



Bedfordshire Hospitals
NHS Foundation Trust

Bedfordshire Hospitals NHS Foundation Trust

Constitution

September 2024

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A handwritten signature in black ink, appearing to be 'M. L.', written over a light blue rectangular background.

Chief Executive
Bedfordshire Hospitals NHS Foundation Trust
4 September 2024

For and on behalf of board of directors

**CONSTITUTION OF BEDFORDSHIRE HOSPITALS 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 2012 Act”	is the Health and Social Care Act 2012;
“Code of Governance”	Code of Governance published in October 2022 which came into effect 1 April 2023
“Public at Large”	Councils of governors are not restricted to representing the interests of a narrow section of the public served by the NHS Foundation Trust – that is, patients and the public within the vicinity of the Trust or those who form governors’ own electorates. This includes the population of the local system, Bedfordshire, Luton and Milton Keynes Integrated Care System (BLMK ICS), of which the NHS Foundation Trust is part.
“Appointed Governors”	means those Local Authority Governors and Partnership Governors appointed by the relevant Appointing Organisations;
“Appointing Organisations”	means those organisations named in this constitution who are entitled to appoint the Appointed Governors;
“Areas of the Foundation Trust”	means the four areas specified in Annex 2 which are (1) Luton; (2) Central Bedfordshire; (3) Bedford Borough (and surrounding counties) and (4) 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;
“Director”	means a member of the Board of Directors;
“DBS Certificate”	means a disclosure and barring service certificate;
“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"> (a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April;
“Independent Auditor”	means the person appointed to audit the accounts of the Foundation Trust, who is called the auditor in the 2006 Act;
“Independent Regulator”	means the body corporate known as Monitor and references in this constitution to “Monitor” shall be read as reference to its statutory successor, “NHSE/I” where the context permits;
“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;
“Monitor”	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
“NHSE/I”	means NHS England and NHS Improvement. NHS Improvement and NHS England have worked together as a single organisation since 1 April 2019, to help improve care for patients and provide leadership and support to the wider NHS;

“the Foundation Trust”	means Bedfordshire Hospitals 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 an Appointing Organisation;
“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 Medical Practitioner”	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 each class in 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.
“Chief Executive”	means the accountable officer of the Foundation Trust appointed by the Non-Executive Directors to lead the Executive Board.
“Chair”	is the person appointed by the Council of Governors as a Non-Executive Chair to lead the Board of Directors and Council of Governors to ensure it successfully discharges its overall responsibility for the Foundation Trust as a whole.
“Non-Executive Director”	is a person appointed by the Council of Governors to be a member of the Board of Directors. This includes the Chair, the Vice-Chair and the senior independent director of the Foundation Trust.

“Vice Chair”	means the Non-Executive Director to take on the Chair’s duties if the Chair is absent for any reason.
“Senior Independent Director (SID) ”	means in consultation with the council of governors, the board appoints one of the independent non-executive directors to be the Senior Independent Director to provide a sounding board for the Chair and to serve as an intermediary for the other directors when necessary. The SID is available to governors if they have concerns that contact through the normal channels of Chair, Chief Executive, Finance Director or Secretary has failed to resolve, or for which such contact is inappropriate. The SID could be the Vice Chair. The SID will lead the performance evaluation of the Chair, within a framework agreed by the council of governors and taking into account the views of directors and governors. In addition to these duties, the SID has the same duties as the other Non-Executive Directors.
Lead Governor/Deputy Chair	is also the Deputy Chair of the Council of governors who is elected by the governors. Governor’s significant concerns are raised first with the Lead Governor. This is to improve the efficiency of communication between the governors and the Foundation Trust and its Directors, particularly regarding the agenda and smooth running of Council of Governors business. This role is also to provide liaison between the Council of Governors and NHSE/I in certain circumstances.
“Deputy Lead Governors	is a person elected by the Council of Governors. This role is to support the Lead Governor and take on the Lead Governor’s duties if the lead governor is absent for any reason.
“Unitary Board”	The Board of Directors is a unitary board. This means that within the board of directors, the non-executive directors and executive directors make decisions as a single group and share the same responsibility and liability. All directors, executive and non-executive, have responsibility to constructively challenge during board discussions and help develop proposals on priorities, risk mitigation, values, standards and strategy.

2 Name and status

- 2.1. The name of this Foundation Trust is Bedfordshire Hospitals 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 principal 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 Foundation Trust does not fulfill 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 Foundation 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 Foundation 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 activities 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. The powers of the Foundation Trust are set out in the 2006 Act. 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.
- 5.7. All the powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.
- 5.8. Any of these powers may be delegated to a committee of directors or to an executive director.

6 **Commitments**

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

Co-operation with Health bodies

- 6.2 In exercising its functions the Foundation Trust shall co-operate with all appropriate health and social care bodies and work in collaboration through the Bedfordshire, Luton and Milton Keynes Integrated Care System (BLMK ICS) and Bedfordshire Care Alliance (BCA).

Respect for rights of people

- 6.3 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 Foundation Trust as set out in the Charter of Fundamental Rights of the European Union or any re-enactment thereof or replacement human rights legislation and the NHS Constitution.

