



LUTON &  
DUNSTABLE  
UNIVERSITY  
HOSPITAL

CLINICAL EXCELLENCE, QUALITY & SAFETY

**Constitution  
January 2017**

**CONSTITUTION OF THE LUTON & DUNSTABLE UNIVERSITY  
HOSPITAL NHS FOUNDATION TRUST (A Public Benefit Corporation)**

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## 1 Definitions

- 1.1. Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the National Health Service Act 2006.
- 1.2. References in this constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.3. Headings are for ease of reference only and are not to affect interpretation.
- 1.4. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.

1.5. In this constitution:

“the 2006 Act”	means the National Health Service Act 2006;
“the 1977 Act”	means the National Health Service Act 1977;
“the 2012 Act”	is the Health and Social Care Act 2012.
“appointed Governors”	means those Governors appointed by the appointing organisations;
“appointing organisations”	means those organisations named in this constitution who are entitled to appoint Governors;
“areas of the Foundation Trust”	means the three areas specified in Annex 1 which are (1) Luton; (2) Bedfordshire; and (3) Hertfordshire;
“authorisation”	means an authorisation given by the Independent Regulator;
“Board of Directors”	means the Board of Directors as constituted in accordance with this constitution;
“Council of Governors”	means the Council of Governors as constituted in accordance with this constitution, which has the same meaning as ‘Council of Governors in the 2006 Act’;
“Director”	means a member of the Board of Directors;
“elected Governors”	means those Governors elected by the public constituencies and the classes of the staff constituency;
“external auditor”	means any external auditor other than the independent auditor appointed under this

	constitution to review and report upon other aspects of the Foundation Trust's performance;
"Financial year"	means: <ul style="list-style-type: none"> <li>(a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and</li> <li>(b) each successive period of twelve months beginning with 1 April;</li> </ul>
"independent auditor"	means the person appointed to audit the accounts of the Foundation Trust, who is called the auditor in the 2006 Act;
"Monitor"	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
"Local Authority Governor"	means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas of the Foundation Trust;
"member"	means a member of the Foundation Trust;
"the Foundation Trust"	means Luton and Dunstable University Hospital NHS Foundation Trust;
"the NHS Trust"	means Luton and Dunstable University Hospital NHS Trust which made the application to become an NHS foundation trust;
"partner"	means, in relation to another person, a member of the same household living together as a family unit;
"Partnership Governor"	means a Governor appointed by a partnership organisation;
"CCG Governor"	means a Governor appointed by a Clinical Commissioning Group for which the Foundation Trust provides goods or services;
"public constituency"	means (collectively) those members who live in one of the areas of the Foundation Trust;
"Public Governor"	means a Governor elected by the members of one of the public constituencies;
"registered dentist"	means a registered dentist within the

		meaning of the Dentists Act 1984;
“registered practitioner”	medical	means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practice under that Act;
“Registered Volunteers”		means those persons who exercise functions for the purposes of the Foundation Trust on a voluntary basis, and whose names are recorded by the Secretary in the Register of Volunteers;
“Secretary”		means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
“staff constituency”		means (collectively) those members of the six classes of the staff constituency;
“Staff Governor”		means a Governor elected by the members of one of the classes of the staff constituency;
“voluntary organisation”		means a body, other than a public or local authority, the activities of which are not carried on for profit.

## **2 Name and status**

- 2.1. The name of this Foundation Trust is to be “Luton and Dunstable University Hospital NHS Foundation Trust”. The Foundation Trust is a public benefit corporation authorised under the National Health Service Act 2006.

## **3 Purpose**

- 3.1. The Foundation Trust’s purpose is to serve the community by 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 Functions**

4.1. The function of the Foundation Trust is to provide goods and services, including education and training, research, accommodation and other facilities, for purposes related to the provision of health care.

4.2. The Foundation Trust may also carry on other functions for the purpose of making additional income available in order to carry on the Foundation Trust's principal purpose better.

## **5 Powers**

5.1. The Foundation Trust may do any lawful thing which appears to it to be necessary or desirable for the purposes of or in connection with its functions.

5.2. In particular it may:

5.2.1. acquire and dispose of property,

5.2.2. enter into contracts,

5.2.3. accept gifts of property (including property to be held on trust for the purposes of the Foundation Trust or for any purposes relating to the health service),

5.2.4. employ staff.

5.3. Any power of the Foundation Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

5.4. The Foundation Trust may borrow money for the purposes of or in connection with its functions, subject to any limit imposed by its authorisation or specified in the prudential borrowing code published by the Independent Regulator from time to time.

5.5. The Foundation Trust may invest money (other than money held by it as charitable trustee) for the purposes of or in connection with its functions. The investment may include investment by:

5.5.1. forming or participating in forming bodies corporate.

5.5.2. otherwise acquiring membership of bodies corporate.

5.6. The Foundation Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

## 6 Commitments

- 6.1 The Foundation Trust shall exercise its functions effectively, efficiently and economically.

### **Representative membership**

- 6.2 The Foundation Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:

6.2.1 the Foundation Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years,

6.2.2 the Council of Governors shall present to each annual members meeting:

6.2.2.1 a report on steps taken to secure that taken as a whole the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;

6.2.2.2 the progress of the membership strategy;

6.2.2.3 any changes to the membership strategy.

### **Co-operation with Health bodies**

- 6.3 In exercising its functions the Foundation Trust shall co-operate with all appropriate health and social care bodies.

### **Respect for rights of people**

- 6.4 In conducting its affairs, the Foundation Trust shall respect the rights of members of the community it serves, its employees and people dealing with the Trust as set out in the Charter of Fundamental Rights of the European Union and the NHS Constitution.

### **Openness**

- 6.5 In conducting its affairs, the Foundation Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way and comply with the NHS Constitution.

### **Prohibiting distribution**

- 6.6 Any profits or surpluses of the Foundation Trust are not to be distributed either directly or indirectly in any way at all among members of the Foundation Trust.

