHS Foundation Trust Model Core 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 13 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 [ ] NHS Foundation Trust (the trust).<sup>1</sup>

## 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>2</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.

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<sup>1</sup> Enter name of trust (paragraph 2). The name of the applicant trust must include the words "NHS Foundation Trust". Monitor's publication, *Applying for NHS Foundation Trust Status: Guide for Applicants*, further states "applicant trusts should avoid terms that may be misleading, inaccurate or risk causing confusion. If appropriate, applicant trusts should consult over the proposed name."

<sup>2</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** 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.<sup>3</sup>
- 4.2** All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 4.3** Any of these powers may be delegated to a committee of directors or to an executive director.

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

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

- 5.1** a public constituency
- 5.2** a staff constituency [and
- 5.3** a patients' constituency<sup>4</sup>]

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<sup>3</sup> see in particular sections 46 and 47 of the 2006 Act. Please note that the discharge of patients under section 45 of the Mental Health Act 2007 provides that such powers of discharge under that section may be exercised by any three or more "persons authorised by the board of the trust in that behalf each of whom is neither an executive director of the board nor an employee of the trust."

<sup>4</sup> The patients' constituency is optional (para 3(1)(c)). Strike out if not applicable. Monitor appreciates that the use of the word "hospital" may be sensitive to users of mental health services. The term "hospital" mirrors the statutory provision at para 3(1)(c) and is defined widely by section 275 of the 2006 Act. By way of concession, Monitor will accept the term "Trust premises" in place of "hospital" by applicant mental health trusts.

## **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 [the] [an] area specified in Annex 1 as [the] [an] area for a public constituency may become or continue as a member of the trust.<sup>5</sup>

**7.2** Those individuals who live in [the][an] area specified for a public constituency are referred to collectively as a Public Constituency.

**7.3** The minimum number of members in [the][each] Public Constituency is specified in Annex 1.<sup>6</sup>

## **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. (*optional*)

**8.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the

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<sup>5</sup> The constitution must specify an area/s for each public constituency (para 3(1)(a)). Each of these areas must be an electoral area for the purposes of local government elections in England and Wales or an area consisting of two or more areas (para 3(2)).

<sup>6</sup> For each public constituency and each class within a staff or patient constituency, the constitution is to require a minimum number of members for each public constituency or class (para 5).



Staff Constituency.

- 8.4** [The Staff Constituency shall be divided into [specify the number] 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.] *(optional)*<sup>7</sup>
- 8.5** The minimum number of members in [each class of] the Staff Constituency is specified in Annex 2.<sup>8</sup>

**9. Automatic membership by default – staff** *(optional)*<sup>9</sup>

- 9.1** An individual who is:
- 9.1.1** eligible to become a member of the Staff Constituency, and
  - 9.1.2** invited by the trust to become a member of the Staff Constituency [and a member of the appropriate class within the Staff Constituency],

shall become a member of the trust as a member of the Staff Constituency [and appropriate class within the Staff Constituency] without an application being made, unless he informs the trust that he does not wish to do so.

**10. Patients' Constituency** *(optional)*<sup>10</sup>

- 10.1** An individual who has, within the period specified below, attended any of the trust's hospitals as either a patient or as the carer of a patient may become a member of the trust.
- 10.2** The period referred to above shall be the period of [ ] years immediately preceding the date of an application by the patient or carer to become a member of the trust.

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<sup>7</sup> The constitution may divide the staff constituency into two or more descriptions of individuals (para 3(5)).

<sup>8</sup> Refer to footnote 6.

<sup>9</sup> The constitution may provide for automatic membership of the staff constituency by default (para 6(2)). Trusts should consider whether and, if so, how they will inform staff that they are subject to automatic membership.