Openness

- 6.4 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.

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.

Representative Membership

- 7.2. 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:
- 7.2.1. 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,
- 7.2.2. the Council of Governors shall present to each Annual Members' Meeting:
- 7.2.2.1. 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;
- 7.2.2.2. the progress of the membership strategy; and
- 7.2.2.3. any changes to the membership strategy.

Roles and Responsibilities: Members

- 7.3. Members may attend and participate in Members' meetings, vote in elections, stand for Governor elections and take such other part in the affairs of the Foundation Trust as is provided in this constitution.

Roles and Responsibilities: Council of Governors

- 7.4. 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:
- 7.4.1. at a General Meeting
- 7.4.1.1. to appoint or remove the Chair and the other Non-executive Directors;
- 7.4.1.2. to approve an appointment (by the Non-executive Directors) of the chief executive;

- 7.4.1.3. to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
- 7.4.1.4. to appoint or remove the Foundation Trust's Independent Auditor;
- 7.4.1.5. to be presented with the annual accounts, any report of the Independent Auditor on them and the annual report;
- 7.4.1.6. to hold the non-executive directors individually and collectively to account for the performance of the board; In holding non-executive directors to account for the performance of the board, Councils of Governors should consider whether the interests of the 'public at large' have been factored into board decision-making, and be assured of the board's performance in the context of the system as a whole, and as part of the wider provision of health and social care.
- 7.4.1.7. to represent the interests of NHS Foundation Trust Members, and the 'public at large'.
- 7.4.1.8. to require one or more directors to attend a meeting (of the council) to obtain information about the Foundation 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);
- 7.4.1.9. to provide the views of the Foundation Trust's members and the public at large, and for appointed governors the views of the body they represent; to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;
- 7.4.1.10. to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
- 7.4.1.11. to undertake such functions as the Board of Directors shall from time to time request; and
- 7.4.1.12. from time to time to review the Foundation Trust's membership strategy as per paragraph 7.2.1, 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

- 7.5. 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 or in the case of the Staff Constituency only, has been invited to become a Member of that constituency by the Foundation Trust and has not informed the Foundation Trust that they do not wish to do so.

Public constituencies

- 8.3. There are four Public Constituencies corresponding to the four Areas of the Foundation Trust specified in Annex 2. 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 for each of the Public Constituencies is fifteen.
- 8.5. An individual who is eligible to become a Member of the Public Constituency may do so on application to the Foundation Trust.

Staff constituency

- 8.6. The Staff Constituency is divided into five classes as follows:
 - 8.6.1. Non Clinical; including Administrative, Clerical, Managers, Ancillary Staff (Direct Services) and Maintenance;
 - 8.6.2. Nursing and Midwifery (including Healthcare Assistants);
 - 8.6.3. Professions Allied to Medicine, Professional and Technical Staff, Pharmacy and Scientific and Professional, and Allied Health Professions; and
 - 8.6.4. Registered Volunteers.

- 8.7. Membership of one of the classes of the Staff Constituency is open to individuals as specified in Annex 1, Table 2, point a) and b):
- 8.7.1. who are employed by the Foundation Trust under a contract of employment provided:
 - 8.7.1.1. the contract of employment has no fixed term or a fixed term of at least 12 months, or
 - 8.7.1.2. they have been continuously employed by the Foundation Trust (including its statutory predecessor immediately preceding the date of this constitution) for at least 12 months.
- 8.8. Individuals who exercise functions for the purposes of the Foundation Trust as specified in Annex 1, Table 2, point c) and d), otherwise than under a contract of employment with the Foundation 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 continuously. This includes Registered Volunteers, but for the avoidance of doubt does not include individuals exercising functions on a voluntary basis.
- 8.9. The Secretary shall make a final decision about the class of which an individual is eligible to be a Member.
- 8.10. All individuals who are entitled under this constitution to become Members of one of the classes of the Staff Constituency, and who
- 8.10.1. have been invited by the Foundation Trust to become a member of the appropriate class, and
 - 8.10.2. have not informed the Foundation Trust that they do not wish to do so shall become Members of the appropriate class.
- 8.11. 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.
- 8.12. The minimum number of Members for each class of the Staff Constituency is fifteen.

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 NHS hospital or facility 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. in the case of Elected Governors, 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. in the case of an Appointed Governor, the Appointing Organisation terminates the appointment;
 - 10.1.6. 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.
 - 10.1.7. they have been removed as a Governor and as a Foundation Trust member under the Code of Conduct.
- 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.
- 10.3. Any Member may complain to the Secretary that another Member has acted in a way detrimental to the interests of the Foundation Trust.
- 10.4. If a complaint is made, the Council of Governors, or a Code of Conduct Team, may 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:
 - 10.4.1.1. dismiss the complaint and take no further action; or
 - 10.4.1.2. for a period not exceeding twelve months suspend the rights of the Member complained of to attend Members' meetings and vote under this constitution;
 - 10.4.1.3. arrange for a resolution to expel the Member complained of to be considered at the next General Meeting of the Council of Governors.
- 10.4.2. If a resolution to expel a Member is to be considered at a General Meeting of the Council of Governors, or a Code of Conduct Team, 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.