## 7. **Roles and Responsibilities: Framework**

- 7.1. The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this constitution and the Foundation Trust's authorisation. The members, the Board of Directors and the Council of Governors are to have the roles and responsibilities set out in this constitution.

### **Roles and Responsibilities: Members**

- 7.2. Members may attend and participate at members meetings, vote in elections to, and stand for election for the Council of Governors, and take such other part in the affairs of the Foundation Trust as is provided in this constitution.

### **Roles and Responsibilities: Council of Governors**

- 7.3. The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the Foundation Trust's authorisation, are:

#### 7.3.1 at a General Meeting

7.3.1.1 to appoint or remove the Chairman and the other non-executive Directors;

7.3.1.2 to approve an appointment (by the non-executive Directors) of the chief executive;

7.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;

7.3.1.4 to appoint or remove the Foundation Trust's independent auditor;

7.3.1.5 to be presented with the annual accounts, any report of the independent auditor on them and the annual report;

7.3.1.6 to hold of the non-executive directors individually and collectively to account for the performance of the board;

7.3.1.7 to represent the interests of members as a whole and of the public

7.3.1.8 to require one or more directors to attend a meeting (of the council) to obtain information on the performance of the FT and to help them to decide whether to propose a vote on the performance of the FT. FTs must report on the number of times this power was used each year in their annual report

- 7.3.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning.

- 7.3.3 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution.
- 7.3.4 to undertake such functions as the Board of Directors shall from time to time request.
- 7.3.5 to prepare and from time to time to review the Foundation Trust's membership strategy, and its policy for the composition of the Council of Governors and of the non-executive Directors and when appropriate to make recommendations for the revision of this constitution.

#### **Roles and Responsibilities: Board of Directors**

- 7.4. The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.

### **8. Members**

- 8.1. The members of the Foundation Trust are those individuals whose names are entered in the register of members. Every member is either a member of one of the public constituencies or a member of one of the classes of the staff constituency.
- 8.2. Subject to this constitution, membership is open to any individual who:
  - 8.2.1. is over sixteen years of age,
  - 8.2.2. is entitled under this constitution to be a member of one of the public constituencies or one of the classes of the staff constituency, and
  - 8.2.3. completes a membership application form in whatever form the Secretary specifies.

#### **Public constituencies**

- 8.3. There are three public constituencies corresponding to the three areas of the Foundation Trust specified in Annex 1. Membership of a public constituency is open to individuals who
  - 8.3.1. live in the relevant area of the Foundation Trust,
  - 8.3.2. are not a member of another public constituency, and
  - 8.3.3. are not eligible to be members of any of the classes of the staff constituency.
- 8.4. The minimum number of members of each of the public constituencies is to be fifteen.
  - 8.4.1. Staff members who leave the Trust and are eligible to become members of one of the Public Constituencies shall be asked if they

would like to become a member and a form will be completed for that staff member who leaves.

### **Staff constituency**

- 8.5. The staff constituency is divided into six classes as follows:
- 8.5.1. Ancillary Staff (Direct Services) and Maintenance
  - 8.5.2. Administrative and Clerical, and Managers
  - 8.5.3. Medical and Dental
  - 8.5.4. Nursing and Midwifery (including Healthcare Assistants)
  - 8.5.5. Professions Allied to Medicine, Professional and Technical Staff, Pharmacy and Scientific and Professional, and Allied Health Professions
  - 8.5.6. Registered Volunteers.
- 8.6. Membership of one of the classes of the staff constituency is open to individuals:
- 8.6.1. who are employed under a contract of employment by the Foundation Trust and who either
    - 8.6.1.1. are employed by the Foundation Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or
    - 8.6.1.2. who have been continuously employed by the Foundation Trust or the NHS Trust for at least 12 months; or
  - 8.6.2. who are not so employed but who nevertheless exercise functions for the purposes of the Foundation Trust and who have exercised the functions for the purposes of the Foundation Trust or the NHS Trust registered to work for the Trust, for example those staff on permanent bank for at least 12 months continuously. This includes Registered Volunteers, but for the avoidance of doubt does not include any other person exercising functions on a voluntary basis.
- 8.7. The Secretary shall make a final decision about the class of which an individual is eligible to be a member.
- 8.8. All individuals who are entitled under this constitution to become members of one of the classes of the staff constituency, and who
- 8.8.1. have been invited by the Foundation Trust to become a member of the appropriate class, and
  - 8.8.2. have not informed the Foundation Trust that they do not wish to do so
- shall become members of the appropriate class.

- 8.9. A person who is eligible to be a member of one of the classes of the staff constituency may not become or continue as a member of any of the public constituencies, and may not become or continue as a member of more than one class of the staff constituency.
- 8.10. The minimum number of members of each class of the staff constituency is to be fifteen.
- 8.11. Automatic membership by default – staff

An individual who is:

- Eligible 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 they inform the Trust that they do not wish to do so.

## **9 Disqualification from Membership**

- 9.1. A person may not become a member of the Foundation Trust if within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against Registered Volunteers.

## **10 Termination of Membership**

- 10.1. A member shall cease to be a member if:
- 10.1.1. they resign by notice to the Secretary;
  - 10.1.2. they die;
  - 10.1.3. they are expelled from membership under this constitution;
  - 10.1.4. they cease to be entitled under this constitution to be a member of any of the public constituencies or of any of the classes of the staff constituency;
  - 10.1.5. if it appears to the Secretary that they no longer wish to be a member of the Foundation 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 to be a member of the Foundation Trust.
- 10.2. A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.
- 10.2.1. Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.

- 10.2.2. 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:
  - 10.2.2.1. dismiss the complaint and take no further action; or
  - 10.2.2.2. for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution;
  - 10.2.2.3. arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
- 10.2.3. If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 10.2.4. At the meeting 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.
- 10.2.5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 10.3. A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 10.4. 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 Governors present and voting at a General Meeting.