<sup>10</sup> Refer to footnote 4

- 10.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Patients' Constituency.
- 10.4** [The Patients' Constituency shall be divided into [specify the number – at least 3] descriptions of individuals who are eligible for membership of the Patients' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Patients' Constituency.] (optional)<sup>11</sup>
- 10.5** An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patient Constituency.
- 10.6** The minimum number of members in [each class of] the Patients' Constituency is specified in Annex 3.<sup>12</sup>]

**11. Automatic membership by default – patients** (optional)<sup>13</sup>

- 11.1** An individual who is:
- 11.1.1** eligible to become a member of the Patients' Constituency (otherwise than as a carer of a patient), and
  - 11.1.2** invited by the trust to become a member of a specified constituency [and a member of a specified class within that specified constituency],

shall become a member of the trust as a member of that specified constituency [and specified class] without an application being made, unless he informs the trust that he does not wish to do so.

- 11.2** The constituency and, where applicable, the class to be specified:
- 11.2.1** if he is eligible to be a member of any public

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<sup>11</sup> If the constitution divides those who come within the Patients' Constituency into descriptions or classes of individuals, there must be at least three such descriptions or classes and one such description/class must comprise the carers of patients (para 3(7)).

<sup>12</sup> Refer to footnote 6

<sup>13</sup> The constitution may provide for automatic membership of the Patients' Constituency (if there is one) by default (para 6(3)). Trusts should consider whether and, if so, how they will inform patients that they are subject to automatic membership.

constituency, is that constituency,

- 11.2.2** otherwise, is the Patients' Constituency and, where applicable, the class of which he is eligible to become a member.]

## **12. Restriction on membership**

- 12.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 12.2** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 12.3** An individual must be at least [ ] years old to become a member of the trust.
- 12.4** [Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 9 – Further Provisions.]<sup>14</sup>

## **13. Annual Members' Meeting**<sup>15</sup>

- 13.1** The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 13.2** [Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting].

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<sup>14</sup> Provisions additional to those provided in the model core constitution may be inserted in Annex 9. These may include, for example, further provisions as to the circumstances in which an individual may not become or continue as a member of the trust (paragraph 10.4 of the model core constitution and para 3(8) of Schedule 7), how the eligibility criteria for members are to be applied as a condition of continued membership, the resolution of disputes and responsibilities of a trust secretary. Additional provisions with respect to the Council of Governors are to be inserted in Annex 6.

<sup>15</sup> Foundation Trusts are required under paras 27A(1) and (2) to hold an annual members meeting open to the public. Inclusion of this paragraph is suggested but not mandatory. The trust may wish to include additional provisions about the annual members meeting in an Annex to the constitution.

#### **14. Council of Governors – composition**

- 14.1 The trust is to have a Council of Governors<sup>16</sup>, which shall comprise both elected and appointed governors.
- 14.2 The composition of the Council of Governors is specified in Annex 4.
- 14.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.<sup>17</sup>

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

- 15.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 15.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust's Authorisation are attached at Annex 5.
- 15.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 48 of the constitution (amendment of the constitution).
- 15.4 An election, if contested, shall be by secret ballot.

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

- 16.1 An elected governor may hold office for a period of up to [3 years].
- 16.2 An elected governor shall cease to hold office if he ceases to be a

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<sup>16</sup> By para 7, the trust must have a Council of Governors, previously known as a 'Board of governors'

<sup>17</sup> Section 60 of the 2006 Act requires persons standing for and voting in the elections to make a declaration setting out the particulars of their qualification to vote or stand as a member of the constituency (or class/area) for which the election is being held. The trust may want to consider including provisions to this effect in the constitution. NB: the requirement does not apply to staff governors (section 60(4) of the 2006 Act).

member of the constituency or class by which he was elected.

- 16.3** An elected governor shall be eligible for re-election at the end of his term.
- 16.4** An appointed governor may hold office for a period of up to [ ] years.
- 16.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 16.6** An appointed governor shall be eligible for re-appointment at the end of his term.