- 10.4.3. 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.
- 10.4.4. If the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 10.5. A person expelled from membership will cease to be a Member upon the declaration by the chair of the meeting that the resolution to expel them is carried.
- 10.6. 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 Annual Members' Meetings

- 11.1. The Foundation Trust is to hold an Annual Members' Meeting within nine months of the end of each financial year.
- 11.2. Members' meetings, shall be 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.
- 11.3. All Members' meetings are to be convened by the Secretary by order of the Council of Governors.
- 11.4. The Council of Governors may decide where a Members' meeting is to be held and may also for the benefit of Members:
 - 11.4.1. arrange for the Annual Members' Meeting to be held in different venues each year:
 - 11.4.2. 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 as per paragraph 11.7.
- 11.5. At the Annual Members' Meeting:
 - 11.5.1. the Board of Directors shall present to the Members:
 - 11.5.1.1. the annual accounts
 - 11.5.1.2. any report of the Independent Auditor
 - 11.5.1.3. any report of any other External Auditor of the Foundation Trust's affairs
 - 11.5.1.4. forward planning information for the next Financial Year

- 11.5.2. the Council of Governors shall present to the Members
 - 11.5.2.1. 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;
 - 11.5.2.2. the progress of the membership strategy;
 - 11.5.2.3. any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
- 11.5.3. the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 11.6. Notice of a Members' meeting is to be given by the Secretary:
 - 11.6.1. in writing to all Members;
 - 11.6.2. prominently displayed at the head office and at all of the Foundation Trust's places of business; and
 - 11.6.3. on the Foundation Trust's website and in the Foundation Trust's membership newsletter

at least 14 clear days before the date of the Members' meeting except in the case of emergencies or the need to conduct urgent business. The notice must:

 - 11.6.4. be given to the Council of Governors and the Board of Directors, and to the Independent Auditor;
 - 11.6.5. state whether the meeting is an annual or Members' meeting;
 - 11.6.6. give the time, date and place of the meeting; and
 - 11.6.7. indicate the business to be dealt with at the meeting.
- 11.7. 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.
- 11.8. The Foundation Trust may make arrangements for Members to vote by post, or by using electronic communications.
- 11.9. It is the responsibility of the Council of Governors, the chair of the meeting and the Secretary to ensure that at any Members' meeting:
 - 11.9.1. the issues to be decided are clearly explained;
 - 11.9.2. sufficient information is provided to Members to enable rational discussion to take place.
- 11.10. The Chair of the Foundation Trust, or in their absence the Lead Governor/Deputy Chair of the Council of Governors shall act as chair at all

Members' meetings of the Foundation Trust. If neither the Chair nor the Lead Governor/Deputy Chair of the Council of Governors is present, then one of the Deputy Lead Governors will Chair. If none of those listed are present the members of the Council of Governors present shall elect one of their member to be Chair and if there is only one Governor present and willing to act they shall be Chair.

- 11.11. 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.
- 11.12. A resolution put to the vote at a Members' meeting shall be decided upon by a poll.
- 11.13. 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 Chair of the meeting is to have a second or casting vote.
- 11.14. The result of any vote will be declared by the Chair 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, 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 is to comprise as specified in Annex 1, Table 1:
 - 12.4.1. twenty-one Public Governors from the following public constituencies;
 - 12.4.1.1. Luton – eight Public Governors
 - 12.4.1.2. Central Bedfordshire – six Public Governors
 - 12.4.1.3. Bedford Borough (and surrounding counties) – five Public Governors
 - 12.4.1.4. Hertfordshire – two Public Governors;
 - 12.4.2. twelve Staff Governors from the following classes:
 - 12.4.2.1. Non Clinical; including Administrative, Clerical, Managers, Ancillary Staff (Direct Services) and Maintenance – four Staff Governors (two L&D and two Bedford)
 - 12.4.2.2. Medical and Dental – two Staff Governors (one L&D and one Bedford)
 - 12.4.2.3. Nursing and Midwifery (including Healthcare Assistants) – three Staff Governors (two L&D and one Bedford)
 - 12.4.2.4. Professions Allied to Medicine, Professional and Technical Staff, Pharmacy and Scientific and Professional, and Allied Health Professions – two Staff Governors (one L&D and one Bedford)
 - 12.4.2.5. Registered Volunteers - one Staff Governor (cross site)
 - 12.4.3. Three Local Authority Governors comprised of one Local Authority Governor to be appointed by Luton Unitary Council, one Local Authority Governor to be appointed by Central Bedfordshire Council Unitary Authority and one Local Authority Governor to be appointed by Bedford Borough Unitary Authority.

Two Partnership Governors to be appointed by each of

 - 12.4.4. University of Bedfordshire; and
 - 12.4.5. University College of London;

Elected Governors

- 12.5. Elections for Elected Governors shall be carried out in accordance with the Model Election Rules and the Time table set out in Annex 3. The Board of Directors and Council of Governors will decide which of the two voting methods set out in the Model Election Rules is to be used.
- 12.6. Public Governors are to be elected 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. 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.