## **11 Members Meetings**

- 11.1. The Foundation Trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each financial year.
- 11.2. All members meetings other than annual meetings are called special members meetings.
- 11.3. Members meetings are open to all members of the Foundation Trust, Governors and Directors, and representatives of the independent auditor, but not to members of the public unless the Council of Governors decides otherwise. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members meeting.
- 11.4. All members meetings are to be convened by the Secretary by order of the Council of Governors.

- 11.5. The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members:
  - 11.5.1. arrange for the annual members meeting to be held in different venues each year:
  - 11.5.2. make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 11.6. At the annual members meeting:
  - 11.6.1. the Board of Directors shall present to the members:
    - 11.6.1.1. the annual accounts
    - 11.6.1.2. any report of the independent auditor
    - 11.6.1.3. any report of any other external auditor of the Foundation Trust's affairs
    - 11.6.1.4. forward planning information for the next financial year
  - 11.6.2. the Council of Governors shall present to the members
    - 11.6.2.1. a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
    - 11.6.2.2. the progress of the membership strategy;
    - 11.6.2.3. any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
  - 11.6.3. the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 11.7. Notice of a members meeting is to be given:
  - 11.7.1. by notice to all members;
  - 11.7.2. by notice prominently displayed at the head office and at all of the Foundation Trust's places of business; and
  - 11.7.3. by notice on the Foundation Trust's websiteat least 14 clear days before the date of the meeting. The notice must:
  - 11.7.4. be given to the Council of Governors and the Board of Directors, and to the independent auditor;

- 11.7.5. state whether the meeting is an annual or special members meeting;
- 11.7.6. give the time, date and place of the meeting; and
- 11.7.7. indicate the business to be dealt with at the meeting.
- 11.8. Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the Foundation Trust's constituencies.
- 11.9. The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
- 11.10. It is the responsibility of the Council of Governors, the Chairman of the meeting and the Secretary to ensure that at any members meeting:
  - 11.10.1. the issues to be decided are clearly explained;
  - 11.10.2. sufficient information is provided to members to enable rational discussion to take place.
- 11.11. The Chairman of the Foundation Trust, or in their absence the Lead Governor and Deputy Chairman of the Council of Governors shall act as chairman at all members meetings of the Foundation Trust. If neither the Chairman nor the Lead Governor and Deputy Chairman of the Council of Governors is present, the members of the Council of Governors present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act they shall be Chairman.
- 11.12. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 11.13. A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 11.14. Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a second or casting vote.
- 11.15. The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## **12. Council of Governors**

- 12.1. The Foundation Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors, CCG Governors, Local Authority Governors, and Partnership Governors.
- 12.2. The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.

12.3. The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:

12.3.1. the interests of the community served by the Foundation Trust are appropriately represented;

12.3.2. the level of representation of the public constituencies, the classes of the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs;

and to this end, the Council of Governors:

12.3.3. shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy and

12.3.4. shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and

12.3.5. when appropriate shall propose amendments to this constitution.

12.4. The Council of Governors of the Foundation Trust is to comprise:

12.4.1. twenty-two Public Governors from the following public constituencies as defined in Annex 1;

12.4.1.1. Luton – twelve Public Governors

12.4.1.2. Bedfordshire – seven Public Governors

12.4.1.3. Hertfordshire – three Public Governors;

12.4.2. nine Staff Governors from the following classes;

12.4.2.1. Ancillary Staff (Direct Services) and Maintenance – one Staff Governor

12.4.2.2. Administrative and Clerical, and Managers – two Staff Governors

12.4.2.3. Medical and Dental – one Staff Governor

12.4.2.4. Nursing and Midwifery (including Healthcare Assistants) – three Staff Governors

12.4.2.5. Professions Allied to Medicine, Professional and Technical Staff, Pharmacy and Scientific and Professional, and Allied Health Professions – one Staff Governor

12.4.2.6. Registered Volunteers - one Staff Governor;

- 12.4.3. three CCG Governors, one to be appointed by each of Luton CCG, Hertfordshire Valley CCG and Bedfordshire CCG;
  - 12.4.4. two Local Authority Governors, one to be appointed by each of Luton Unitary Council and Central Bedfordshire Council Unitary Authority. It also could be that LA Appointed Governors may have a conflict. A Public Governor is ineligible if they are a member of the LA Scrutiny Committee (see Clause 12.17.4) for example, yet here they may be appointed as a Governor.
  - 12.4.5. two Partnership Governors be appointed by partnership organisations.
- 12.5. The partnership organisations that may each appoint a Partnership Governor are:
- 12.5.1. University of Bedfordshire;
  - 12.5.2. University of London;

### **Elected Governors**

- 12.6. Public Governors are to be elected following the Election Rule by members of their public constituency, and Staff Governors are to be elected by members of their class of the staff constituency. Each class/constituency may elect any of their number to be a Governor in accordance with the provisions of this constitution.
- 12.7. If contested, the elections must be by secret ballot.
- 12.8. Elections shall be carried out in accordance with the rules set out in Annex 2. The Directors and Council of Governors will decide which of the two voting methods set out in the Election Rules is to be used.
- 12.9. A member of a public constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant public constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **CCG Governors**

- 12.10. The Secretary, having consulted Luton CCG, Hertfordshire Valley CCG and Bedfordshire CCG is to adopt a process for agreeing the appointment of the CCG Governors.

### **Local Authority Governors**

- 12.11. The Secretary, having consulted Luton Unitary Council and Central Bedfordshire Council Unitary Authority is to adopt a process for

agreeing the appointment of Local Authority Governors with those local authorities.

### **Partnership Governors**

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

### **Appointment of Lead Governor and Deputy Chairman of the Council of Governors**

- 12.13. The Council of Governors shall appoint one of the Governors to be Lead Governor and Deputy Chairman of the Council of Governors.

12.13.1. The Lead Governor and Deputy Chairman of the Council of Governors shall be elected by the Council of Governors for a period of 2 years. The elections will be held in October following the annual elections.

12.13.2. To be eligible to be the Lead Governor, a Governor must have been a Governor for 12 months

12.13.3. In the event of a vacancy, for any reason other than expiry of term of office, the Chairman of the Trust will appoint the chairman of one of the sub-committees of the Council of Governors to act as Lead, until a new Lead Governor and Deputy Chairman of the Council of Governors is elected for the remainder of that term of office.