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

- 17.1** The following may not become or continue as a member of the Council of Governors:
  - 17.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 17.1.2** a person 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;
  - 17.1.3** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 17.2** Governors must be at least [16] years of age at the date they are nominated for election or appointment.<sup>18</sup>
- 17.3** [Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Governors are set out in Annex 6.] (optional)<sup>19</sup>

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<sup>18</sup> *Applying for NHS Foundation Trust Status: Guide for Applicants* sets out that, in order to be considered “otherwise appropriate”, the constitution should state that governors are to be at least 16 years old.

<sup>19</sup> The constitution may make further provision as to the circumstances in which a person may not become or continue as a member of the Council of governors (para 8(2)).

**17.4** [The constitution is to make provision for the removal of governors.]<sup>20</sup>

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

**18.1** The general duties of the Council of Governors are –

**18.1.1** to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

**18.1.2** to represent the interests of the members of the trust as a whole and the interests of the public.<sup>21</sup>

**18.2** The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.<sup>22</sup>

## **19. Council of Governors – meetings of governors**

**19.1** The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or paragraph 23.1 below) or, in his absence [another person], [the Deputy Chairman (appointed in accordance with the provisions of paragraph 24 below)], shall preside at meetings of the Council of Governors.

**19.2** Meetings of the Council of Governors shall be open to members of the public. [Members of the public may be excluded from a meeting for special reasons.]<sup>23</sup>

**19.3** For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.<sup>24</sup>

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<sup>20</sup> Para 14(1)(d) requires the constitution to make provision for the removal of governors. No mandated or suggested procedures are given in Schedule 7. Appropriate provisions should be determined by the applicant trust and inserted here.

<sup>21</sup> This reflects para 10A.

<sup>22</sup> This reflects para 10B.

<sup>23</sup> Para 13(1) provides that meetings of the Council of Governors are to be open to members of the public. The constitution may, however, provide that members of the public may be excluded from a meeting for special reasons (para 13(2)).

<sup>24</sup> This reflects paragraph 10C.

## **20. Council of Governors – standing orders**

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

## **21. Council of Governors – referral to the Panel**<sup>25</sup>

**21.1** In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—

**21.1.1** to act in accordance with its constitution, or

**21.1.2** to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

**21.2** A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

## **22. 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.

## **23. Council of Governors – travel expenses**

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

## **24. [Council of Governors – further provisions]** *(optional)*<sup>26</sup>

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

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<sup>25</sup> This reflects section 39A of the 2006 Act.

<sup>26</sup> The constitution may make further provisions about the Council of Governors (para 14(2)).

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

- 25.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.<sup>27</sup>
- 25.2** The Board of Directors is to comprise:
- 25.2.1** a non-executive Chairman
  - 25.2.2** [ ] other non-executive directors; and
  - 25.2.3** [ ] executive directors.
- 25.3** One of the executive directors shall be the Chief Executive.
- 25.4** The Chief Executive shall be the Accounting Officer
- 25.5** One of the executive directors shall be the finance director
- 25.6** One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 25.7** One of the executive directors is to be a registered nurse or a registered midwife.

## **26. Board of Directors – general duty**<sup>28</sup>

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

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

A person may be appointed as a non-executive director only if –

- 27.1** he is a member of a Public Constituency, or
- 27.2** [he is a member of the Patients' Constituency, or] (optional)<sup>29</sup>

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<sup>27</sup> In accordance with the principles of good corporate governance, it is recommended that the constitution provide that at least half of the Board of Directors, excluding the Chairman, should be non-executive directors. Alternatively, in the event that the constitution provides for parity on the Board of Directors between executive and non-executive directors, the Chairman should have a casting vote.

<sup>28</sup> This reflects paragraph 18A.

<sup>29</sup> Refer to footnote 4



**27.3** [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

**27.4** he is not disqualified by virtue of paragraph 33 below.

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

**28.1** 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.

**28.2** Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

**28.3** The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 29 below.

**29. Board of Directors – appointment of initial chairman and initial other non-executive directors**<sup>30</sup>

**29.1** The Council of Governors shall appoint the chairman of the applicant NHS Trust as the initial chairman of the trust, if he wishes to be appointed.