Local Authority Governors

- 12.9. The Secretary, having consulted Luton Unitary Council, Central Bedfordshire Council Unitary Authority, and Bedford Borough Unitary Authority is to adopt a process for the appointment of Local Authority Governors.

Partnership Governors

- 12.10. The Partnership Governors are to be appointed by the Appointing Organisations, in accordance with the process agreed with the Secretary.

Appointment of Lead Governor/Deputy Chair of the Council of Governors and two Deputy Lead Governors

- 12.11. The Council of Governors shall appoint one of the Governors to be Lead Governor/Deputy Chair of the Council of Governors and two other Governors to be Deputy Lead Governors.
- 12.12. The Lead Governor/Deputy Chair and Deputy Lead Governors 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. To be eligible to be the Lead Governor/Deputy Chair and Deputy Lead Governor, a Governor must have been a Governor for 12 months preceding the last Governor election.
- 12.14. In the event of a vacancy, for any reason other than expiry of term of office, the Chair of the Foundation Trust will appoint one of the Deputy Lead Governors of the Council of Governors to act as Lead

Governor/Deputy Chair, until a new Lead Governor/Deputy Chair of the Council of Governors is elected.

- 12.15. The Council of Governors will elect a Lead Governor/Deputy Chair and Deputy Lead Governors 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

- 12.16. Elected Governors:

12.16.1. shall normally hold office for a maximum period of three years commencing immediately after the Annual Members' Meeting at which their election is announced;

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

12.16.3. may not hold office for more than nine cumulative years, and shall not be eligible for re-election until at least 3 years have elapsed since they last held office. Existing Governors cannot stand for re-election if the future term of office will take them over the cumulative nine years.

- 12.17. Appointed Governors:

12.17.1. shall normally hold office for a period of three years commencing immediately after the Annual Members' Meeting at which their appointment is announced;

12.17.2. are eligible for re-appointment at the end of that period;

12.17.3. may not hold office for longer than nine cumulative years, and shall not be eligible for re-appointment until at least 3 years have elapsed since they last held office.

- 12.18. 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

- 12.19. A person may not become a Governor of the Foundation Trust if any of the paragraphs 12.19.1 to 12.19.17 apply. If already holding such office the governor's situation will be discussed and processed as outlined in the code of conduct in Annex 4:

12.19.1. they are under sixteen years of age;

12.19.2. 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);

- 12.19.3. they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
- 12.19.4. they are a member of a local authority's Scrutiny Committee covering health matters;
- 12.19.5. 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;
- 12.19.6. they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 12.19.7. 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;
- 12.19.8. 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;
- 12.19.9. they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 12.19.10. they are a person whose tenure of office as the Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 12.19.11. 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;
- 12.19.12. they have failed to provide a basic DBS Certificate when requested by the Secretary to do so; or
- 12.19.13. have, within the last five years been removed from office as a governor of a Foundation Trust or other elected public office on grounds set out, or similar to those set out in 12.21.
- 12.19.14. they have had their name suspended, erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals;
- 12.19.15. the staff member is under consideration, investigation or review for an alleged misconduct prior to a formal disciplinary proceeding;
- 12.19.16. the staff member has been suspended from work while investigation into alleged misconduct is taking place;

- 12.19.17. the staff member is in receipt of a file note in relation to performance or conduct from the Line manager (informal) and the time period for such file note has not expired ; or the staff member is being formally performance managed is in receipt of first or final written warning under the Trust's formal disciplinary procedure and the time period for such a warning has not expired;

Termination of office and removal of Governors

- 12.20. A person holding office as a Governor shall immediately cease to do so if

12.20.1. they resign by notice in writing to the Secretary;

12.20.2. If Governors fail to attend six meetings and/or seminars in any Financial year they will be subject to the Code of Conduct review process as outlined in Annex 4, unless the Council of Governors is satisfied that:

12.20.2.1. the absences were due to reasonable causes; and

12.20.2.2. they will be able to start attending meetings of the Council of Governors again within such a period as the Council of Governors consider reasonable.

12.20.3. 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;

12.20.4. in the case of an Appointed Governor, the Appointing Organisation terminates the appointment;

12.20.5. they have refused without reasonable cause to undertake any training which the Council of Governors requires Governors to undertake;

12.20.6. 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;

12.20.7. they are removed from the Council of Governors under the following provisions set out in 12.21.