12.13.4. The Council of Governors will elect a Lead Governor and Deputy Chairman of the Council of Governors within three months of the vacancy arising, to fill the seat for the remainder of that term of office

### **Terms of office for Governors**

- 12.14. Elected Governors:

12.14.1. shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their election is announced;

12.14.2. are eligible for re-election at the end of that period;

12.14.3. may not hold office for more than nine consecutive years, and shall not be eligible for re-election if they have already held office for more than six consecutive years but will be eligible if at least 1 year has elapsed since they last held office.

- 12.15. Appointed Governors:

12.15.1. shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their appointment is announced;

- 12.15.2. are eligible for re-appointment at the end of that period;
  - 12.15.3. may not hold office for longer than nine consecutive years, and shall not be eligible for re-appointment if they have already held office for more than six consecutive years.
- 12.16. For the purposes of these provisions concerning terms of office for Governors, “year” means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

### **Eligibility to be a Governor**

- 12.17. A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so if:
- 12.17.1. they are under sixteen years of age;
  - 12.17.2. they are a Director of the Foundation Trust, or a governor or director of a health service body (unless they are appointed by an appointing organisation which is a health service body);
  - 12.17.3. they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 12.17.4. they are a member of a local authority’s Scrutiny Committee covering health matters
  - 12.17.5. being a member of one of the public constituencies, 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 Foundation Trust, and that they are not prevented from being a member of the Council of Governors;
  - 12.17.6. they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 12.17.7. they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
  - 12.17.8. they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
  - 12.17.9. they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
  - 12.17.10. they are a person whose tenure of office as the Chairman or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

- 12.17.11. they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and have not subsequently had their name included in such a list.
- 12.17.12. they have been disqualified from being a Director of a Company or a Trustee of a Charity under the Companies Act 2006 and/or the Charities Act 2006.

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

- 12.18. A person holding office as a Governor shall immediately cease to do so if
  - 12.18.1. they resign by notice in writing to the Secretary;
  - 12.18.2. If Governors fail to attend 6/12 meetings and seminars of which 4 should be meetings. If this is not achieved, this will be subject to a review meeting with the Chairman, Lead Governor and Board Secretary and could lead to a recommendation for the termination of office.
  - 12.18.3. If Governors fail to attend consecutive meetings of the Council of Governors the following process is undertaken:
    - Miss 2 consecutive meetings – Formal letter
    - Miss 3 consecutive meetings – Review meeting with Chairman, Lead Governor and Board Secretary
    - Miss 4 consecutive meetings – Termination of office
  - 12.18.4. If the review meeting cannot determine that:
    - 12.18.4.1. the absences were due to reasonable causes; and
    - 12.18.4.2. they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.
  - 12.18.5. in the case of an elected Governor, they cease to be a member of the constituency or class of the constituency by which they were elected;
  - 12.18.6. in the case of an appointed Governor, the appointing organisation terminates the appointment;
  - 12.18.7. they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
  - 12.18.8. 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;
  - 12.18.9. they are removed from the Council of Governors under the following provisions.

- 12.19. 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
- 12.19.1. they have committed a serious breach of the code of conduct, or
  - 12.19.2. they have acted in a manner detrimental to the interests of the Foundation Trust, and
  - 12.19.3. the Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

### **Vacancies amongst Governors**

- 12.20. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 12.21. 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 the term of office.
- 12.22. Elections are held annually in June to be approved at the Annual Members Meeting in September each year
- 12.22.1 In year elections will only be held if the vacancy rates exceed the minimum levels (see 12.23)
- 12.22.2 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
- 12.22.3 If the vacancy arises within a year of the election, 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 end of the original term. If they are not willing, the seat can remain vacant until the next election as long as the vacancy rate does not exceed the minimum levels (see 12.23) when a three-year term will be offered.
- 12.22.4 If the vacancy arises over a year following election, the seat can remain vacant until the next election as long as the vacancy rate does not exceed the minimum levels (see 12.23) when a three-year term will be offered.
- 12.23. The Council of Governors can run at a 50% vacancy rate for each constituency (1 vacancies for Herts, 3 vacancies for Beds, 5 vacancies for Luton and 4 vacancies for Staff as long as the number of vacancies is not greater than 10. The Board Secretary, Chairman and Deputy Chairman of the Council of Governors agree any exceptional elections required.

### **Expenses and Remuneration of Governors**

- 12.24. The Foundation Trust may reimburse Governors for travelling and other costs and expenses at such rates as the Board of Directors decides. These are to be disclosed in the annual report.
- 12.25. Governors are not to receive remuneration.

### **Meetings of the Council of Governors**

- 12.26. The Council of Governors is to meet at least three 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 days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Foundation Trust's website and in the Foundation Trust's membership newsletters.
- 12.27. Meetings of the Council of Governors may be called by the Secretary, or by the Chairman, or by ten Governors (including at least two elected Governors and two appointed Governors) 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. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or ten Governors, whichever is the case, shall call such a meeting.
- 12.28. All meetings of the Council of Governors are to be General Meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 12.29. Twelve Governors including not less than five Public Governors and not less than two Staff Governors shall form a quorum.
- 12.30. The Chairman of the Foundation Trust or, in their absence, the Vice Chairman of the Board of Directors, or in their absence one of the non-executive Directors is to preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor and Deputy Chairman of the Council of Governors, or, if he has a conflict of interest, another Governor without a conflict of interest appointed by the Governors will chair that part of the meeting.
- 12.31. 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 independent auditor or other advisors to attend a meeting of the Council of Governors.
- 12.32. The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link.

Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

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

12.33.1. In case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.

12.33.2. No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.

12.34. The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.

12.34.1. Commencing September 2011, the Chairman of the Membership and Communications Sub-Committee and the Chairman of the Remuneration and Nomination Sub-Committee will be elected by the Council of Governors for a period of 2 years, commencing 1<sup>st</sup> October and ending 30<sup>th</sup> September. In the event of a vacancy, for any reason other than expiry of term of office, the Council of Governors will fill the vacancy within three months of the vacancy arising, to fill the seat for the remainder of that term of office. If needed, the chairman of the Trust can fill such a vacancy through appointing an existing committee member to act as chairman of the sub-committee until the Council of Governors elected the new sub-committee chairman.

12.35. All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

#### **Disclosure of Interests**

12.36. Any Governor who, or whose spouse or partner has a material interest in a matter to be discussed as defined below shall declare such interest to the Council of Governors and:

12.36.1. shall withdraw from the meeting and play no part in the relevant discussion or decision

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

12.37. 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.

- 12.38. Subject to the exceptions below, a material interest is
- 12.38.1. any directorship of a company;
  - 12.38.2. any interest held in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
  - 12.38.3. any interest in an organisation providing health and social care services to the National Health Service;
  - 12.38.4. a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 12.38.5. any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 12.39. The exceptions which shall not be treated as material interests are as follows:
- 12.39.1. shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - 12.39.2. an employment contract held by Staff Governors;
  - 12.39.3. an employment contract with their CCG held by a CCG Governor;
  - 12.39.4. an employment contract with a local authority held by a Local Authority Governor;
  - 12.39.5. an employment contract with a partnership organisation held by a Partnership Governor.
- 12.40. The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

### **Declaration**

- 12.41. 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 Foundation 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, and every agenda for meetings of the Council of Governors will draw this to the attention of elected Governors.

## **Training**

12.42. All Governors will receive appropriate training to carry out their role.

## **13. Board of Directors**

13.1. The Foundation Trust is to have a Board of Directors. It is to consist of executive and non-executive Directors.

13.2. The board is to include:

13.2.1. the following non-executive Directors:

13.2.1.1. a Chairman, who is to be appointed (and removed) by the Council of Governors at a General Meeting;

13.2.1.2. Up to seven other non-executive Directors who are to be appointed (and removed) by the Council of Governors at a General Meeting;

in each case subject to the approval of a majority of the Council of Governors (in the case of an appointment) present and voting at the meeting, and three-quarters of all of the members of the Council of Governors (in the case of a removal);

13.2.2. the following executive Directors:

13.2.2.1. a Chief Executive (who is the accounting officer), who is to be appointed (and removed) by the non-executive Directors, and whose appointment is subject to the approval of a majority of the members of the Council of Governors present and voting at a General Meeting;

13.2.2.2. a Finance Director, a registered medical practitioner or a registered dentist, a registered nurse or registered midwife, and up to four other executive Directors, all of whom are to be appointed (and removed) by a committee consisting of the Chairman, the Chief Executive and the other non-executive Directors.

13.3. The Board of Directors shall elect one of the non-executive Directors to be Vice-Chairman of the Board of Directors. If the Chairman is unable to discharge their office as Chairman of the Foundation Trust, the Vice-Chairman of the Board of Directors shall be acting Chairman of the Foundation Trust.

13.4. The Board of Directors shall nominate one of the executive Directors to be Deputy Chief Executive.

- 13.5. Only a member of one of the public constituencies is eligible for appointment as a non-executive Director (excluding the Chair).
- 13.6. The Council of Governors may appoint any suitably qualified person to be the Chairman by the procedure set out in Clause 13.7
- 13.7. Non-executive Directors are to be appointed by the Council of Governors using the following procedure.
  - 13.7.1. The Council of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
  - 13.7.2. The Board of Directors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive Directors.
  - 13.7.3. Appropriate candidates (not more than five for each vacancy) will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required;
  - 13.7.4. The Nominations Committee will comprise the Chairman of the Foundation Trust (or the Vice Chairman unless they are standing for appointment, in which case another non-executive director, when a Chairman is being appointed), two elected Governors and one Appointed Governor. The Chairman of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee.
- 13.8. The removal of the Chairman or another non-executive Director shall be in accordance with the following procedures.
  - 13.8.1. Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two elected Governors and two appointed Governors.
  - 13.8.2. Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons.
  - 13.8.3. In making any decision to remove a non-executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairman.
  - 13.8.4. If any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-

executive Director based upon the same reasons within 12 months of the meeting.

### **Terms of Office**

- 13.9. The Chairman and the non-executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office, including remuneration and allowances decided by the Council of Governors at a General Meeting. Any re-appointment of a non-executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved.
- 13.10. The remuneration committee of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of all the executive Directors.

### **Disqualification**

- 13.11. A person may not become or continue as a Director of the Foundation Trust if:
- 13.11.1. they are a member of the Council of Governors, or a governor or director of another health service body;
  - 13.11.2. they are a member of the Foundation Trust's Patients' Forum;
  - 13.11.3. they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 13.11.4. they are a member of a Scrutiny Committee covering health matters of a local authority in the Trust's catchment area as set out in Clause 3.3 **(page 6)**.
  - 13.11.5. they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 13.11.6. they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
  - 13.11.7. they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
  - 13.11.8. they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 13.11.9. in the case of a non-executive Director, they are no longer a member of one of the public constituencies;
  - 13.11.10. they are a person whose tenure of office as a Chairman or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the

health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;

- 13.11.11. they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and have not subsequently had their name included on such a list;
- 13.11.12. they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 13.11.13. in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
- 13.11.14. they have 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.

### **Committees and Delegation**

- 13.12. The Board of Directors may delegate any of its powers to a committee of Directors or to an executive Director.
- 13.13. The Board of Directors shall appoint a committee of non-executive Directors to perform such monitoring, reviewing and other functions as are appropriate.
- 13.14. The Board of Directors shall appoint a remuneration committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors.

### **Meetings of the Board of Directors**

- 13.15. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Board of Directors to all Directors.
- 13.16. Meetings of the Board of Directors shall be held in public and private meetings can be held subject to the Freedom of Information Act compliance. The Chairman may exclude any member of the public from such a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 13.17. Meetings of the Board of Directors are called by the Secretary, or by the Chairman, or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.