**29.2** The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.

**29.3** The criteria for qualification for appointment as a non-executive director set out in paragraph 27 above (other than disqualification by virtue of paragraph 33 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

**29.4** An individual appointed as the initial chairman or as an initial non-

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<sup>30</sup> Para 19 which provides for the appointment of the initial NEDs is marked for repeal, but the repeal will not take effect until all NHS Trusts have become FTs. These provisions will therefore continue to be relevant to all aspirant FTs.

executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

**30. Board of Directors – appointment of deputy chairman** *(optional)*<sup>31</sup>

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.]

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

- 31.1 The non-executive directors shall appoint or remove the Chief Executive.
- 31.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 31.3 The initial Chief Executive is to be appointed in accordance with paragraph 32 below.
- 31.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

**32. Board of Directors – appointment and removal of initial Chief Executive**<sup>32</sup>

- 32.1 The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust, if he wishes to be appointed.
- 32.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

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<sup>31</sup> Provision for the appointment of a deputy chair is suggested. It is not a mandatory requirement. Where the constitution provides for the appointment of a deputy chairman, that appointment should be made by the Council of governors from the non-executive directors.

<sup>32</sup> Paragraph 19 which provides for the appointment of the initial Chief Executive is marked for repeal, but the repeal will not take effect until all NHS Trusts have become FTs. These provisions will therefore continue to be relevant to all aspirant FTs.

### **33. Board of Directors – disqualification**

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

- 33.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 33.2** a person 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.
- 33.3** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

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

- 34.1** Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.<sup>33</sup>
- 34.2** Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.<sup>34</sup>

### **35. Board of Directors – standing orders**<sup>35</sup>

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8.

### **36. Board of Directors - conflicts of interest of directors**<sup>36</sup>

- 36.1** The duties that a director of the trust has by virtue of being a director include in particular –

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<sup>33</sup> This reflects paragraph 18E. Its inclusion is mandatory.

<sup>34</sup> This reflects paragraph 18D.

<sup>35</sup> Provision for standing orders for the practice and procedure of the Board of Directors is required in respect of paragraph 28 of the model core constitution. Provision relating to other aspects of the Board's practice and procedure is suggested but not mandatory.

<sup>36</sup> These provisions reflect paragraphs 18B and 18C. Inclusion of provisions in the constitution about directors' conflicts of interest is mandatory pursuant to paragraph 21.

- 36.1.1** A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.
  - 36.1.2** A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 36.2** The duty referred to in sub-paragraph 36.1.1 is not infringed if –
  - 36.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 36.2.2** The matter has been authorized in accordance with the constitution.
- 36.3** The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 36.4** In sub-paragraph 36.1.2, “third party” means a person other than –
  - 36.4.1** The trust, or
  - 36.4.2** A person acting on its behalf.
- 36.5** If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 36.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 36.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 36.8** This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 36.9** A director need not declare an interest –
  - 36.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 36.9.2** If, or to the extent that, the directors are already aware of it;
  - 36.9.3** If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –

- 36.9.3.1** By a meeting of the Board of Directors, or
- 36.9.3.2** By a committee of the directors appointed for the purpose under the constitution.

**36.10** A matter shall have been authorised for the purposes of paragraph 36.2.2 if:

[insert relevant provisions]

### **37. Board of Directors – remuneration and terms of office**

**37.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

**37.2** The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.<sup>37</sup>

### **38. Registers**

The trust shall have:

- 38.1** 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;
- 38.2** a register of members of the Council of Governors;
- 38.3** a register of interests of governors;
- 38.4** a register of directors; and
- 38.5** a register of interests of the directors.

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<sup>37</sup> The constitution may make provision for these matters to be decided pending the establishment of such a committee (para 18(2)).

### **39. Admission to and removal from the registers (optional)<sup>38</sup>**

#### **40. Registers – inspection and copies**

- 40.1** The trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 40.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of –
- 40.2.1** any member of the Patients' Constituency; or
  - 40.2.2** any other member of the trust, if he so requests<sup>39</sup>.