- 12.21. 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, using the process outlined in Annex 4 and voting on the grounds that:

12.21.1. they have committed a breach of the code of conduct, or

- 12.21.2. they have acted in a manner detrimental to the interests of the Foundation Trust, and
- 12.21.3. 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

- 12.22. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 12.23. 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.
- 12.24. Elections are held annually in June to be approved at the Annual Members' Meeting in September each year
- 12.25. In year elections will only be held if the vacancy rates exceed the minimum levels (see 12.27)
- 12.26. Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
 - 12.26.1. 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 next election. 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 12.27) otherwise an election must be called; or
 - 12.26.2. if the vacancy arises more than a year before the next election, the seat can remain vacant until the next election as long as the vacancy rate does not exceed the minimum levels (see 12.27) otherwise an election must be called
- 12.27. The Council of Governors can run at a 50% vacancy rate for each constituency comprising up to: 1 vacancy in Hertfordshire, 3 vacancies in Central Bedfordshire, 2 vacancies in the Bedford Borough (and surrounding counties), 4 vacancies in Luton and 6 vacancies for the Staff Constituency as long as the number of vacancies is not greater than 10 in total. The Secretary, Chair and Lead Governor/Deputy Chair of the Council of Governors will agree any exceptional elections as may be required.

Expenses and Remuneration of Governors

- 12.28. 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.
- 12.29. Governors are not to receive remuneration.

Meetings of the Council of Governors

- 12.30. The Council of Governors is to meet at least three times in each Financial Year, except 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.
- 12.31. Meetings of the Council of Governors may be called by the Secretary, or by the Chair, or by ten 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 Chair or ten Governors, whichever is the case, shall call such a meeting.
- 12.32. 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 Chair 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.
- 12.33. Twelve Governors including not less than five Public Governors and not less than three Staff Governors shall form a quorum.
- 12.34. The Chair of the Foundation Trust or, in their absence, the Senior Independent Director 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/Deputy Chair of the Council of Governors, or, if he/she has a conflict of interest, one of the Deputy Lead Governors chair the Council of Governors, or, if they have a conflict of interest, another Governor without a conflict of interest appointed by the Governors will chair that part of the meeting.
- 12.35. 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.
- 12.36. 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.

- 12.37. Subject to the constitution including the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 12.37.1. In case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.
- 12.37.2. No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 12.38. 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.
- 12.39. 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

- 12.40. 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:
- 12.40.1. shall withdraw from the meeting and play no part in the relevant discussion or decision
- 12.40.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 12.41. 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.
- 12.42. Subject to the exceptions below, a material interest is
- 12.42.1. any directorship of a company;
- 12.42.2. 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;
- 12.42.3. any interest in an organisation providing health and social care services to the National Health Service;
- 12.42.4. a position of authority in a charity or Voluntary Organisation in the field of health and social care;

- 12.42.5. 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.
- 12.43. The exceptions which shall not be treated as material interests are as follows:
 - 12.43.1. shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
 - 12.43.2. an employment contract held by Staff Governors;
 - 12.43.3. an employment contract with a local authority held by a Local Authority Governor;
 - 12.43.4. an employment contract with a Appointing Organisation held by a Partnership Governor.
- 12.44. The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

Declaration

- 12.45. 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

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

13. Board of Directors (Executive and Non-Executive Directors)

- 13.1. The Foundation Trust is to have a Board of Directors. It is to consist of Executive and Non-Executive Directors. The Board of Directors is a unitary board. This means that within the board of directors, the non-executive directors and executive directors make decisions as a single group and share the same responsibility and liability. All directors, executive and non-executive, have responsibility to

constructively challenge during board discussions and help develop proposals on priorities, risk mitigation, values, standards and strategy.

13.2. The board is to include:

13.2.1. the following non-executive Directors:

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

13.2.1.2. Up to nine 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 Governor present and voting at the meeting in the case of an appointment, 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 a registered midwife, and up to six other executive Directors, all of whom are to be appointed (and removed) by a committee consisting of the Chair, the Chief Executive and the other non-executive Directors.

13.3. The Board of Directors shall appoint one of the non-executive Directors to be Vice-Chair and/or Senior Independent Director of the Board of Directors. If the Chair is unable to discharge their office as Chair of the Foundation Trust, the Vice-Chair of the Board of Directors shall be acting Chair 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 Chair 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 Council of Governors may work or seek advice from NHS England's Non-Executive Talent and Appointments team, or work with an external organisation recognised as expert at appointments to identify the skills and experience required for the appointment of the chair and non-executive directors.
 - 13.7.3. Appropriate candidates will be identified by a Nominations Committee through a process of open competition, which takes 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 Chair of the Foundation Trust (or Senior Independent Director unless they are standing for appointment, in which case another non-executive director, when a Chair is being appointed), and Governors as stated in the Terms of Reference for Remuneration and Nomination Committee of the Council of Governors. In the case of the appointment of the Chair, a Chair of another Foundation Trust may be invited for the selection panel and in addition as a best practice to include at least one external assessor from NHS England and/or a representative from a relevant ICB should be included - the Foundation Trust should engage with NHS England to agree the approach.
 - 13.7.5. When considering the appointment of non-executive directors, including the Chair, the Council of Governors should take into account the views of the board of directors and the nominations committee on the qualifications, skills and experience required for each position.
- 13.8. The removal of the Chair 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 supported 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 Chair.

- 13.8.4. If any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors by at least three-quarters of the members 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 Chair 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. The Chair and the Non-Executive Directors should not remain in post beyond nine years from the date of their first appointment to the board of directors and any decision to extend a term beyond six years should be subject to rigorous review and a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved. To facilitate effective succession planning and the development of a diverse board, this period of nine years can be extended for a limited time, particularly where on appointment the chair was an existing non-executive director. The need for extension should be clearly explained and should have been agreed with NHS England.