- 13.18. Five Directors including not less than three executive Directors (one of whom must be the Chief Executive or the Deputy Chief Executive) and not less than two non-executive Directors (one of whom must be the Chairman or the Vice-Chairman of the Board) shall form a quorum.
- 13.19. The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 13.20. The Chairman of the Foundation Trust or, in their absence, the Vice-Chairman of the Board of Directors, is to chair meetings of the Board of Directors.
- 13.21. Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes. In case of an equality of votes the Chairman shall have a second and casting vote.
- 13.22. The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

#### **Conflicts of Interest of Directors**

- 13.23. Any Director who, or whose spouse or partner has a material interest in a matter to be discussed as defined below shall declare such interest to the Board of Directors following the Trust Conflict of Interest Policy and:
  - 13.23.1. shall withdraw from the meeting and play no part in the relevant discussion or decision and
  - 13.23.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 13.24. Details of any such interest shall be recorded in the register of the interests of Directors.
- 13.25. Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by the requisite majority of the Council of Governors.
- 13.26. A material interest is
  - 13.26.1. any directorship of a company;
  - 13.26.2. any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) held in any firm or company or business which, in connection with the matter, is trading with

- the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
- 13.26.3. any interest in an organisation providing health and social care services to the National Health Service;
  - 13.26.4. a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 13.26.5. any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

### **Expenses**

- 13.27. The Foundation Trust may reimburse executive Directors travelling and other costs and expenses at such rates as the remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.
- 13.28. The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

## **14. Secretary**

- 14.1. The Foundation Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
  - 14.1.1. acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
  - 14.1.2. summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
  - 14.1.3. keeping the register of members and other registers and books required by this constitution to be kept;
  - 14.1.4. having charge of the Foundation Trust's seal;
  - 14.1.5. publishing to members in an appropriate form information which they should have about the Foundation Trust's affairs;
  - 14.1.6. preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.
- 14.2. Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be approved at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

- 14.3. The Secretary is to be appointed and removed by the Board of Directors, subject to the approval of the Council of Governors.

## **15. Registers**

- 15.1. The Foundation Trust is to have:
- 15.1.1. a register of members showing, in respect of each member the constituency and (where relevant) the class of a constituency to which they belong;
  - 15.1.2. a register of members of the Council of Governors;
  - 15.1.3. a register of Directors;
  - 15.1.4. a register of interests of Governors;
  - 15.1.5. a register of interests of the Directors.
- 15.2. The Secretary 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 this constitution.

## **16. Public Documents**

- 16.1. The following documents of the Foundation Trust are to be available for inspection by members of the public free of charge at all reasonable times, and shall be available on the Foundation Trust's website:
- 16.1.1. a copy of the current constitution;
  - 16.1.2. a copy of the current authorisation;
  - 16.1.3. a copy of the latest annual accounts and of any report of the independent auditor on them;
  - 16.1.4. a copy of the report of any other external auditor of the Trust's affairs appointed by the Council of Governors;
  - 16.1.5. a copy of the latest annual report;
  - 16.1.6. a copy of the latest information as to its forward planning;
  - 16.1.7. a copy of the Foundation Trust's membership development strategy;
  - 16.1.8. a copy of the Foundation Trust's policy for the composition of the Council of Governors ;
  - 16.1.9. a copy of any notice given under section 23 of the 2006 Act (regulator's notice to failing NHS Foundation Trust).
- 16.2. The registers shall be made available for inspection by members of the public, except in circumstances prescribed by regulations; and

so far as they are required to be available they are to be available free of charge at all reasonable times.

- 16.3. Any person who requests it is to be provided with a copy or extract from any of the above documents or registers. The Foundation Trust may impose a reasonable charge for providing the copy or extract, but a member is entitled to a copy or extract from the registers free of charge.

## **17. Independent Auditor and Other External Auditors**

- 17.1. The Foundation Trust is to have a independent auditor and is to provide the independent auditor with every facility and all information which he may reasonably require for the purposes of his functions under Part 1 of the 2006 Act.
- 17.2. A person may only be appointed as the independent auditor if they (or in the case of a firm of each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 1 to the 2006 Act.
- 17.3. An officer of the Audit Commission may be appointed as independent auditor with the agreement of the Commission. Where an officer of the Audit Commission is appointed as independent auditor, the Commission is to charge the Foundation Trust such fees for their services as will cover the full cost of providing them.
- 17.4. The Council of Governors at a General Meeting shall appoint or remove the Foundation Trust's independent auditor.
- 17.5. The independent auditor is to carry out their duties in accordance with Schedule 5 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.
- 17.6. The Board of Directors may resolve that external auditors be appointed to review and publish a report on any other aspect of the Foundation Trust's performance.

## **18. Accounts**

- 18.1. The Trust must keep proper accounts and proper records in relation to the accounts.
- 18.2. Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 18.3. The accounts are to be audited by the trust's auditor.
- 18.4. 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

- 18.5. The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

## **19. Annual Reports and Forward Plans and Non NHS Work**

- 19.1. The trust shall prepare an Annual Report and send it to Monitor.
- 19.2. The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 19.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 19.4. In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 19.5. Each forward plan must include information about –
- 19.5.1. 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
  - 19.5.2. the income it expects to receive from doing so.
- 19.6. Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 19.5.1 the Council of Governors must –
- 19.6.1. 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
  - 19.6.2. notify the directors of the trust of its determination.
- 19.7. Where the trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England shall not be implemented unless more than half of the members of the Council of Governors of the Trust voting approve its implementation