*Alternative text where there is no Patients' Constituency:*

- 40.3** [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.]
- 40.4** So far as the registers are required to be made available:
- 40.4.1** they are to be available for inspection free of charge at all reasonable times; and
  - 40.4.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 40.5** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

#### **41. Documents available for public inspection<sup>40</sup>**

- 41.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 41.1.1** a copy of the current constitution,
  - 41.1.2** a copy of the latest annual accounts and of any report of the auditor on them, and
  - 41.1.3** a copy of the latest annual report.

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<sup>38</sup> The constitution may make further provision about the registers including, in particular, admission to, and removal from, the registers (para 20(2)).

<sup>39</sup> See the Public Benefit Corporation (Register of Members) Regulations 2004 (SI 2004 No. 539) as amended.

<sup>40</sup> This reflects para 22.

- 41.2** The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 41.2.1** a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - 41.2.2** a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 41.2.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 41.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 41.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 41.2.6** a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
  - 41.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 41.2.8** a copy of any final report published under section 65I (administrator's final report),
  - 41.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
  - 41.2.10** a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 41.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 41.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

## **42. Auditor**

- 42.1 The trust shall have an auditor.
- 42.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

## **43. Audit committee**

The trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

## **44. Accounts**

- 44.1 The Trust must keep proper accounts and proper records in relation to the accounts.<sup>41</sup>
- 44.2 Monitor may with the approval of the Secretary of State<sup>42</sup> give directions to the Trust as to the content and form of its accounts.
- 44.3 The accounts are to be audited by the trust's auditor.
- 44.4 The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct<sup>43</sup>.
- 44.5 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 45.1 The trust shall prepare an Annual Report and send it to Monitor.
- 45.2 The trust shall give information as to its forward planning in respect of each financial year to Monitor.

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<sup>41</sup> This reflect para 24(1)

<sup>42</sup> This reflects para 24(1A): initial arrangements for accounts. In time, the initial arrangements will be varied to enable the Secretary of State with the approval of Treasury to give directions as to FT accounts.

<sup>43</sup> This reflects para 25(1): initial arrangements for accounts. In time, the initial arrangements will be varied to enable the Secretary of State with the approval of Treasury to give directions as to the form of FT annual accounts.



- 45.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 45.4** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 45.5** Each forward plan must include information about –
- 45.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
  - 45.5.2** the income it expects to receive from doing so.
- 45.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 the Council of Governors must –
- 45.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its other functions, and
  - 45.6.2** notify the directors of the trust of its determination.
- 45.7** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.

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

- 46.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 46.1.1** the annual accounts
  - 46.1.2** any report of the auditor on them
  - 46.1.3** the annual report.
- 46.2** The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.<sup>44</sup>

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<sup>44</sup> This reflects para 27A(3).

- 46.3** The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 46.1 with the Annual Members' Meeting.<sup>45</sup>

#### **47. Instruments**

- 47.1** The trust shall have a seal.
- 47.2** The seal shall not be affixed except under the authority of the Board of Directors.

#### **48. Amendment of the constitution**

- 48.1** The trust may make amendments of its constitution only if –
- 48.1.1** More than half of the members of the Council of Governors of the trust voting approve the amendments, and
  - 48.1.2** More than half of the members of the Board of Directors of the trust voting approve the amendments.<sup>46</sup>
- 48.2** Amendments made under paragraph 48.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.<sup>47</sup>
- 48.3** Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust) –
- 48.3.1** At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 48.3.2** The trust must give the members an opportunity to vote on whether they approve the amendment.

If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a

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<sup>45</sup> This reflects para 28A.

<sup>46</sup> This paragraph reflects section 37(1) of the 2006 Act.