13.10. Terms and Conditions, remuneration and allowance:

13.10.1 The remuneration committee of governors shall decide the terms and conditions of office including remuneration and allowances of all the non executive Directors, including the chair.

13.10.2 The remuneration committee of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of all the executive Directors.

13.11 Eligibility & Disqualification

- 13.11.1 All non-executive directors must be considered to be independent. The following should be considered :

whether the non-executive ;

13.11.1.1 has been an employee of the Foundation Trust within the last two years.

13.11.1.2 has served on the Foundation Trust board for more than six years from the date of their first appointment, unless they have been subject to rigorous review and NHS England approval to serve beyond six years.

13.11.1.3 is an appointed representative of the Foundation Trust's university medical or dental school.

- 13.11.2 A person may not become or continue as a Director of the Foundation Trust if circumstances exist that are likely to impair, or could appear to impair, a non-executive director's independence include, such as, but not limited to:
- 13.11.2.1 they are currently a member of the Council of Governors.
 - 13.11.2.2 they are a member of the Foundation Trust's Patients' Forum
 - 13.11.2.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust or have close family ties with any of the Trust's advisers, directors or senior employees.
 - 13.11.2.4 they are a member of a Scrutiny Committee covering health matters of a local authority in the area's of the Foundation Trust.
 - 13.11.2.5 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
 - 13.11.2.6 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;
 - 13.11.2.7 they have 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;
 - 13.11.2.8 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 13.11.2.9 in the case of a non-executive Director, they are no longer a member of one of the public constituencies;
 - 13.11.2.10 they are a person whose tenure of office as a Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 13.11.2.11 they have had their name erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals;
 - 13.11.2.12 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
 - 13.11.2.13 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
 - 13.11.2.14 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. The Chair should not sit on the audit committee. The chair of the audit committee, ideally, should not be the vice chair or senior independent director.
- 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. 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 Chair 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 Chair, 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 Chair 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 Chair or the Vice-Chair 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 Chair of the Foundation Trust or, in their absence, the Vice-Chair 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 Chair 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 Foundation 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 Chair 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 all documents required by paragraphs 22(1)(g) to 22(1)(p) inclusive of Schedule 7 to the 2006 Act (relating to special administration).

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 an 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)(b) and (c) of Schedule 7 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 10 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 Foundation Trust must keep proper accounts and proper records in relation to the accounts.

18.2 NSHE/I may with the approval of the Secretary of State give directions to the Foundation Trust as to the content and form of its accounts.

18.3 The accounts are to be audited by the Foundation Trust's auditor.

18.4 The Foundation Trust shall prepare in respect of each financial year annual accounts in such form as NSHE/I may with the approval of the Secretary of State direct

18.5 The functions of the Foundation 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 Foundation Trust shall prepare an Annual Report and send it to NHSE/I.

19.2 The Foundation Trust shall give information as to its forward planning in respect of each financial year to NHSE/I.

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 Foundation 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 Foundation 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 Foundation Trust of its principal purpose or the performance of its other functions, and

19.6.2 notify the Directors of the Foundation Trust of its determination.

19.7 Where the Foundation 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 Foundation Trust voting approve its implementation

20 Significant Transaction

20.1 Subject to paragraph 20.2, the Trust may enter into a Significant Transaction, as defined in paragraph 20.2 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 Foundation Trust to invest in, or will commit the Foundation Trust to acquire, additional capital assets, amounting to 25% or more of its Total Assets Employed, as calculated at the end of the financial year immediately prior to the transaction document being executed by or on behalf of the Foundation Trust; or

20.2.2 It is anticipated that the transaction will result in either:

20.2.2.1 an increase in revenue and associated expenditure of the Foundation Trust of 25% or more; or

20.2.2.2 a decrease in revenue and associated expenditure of the Foundation Trust of 25% or more

as calculated by comparing the revenue and associated expenditure budgeted in the annual plan applicable in the year immediately prior to the transaction document being executed by or on behalf of the Foundation Trust (but always excluding contracts entered into by the Foundation 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 For transactions that do not meet the definition of Significant Transaction set out in paragraph 20.2, but which are nonetheless, in the Council of Governors' opinion:

- Financially material; and/or
- Novel; and/or
- Are likely to be contentious;

the Board must notify the Council of Governors of such transactions¹, along with the rationale underpinning them, in a timely, open and complete way, and ensure that the views of the Council of Governors are properly taken into account before the Board enters into any such transactions. In so doing, Governors will need to be assured that the process the Board has undertaken in seeking to enter into the transaction is appropriate, and that the interests of the 'public at large', including the staff (i.e. not just the Trust) have been properly considered. Patient and public benefits must be central motivations for all such transactions.

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 is more than one Foundation Trust is involved.

21.2 The Independent 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

¹ This might include moving into a new and significant area of activity, or a large-scale service reconfiguration.