## **20. Significant Transaction**

- 20.1. Subject to paragraph below, the Trust may enter into a Significant Transaction, as identified in paragraph below, only if more than half of the members of the Council of Governors voting at a quorate meeting of the Council of Governors approve entering into the Significant Transaction.
- 20.2. A transaction shall be a “Significant Transaction” if:
- 20.2.1. It will commit the Trust to invest, or will commit the Trust to acquire additional capital assets, of three million pounds (£3,000,000) or more; or
- 20.2.2. It is anticipated that the transaction will result in:
- 20.2.2.1. an increase in revenue and associated expenditure of the Trust; or
- 20.2.2.2. a decrease in revenue and associated expenditure of the Trust, involving the discontinuation of services of 3% or more (when compared to the revenue and associated expenditure budgeted in the annual plan applicable to the year in which the transaction document will be executed by or on behalf of the Trust), but always excluding contracts entered into by the Trust with commissioners on substantially standard terms issued by the NHS Commissioning Board or any statutory successor body or otherwise in the normal course of business, which will not require approval from the Council of Governors.
- 20.3. A transaction that would be a Significant Transaction under paragraph (b) above shall not require approval by more than half of the members of the Council of Governors voting at a quorate meeting of the Council of Governors if material details of such transaction have previously been included in the annual plan presented to the Council of Governors and such plan (or such transaction within such plan) has been approved by the Board of Directors at a meeting held in public.

## **21. Mergers, Acquisitions, Separations and Dissolutions**

- 21.1 Applications may only be made where they are supported by more than half of the council of governors of each applicant where there more than one FT is involved.
- 21.2 The regulator must grant an application if it is satisfied that such steps have been taken as are necessary to prepare for the transaction
- 21.3 Where one of the parties to a merger or acquisition is an NHS trust the approval of the secretary of state is required

## **22. Meeting of the Council of Governors to consider Annual Accounts and Reports**

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

- The Annual Accounts
- Any report of the Auditor on them
- The Annual Report

## **23. Indemnity**

23.1. Members of the Council of Governors and 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. 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 and the Board of Directors and the Secretary.

## **24. Execution of Documents**

24.1. A document purporting to be duly executed under the Foundation Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

24.2. The Foundation Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

## **25. Dispute Resolution Procedures**

25.1. Every unresolved dispute which arises out of this constitution between the Foundation Trust and:

25.1.1. a member; or

25.1.2. any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or

25.1.3. any person bringing a claim under this constitution; or

25.1.4. an office-holder of the Foundation Trust

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Trust. The arbitrator's decision will be binding and conclusive on all parties.

- 25.2. Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

## **26. Resolution of Conflict between the Council of Governors and Board of Directors**

Whilst it is recognised that the Board of Directors has ultimate responsibility for the administration and decisions concerning the affairs of the Foundation Trust, it is accepted that on occasions there could be a situation or situations where the Board of Governors raise significant concerns of policy which they would wish to be addressed or re-addressed by the Board of Directors.

The procedure should a situation arise will be as follows:

1. Governor's significant concerns should be raised first with the Lead Governor.
2. The Lead Governor will discuss the issue with the Chairman of the Trust and the Senior Independent Director who will bring the matter to the attention of the Board of Directors for further consideration. The Lead Governor will be in attendance when such a report to the Board is made.
3. The formal response will be reported to the Council of Governors by the Lead Governor within 2 weeks of the issue being raised with the Board of Directors.
4. In the event of the matter not being resolved to the satisfaction of the Council of Governors, the subject of the decision will not be progressed by the Board of Directors, but will be "put on hold" pending further consideration or action as further outlined below.
5. In the event of such further consideration not being accepted to the satisfaction of the Council of Governors a Dispute Panel will be formed and will comprise of the following members:
  - The Chairman of the Foundation Trust
  - The Chief Executive Officer of the Trust
  - The Senior Independent Director of the Trust
  - The Lead Governor of the Council of Governors
  - The Board Secretary
  - An Independent Arbiter who will be the Chair, Vice Chair or Deputy Chair of another Foundation Trust.
- 6 The decision of the Dispute Panel will be forwarded to the Board of Directors who will give further consideration to the issue raised. Following further Board consideration, after acknowledging the report of the Dispute Panel, the Board will take a final decision on the issue, and the Board Secretary will report fully to the Lead Governor of that decision and the reasons for such a decision being made.

The Board Secretary will maintain a full record of any such disputes raised by the Council of Governors.

## **27. Amendment of the Constitution**

- 27.1. No amendment shall be made to this constitution unless:  
25.1.1 it has been approved by a majority (70%) of governors present and voting at a Council of Governors meeting

25.1.2 It has been approved by a majority (70%) of Executives present and voting at a Board of Directors meeting

25.1.3 Any amendments regarding the powers or duties of governors must be approved by majority of members present and voting at a members meeting duly called by order of the Council of Governors in accordance with this constitution or they will cease to remain in force.

## **28. Mergers**

28.1. The Foundation Trust may in accordance with section 27 of the 2006 Act apply to the Independent Regulator jointly with another NHS Foundation Trust or an NHS Trust for authorisation of the dissolution of the Foundation Trust and the transfer of some or all of their property and liabilities to a new NHS Foundation Trust established under that section. Such application shall only be made if a majority of those members of the Foundation Trust present and voting at a meeting of the members shall have approved the making of such an application.

## **29. Dissolution of the Foundation Trust**

29.1. The Foundation Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.

## **30. Head Office**

30.1. The Foundation Trust's head office is at The Luton and Dunstable University Hospital NHS Foundation Trust, Lewsey Road, Luton, LU4 0DZ.