<sup>47</sup> This paragraph reflects sections 37(2) and (3) of the 2006 Act

result.<sup>48</sup>

- 48.4** 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.<sup>49</sup>

#### **49. Mergers etc. and significant transactions**

- 49.1** The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.<sup>50</sup>
- 49.2** [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.<sup>51</sup>
- 49.3** “Significant transaction” means [insert descriptions<sup>52</sup>];

*Alternatively:*

[49.2 The constitution does not contain any descriptions of the term ‘significant transaction’ for the purposes of section 51A of the 2006 Act (Significant Transactions).]<sup>53</sup>

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<sup>48</sup> This paragraph reflects paragraph 27A(4) and 27A(5).

<sup>49</sup> This reflects section 37(4) of the 2006 Act.

<sup>50</sup> This reflects section 56(1A), 56B, 56C and 57A of the 2006 Act.

<sup>51</sup> This reflects section 51A(1) of the 2006 Act.

<sup>52</sup> The trust may insert descriptions of significant transactions pursuant to 51A(2) of the 2006 Act.

<sup>53</sup> If the trust does not wish to specify any descriptions of significant transactions, the constitution must specify that it contains no such descriptions (section 51A(3) of the 2006 Act).

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

(Paragraphs 7.1 and 7.3)

[Specify the public constituencies and the minimum number of members in each such constituency]

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

(Paragraphs 8.4 and 8.5)

[Specify the descriptions of individuals, each description of which is referred to as a class within the Staff Constituency, and the minimum number of members of each class. If there are no classes within the Staff Constituency, specify the minimum number of members in the Staff Constituency.]

### **ANNEX 3 – THE PATIENTS’ CONSTITUENCY**

(Paragraphs 10.4 and 10.6)

[Specify the descriptions of individuals, each description of which is referred to as a class within the Patients’ Constituency, and the minimum number of members of each class. If there are no classes within the Patients’ Constituency, specify the minimum number of members in the Patients’ Constituency.]

## **ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS**<sup>54</sup>

(Paragraphs 14.2 and 14.3)

[Elected governors – specify the number of governors to be elected by each constituency, or by each class within a constituency, as appropriate.

Appointed governors

- specify the local authority governors and their number;
- specify any mandatory university governors and their number;
- specify any other appointing organisations and their number and include a statement that they are specified for the purposes of sub-paragraph 9(7) of Schedule 7]

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<sup>54</sup> More than half of the members of the Council of Governors are to be elected by members of the trust other than those who come within the Staff Constituency (para 9(1)). Therefore, there must be a majority of public and patient governors.

At least three members of the Council of Governors are to be elected by the Staff Constituency or, where there are classes within it, at least one member of the Council of Governors is to be elected by each class within the Staff Constituency and at least three members are to be elected altogether from the Staff Constituency (para 9(2)).

The 2012 Act abolishes the requirement for a primary care trust governor. There is no requirement for a commissioner governor to be appointed in place of former PCT governor/s though Trusts may wish to nominate a commissioner/s as an organisation specified for the purposes of appointing a governor.

At least one member of the Council of Governors is to be appointed by one or more qualifying local authorities. A qualifying local authority is a local authority for an area which includes the whole or part of an area specified in the constitution as a public constituency (para 9(4) and (5)).

If any of the trust's hospitals includes a medical or dental school provided by a university, at least one member of the Council of governors is to be appointed by that university (para 9(6)). The trust will be expected to make submissions in support of its position that one of its hospitals includes a medical or dental school provided by a university.

An organisation specified in the constitution for the purposes of sub-paragraph 9(7) of Schedule 7 may appoint one or more members of the Council of Governors (para 9(7)), but not more than the number specified.

**ANNEX 5 –THE MODEL ELECTION RULES**

(Paragraph 15.2)



**ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

(Paragraph 17.3)

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

(Paragraph 20)

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

(Paragraph 35)

**[ANNEX 9 – FURTHER PROVISIONS]**

(Paragraph 12.4)

**[ANNEX 10 – ANNUAL MEMBERS MEETING]**

(Paragraph 13.2)