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 the Secretary in the first instance and then an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Foundation 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

26.1 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 Council of Governors raise significant concerns of policy which they would wish to be addressed or re-addressed by the Board of Directors.

26.2 The procedure should a situation arise will be as follows:

26.2.1 Governor's significant concerns should be raised first with the Lead Governor.

26.2.2 The Lead Governor will discuss the issue with the Chair of the Foundation 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.

26.2.3 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.

26.2.4 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.

26.2.5 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:

26.2.5.1 The Chair of the Foundation Trust

26.2.5.2 The Chief Executive Officer of the Foundation Trust

26.2.5.3 The Senior Independent Director of the Foundation Trust

26.2.5.4 The Lead Governor of the Council of Governors

26.2.5.5 The Secretary

26.2.5.6 An Independent Arbiter who will be the Chair, Vice-Chair or Deputy Chair of another Foundation Trust.

26.3 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 Secretary will report fully to the Lead Governor of that decision and the reasons for such a decision being made.

26.4 The 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:

27.1.1 it has been approved by a majority [(70%)] of the Governors present and voting at a Council of Governors meeting

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

27.1.3 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 Dissolution of the Foundation Trust

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

29 Notices

29.1 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.

29.2 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

Table 1: Composition of the Council of Governors

Elected Public Governors	
Constituency	No of Governors
Public - Luton	8
Pubic - Central Bedfordshire	6
Public - Bedford Borough (and surrounding counties)	5
Public - Hertfordshire	2
Total Elected Public Governors	21

Elected Staff Governors		
Constituency/Class	No of Governors at L&D site	No of Governors at Bedford site
Staff - Non-Clinical; including Administrative and Clerical, and Managers; Ancillary Staff (Direct Services) and Maintenance	2	2
Staff - Nursing and Midwifery (including Healthcare Assistants);	2	1
Staff - Medical and Dental;	1	1
Staff - Professions Allied to Medicine, Professional and Technical Staff, Pharmacy and Scientific and Professional, and Allied Health Professions;	1	1
Registered Volunteers	1 Cross site (L&D and Bedford)	
Total Elected Staff Governors	12	

Appointed Governors	
Partnership/Local Authority	No of Governors
Luton Borough Council	1
Central Bedfordshire council	1
Bedford Borough council	1
University of Bedfordshire	1
University College of London	1
Total Appointed Governors	5

Table 2 – Foundation Trust Staff member eligibility to stand for staff governor election

	Employment Agreement with the Trust	Category	FT Staff member since:	Eligibility to stand for staff governor election:
a)	Contract of employment	Permanent Staff (no fixed term)	FT staff member from the date of joining	Eligible to stand for staff governor election
b)	Contract of employment	Fixed term contract	Employed at least 12 months to be a FT staff member	Eligible to stand for staff governor election after 12 months
c)	Registration process (terms of registration)	Bank Staff	Registered at least 12 months to be a FT staff member	Eligible to stand for staff governor election after 12 months.
d)	Registration process	Registered Volunteers	Registered at least 12 months to be a FT staff member	Eligible to stand for staff governor election after 12 months
e)	<i>None</i>	<i>Agency staff including Agency locums</i>	<i>Do not qualify to be a FT staff member.</i>	<i>Not eligible to stand for staff governor election.</i>

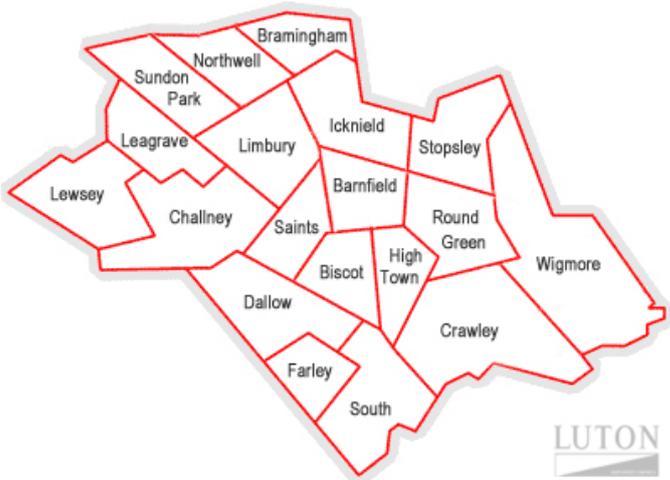
Annex 2 - Areas of the Foundation Trust

Area 1:

Luton – the electoral area of Luton Borough Council, Bedfordshire

8 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



6 Public Governors are to represent the members of this area

Area 3:

The electoral area of Bedford Borough Council (and surrounding counties)



5 Public Governors are to represent the members of this area

Area 4:

The electoral area of Hertfordshire County Council



2 Public Governors are to represent the members of this area

Annex 3 - Election Rule Exception

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

Proceeding	Time
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 4 – Governors Code of Conduct

1. All members of the 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 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.