## **28. Notices**

28.1. Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

28.2. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

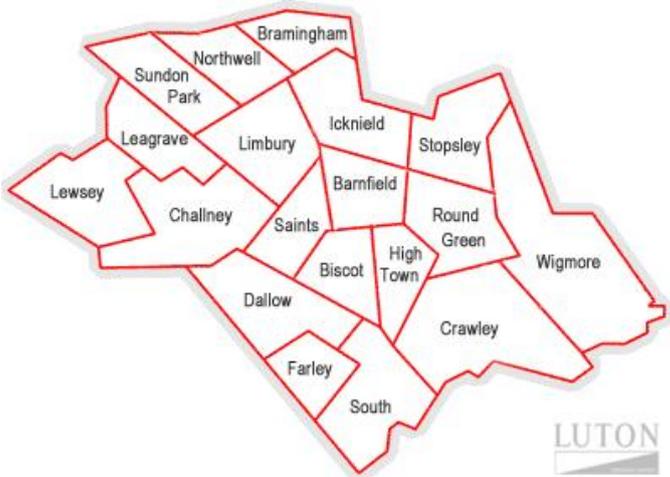
**Annex 1 - Areas of the Foundation Trust**

**Area 1:**

**Luton** – the electoral area of Luton Borough Council, Bedfordshire

12 Public Governors are to represent the members of this area

**Area 1**



**Area 2:**

**Central Bedfordshire** – the membership area contains the selected electoral wards within the jurisdiction of the Central Bedfordshire



7 Public Governors are to represent the members of this area

Area 3:

The electoral area of Hertfordshire County Council



3 Public Governors are to represent the members of this area

## **Annex 2 - Election Rules**

The Council of Governors and the Board of Directors agreed in April 2015 to follow the Model Election Rules 2014 from NHS Providers with the exception of the timetable which is outlined below.

- 1. Timetable** - The proceedings at an election shall be conducted in accordance with the following timetable

<b>Proceeding</b>	<b>Time</b>
Publication of notice of election	Not later than the fifty fifth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the thirty fourth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the thirty third day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than thirty first day before the day of the close of the poll.
Notice of the poll	Not later than the nineteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

## **Annex 3 – Governors Code of Conduct**

1. All members of the Luton and Dunstable University Hospital NHS Foundation Trust Council of Governors will:

a. Abide by the Seven Principles of Public Life (Nolan) which are:

### **Selflessness**

Holders of public office should take decisions solely in terms of public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, friends or associates.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office should be as open as possible about all decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Openness**

Holders of public office should take collective responsibility and be transparent and as open as possible about the processes involved in decision making. They should give reasons for the decisions made by the Council of Governors. All information of a confidential nature must be respected, and in the event that this restriction is not in the public interest, should be discussed with the Board Secretary.

### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life. The Nolan Committee has set them out here for the benefit of all who serve the public in any way.

b. Actively support the vision and aims of the Trust in developing as a successful NHS Foundation Trust;

c. Act in the best interests of the NHS Foundation Trust at all times;

- d. Contribute to the work of the Council of Governors in order for it to fulfil its role as defined in the Trust's Constitution;
- e. Recognise that the Council of Governors exercises collective decision making on behalf of patients, members, local public and staff;
- f. Not expect any privilege arising from being a Governor;
- g. Recognise that the Council of Governors has no managerial role within the NHS Foundation Trust;
- h. Value and respect Governor colleagues, Board of Directors, and all members of staff;
- i. Respect the confidentiality of information received in the role of Governor;
- j. Attend meetings of the Council of Governors, members' meetings and development days on a regular basis, in order to carry out their roles;
- k. Conduct themselves in a manner that reflects positively on the Luton and Dunstable University Hospital NHS Foundation Trust, acting as an ambassador for the Trust;
- l. In undertaking the role of Governor of this NHS Foundation Trust, all Governors shall sign the following declaration:
  - i) If I am a member of any trade union, political party or other organisation, recognise that I must declare this fact and that I will not be representing those organisations (or the views of those organisations) but will represent the constituency that elected me;
  - ii) As a Governor I will act on behalf of and represent the constituency that elected me and forward any members' concerns through the Board Secretary.  
I will not use the role to raise personal issues and will ensure I inform my constituents of the procedure to follow in order for them to have their issues and concerns dealt with.
  - iii) Seek to ensure that my fellow Governors are valued as fellow colleagues and that their views are both respected and considered;
  - iv) Accept responsibility for my own actions;
  - v) Show my commitment to working as a team member by working with all my colleagues in the NHS and the wider community;
  - vi) Seek to ensure that the membership of the constituency I represent is properly informed and given the opportunity to influence services;
  - vii) Seek to ensure that no one is discriminated against because of their religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social and economic status or national origin;
  - viii) Comply with the Constitution;
  - ix) Respect the confidentiality of individual patients;
  - x) I will respect the confidentiality of all issues discussed at a Part II meeting of the Council of Governors and not disclose these outside of the meeting or to a third party;

- xi) Not knowingly make or permit any untrue or misleading statement relating to my own duties or the functions of the NHS Foundation Trust;
- xii) Inform the Board Secretary as soon as possible if contacted by the media or press. Any statements or dealings with the media or press with regard to the Trust must be channelled through the Board Secretary and Communications Office.
- xiii) As a Governor I will at all times uphold the reputation and integrity of the Trust and not bring it into disrepute.
- xiv) Support and assist the Accountable Officer of the NHS Foundation Trust in his/her responsibility to answer the regulator, commissioners and the public for the performance of the Trust.

### **Non-Compliance with the Code of Conduct**

Non-compliance with the Code may result in action being taken as follows:

- a) Where misconduct takes place, the Chair shall be authorised to take such action as may be immediately required, including the exclusion of the person concerned from a meeting.
- b) Where such misconduct is alleged, it shall be reported to the Council of Governors immediately to decide, by a resolution approved by not less than three-quarters of those in attendance, to lay a formal charge of misconduct. In such instances, it will be the responsibility of the Board Secretary to:
  - i) Notify the Governor in writing of the charge(s), detailing the specific behaviour which is considered to be detrimental to the Trust and inviting and considering their response within a defined timescale;
  - ii) Invite the Governor to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence;

The Council of Governors shall decide, by a resolution approved by not less than three-quarters of those present and voting, whether to uphold the charge of conduct detrimental to the Trust;

The Council of Governors shall impose such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses to the removal of the Governor from office.

This Code of Conduct does not limit or invalidate the right of the Governor of the Council of Governors, or Trust, to act under the Constitution.

### **Code of Conduct Process**

- The Board Secretary presents a report to the Council of Governors at the last meeting of the financial year
- New Governors sign-up to the Governors' Code of Conduct during the nomination process for Elections
- Governors declare interests during the nomination process for Elections