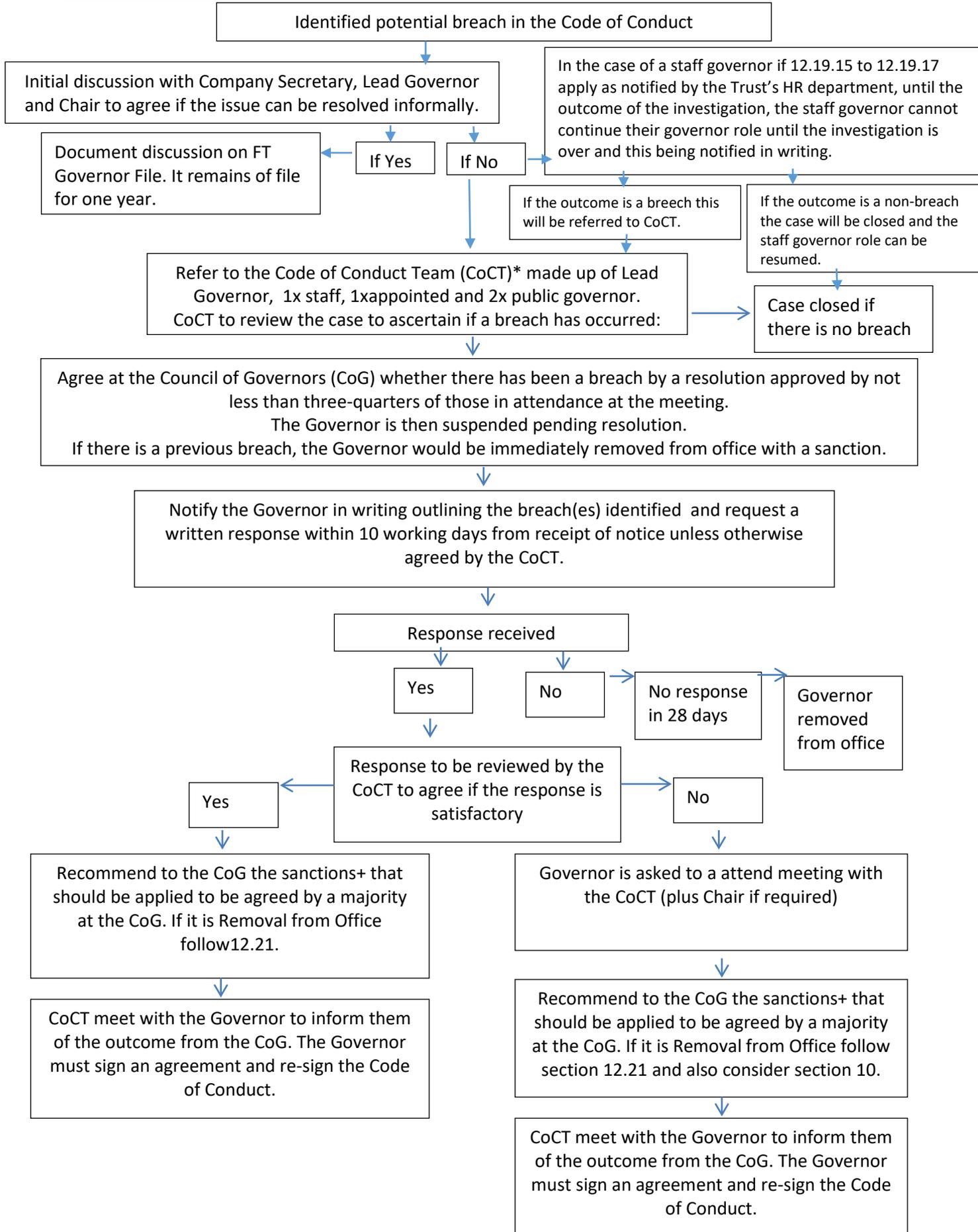
- b. Actively support the vision and aims of the Trust in developing as a successful NHS Foundation Trust;
- c. Act in the best interests of the NHS Foundation Trust at all times;

- d. Contribute to the work of the Council of Governors in order for it to fulfil its role as defined in the Foundation 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 Foundation Trust, acting as an ambassador for the Foundation 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 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 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 Foundation Trust must be channelled through the Secretary and Communications Office.
- xiii) As a Governor I will at all times uphold the reputation and integrity of the Foundation 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 Foundation Trust.

Non-Compliance with the Code of Conduct - see flow chart in pages 49 and 50.

Code of Conduct Process Flowchart



** The Code of Conduct Team would have the support of the Secretary to ensure that the communications are pulled together and agreed through the legal and advisory channels.
+ Sanctions are: No Sanction, Verbal Warning, Written Warning or Removed from Office. The Code of Conduct Team are able to recommend an alternative sanction should these options not be deemed appropriate.*

The following provisions shall apply to those subject to a Code of Conduct process:

- 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 (s), Seminar (s) and Foundation Trust Committees.
- b) If the Code of Conduct process is initiated, it would be suspended if the Governor resigns. However, should the person subsequently be re-elected as a Governor, the Code of Conduct process would be re-instated on election and before the office is taken up at the Annual Members Meeting. This is completed in line with the Code of Conduct Process Flowchart.