



Agenda

*Food to be served from 5pm in the Executive Meeting room*

1. Chair and quorum

Information Mark Jones

2. Apologies for absence

Information Mark Jones

Lynne Lobley

Andrew Bullen

Dawne Gurbutt

Lisa Lymath

3. Declarations of interest

Information Mark Jones

4. Minutes of previous meetings

Decision Mark Jones

📄 04. Minutes\_Council of Governors formal meeting\_270423 (1).pdf (4 pages)

📄 04a. Minutes\_Council of Governors\_010623.pdf (4 pages)

📄 04b. Action Log - July 2023.pdf (1 pages)

5. Chair's update

Information Mark Jones

Verbal item

6. Chief Executive's update





Information Silas Nicholls

Presentation



7. Significant Capital investments

## 8. Non-Executive Director AAA reports

Reports are to be taken as read, Governors are invited to raise any queries,.

-  08. AAA \_ People - May 2023.pdf (2 pages)
  -  08. AAA QSApril23.pdf (2 pages)
  -  08. AAA F&P - 31 May 2023.pdf (1 pages)
  -  08. AAA Audit - May 2023.pdf (2 pages)
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## 9. Constitution

-  09. Review of constitution.pdf (2 pages)
  -  09a. For review - Draft constitution 2023.pdf (39 pages)
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## 10. Annual Report and Accounts

A copy of the annual report was made available as an attachment in the agenda e-mail.

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## 11. Associate Non-Executive Director's

Verbal item

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## Private meeting

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## 12. Non-Executive Director appraisals


Information to be shared on the evening

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## Consent Agenda

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## 13. Committee effectiveness review

-  13. 2023 CoG Effectiveness Feedback Report.pdf (4 pages)
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## 14. Details of next meeting



# Council of Governors formal meeting

Thu 27 April 2023, 17:30 - 19:15

Boardroom, Trust HQ

## Attendees

### Board members

Mr M Jones (Chair - in the Chair), Mr A Boardman (Public Governor - Leigh), Mr A Bullen (Public Governor - Makerfield), Mr J Cavanagh (Appointed Governor - Volunteers), Mr L Chamberlain (Public Governor - Makerfield), Ms E Cooper (Staff Governor - Medical and Dental), Mr S Gorst (Staff Governor - All other Staff), Mr K Griffiths (Public Governor - Makerfield), Ms D Gurbutt (Appointed Governor - University of Central Lancashire), Ms M Hartley (Staff Governor - Nursing and Midwifery), Mr A Haworth (Public Governor - Leigh), Ms J Hilling (Public Governor - Rest of England and Wales), Mr M Koriba (Public Governor - Rest of England and Wales), Ms L Lymath (Public Governor - Rest of England and Wales), Mr M Riding (Public Governor - Rest of England and Wales), Mr P Woods (Public Governor - Makerfield), Mr A Savage (Staff Governor - All other Staff), Ms S Sephton (Public Governor - Leigh), Ms L Taberner (Public Governor - Wigan), Mrs L Lobely (Non-Executive Director)

### In attendance

Lady R Bradley (Non-Executive Director), Mr I Haythornthwaite (Non-Executive Director), Ms C Austin (Non-Executive Director), Mrs L Lobely (Non-Executive Director), Mr P Howard (Director of Corporate Affairs), Mr S Nicholls (Chief Executive), Ms M Fleming (Deputy Chief Executive), Ms R Gleave (Associate Director of Staff Experience and Wellbeing), Mrs T Gardner (Chief Finance Officer)

## Meeting minutes

### 12. Chair and quorum

#### Information

Mark Jones

Mr M Jones took the Chair and noted that due notice and been provided to all governors and that a quorum was present. He therefore declared the meeting duly convened and constituted.

### 13. Apologies for absence

#### Information

Mark Jones

Apologies for absence were received from Ms S Spibey, Cllr F Walker, Dr S Shah, Ms B Shaw Mrs F Thorpe and Mr R Munden

### 14. Declarations of interest

#### Information

Mark Jones

There were no declarations of interest declared.


### 15. Minutes of previous meeting

#### Decision

Mark Jones

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

 04. Minutes\_Council of Governors\_110123 (1).pdf

 04a. Minutes\_Extraordinary meeting of the Council of Governors\_220323 (2).pdf

### 16. Lead Governor update

#### Information

Andrew Haworth

Mr A Haworth summarised the paper which had been circulated in advance of the meeting.

He noted at a review of the Trust constitution is taking place. that he is meeting with the Lead Governor from Bolton and that he will be in attendance at the NHS Providers - Governor Focus conference.

Mr A Haworth further informed members of the Council that at a recent visit to the Leigh Infirmary site he had met Natalie Morgan, the Trusts Freedom to Speak up Guardian.

 06. Lead Gov update April 2023.pdf

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## 17. Chair's update

## Information

Mark Jones

The Chair provided a verbal update to the Council informing them that a lot of work is taking place within the Integrated Care System. He informed the Council that a piece of diagnostic work has been initiated with the PWC across GM and will provide some beneficial benchmarking data.

The Chair further informed the Council that a leadership and governance review has also taken place with Carnall Farrer and that they are awaiting the outputs of this review. He informed the Council that they as part of the review they have looked at the Board meetings and have met with the Place based leaders.

The Chair finished his update by informing the Council he had attended the opening of the WWL Clinical Research Hub in Ashton In Makerfield. He was pleased to inform them that it was well received and is bringing research into the community setting and has all the appropriate facilities to support research within the community.

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## 18. Chief Executive's report

## Information

Silas Nicholls

The Chief Executive provided an update on the Trusts current position to the Council.

He noted that the pressures being face across the Trust are up down, more recently WWL has had a two week return to the pressures faced over the winter period.

The Chief Executive continued to inform the Council that Junior Doctors industrial action has taken place and there has been learning generated on the management of the organisation and how WWL can utilise this and operationalise some of the plans. He continued to state that the Royal College of Nursing have more industrial action planned and although there have been previous derogations, they have taken the position that this will not be the case for their upcoming industrial action.

The Chief Executive further informed the Council that WWL have plans in place to ensure ICU and Accident and Emergency will be staffed appropriately, there will be divers in place from the North West Ambulance service and a control room will be in action on the day. He noted that due to there being no derogations in place, this is a new level of risk that hasn't faced before. He cautioned that there is high court action in process which could reduce the number of days of strike action but that this cause some push back from the unions.

The Chief Executive finished by informing members of the Council of a recent visit he had undertaken at Golborne Heath Centre where he met with the district nurse team based there. He was please to inform the Council of the work they have undertaken to improve services which add no additional cost pressures.

The Chief Finance officer summarised the Trusts year end position and the planning for the future to members of the Council She informed the Council that the final submission for plans is the 4 May 2023 and that there is still working being undertaken at ICB Level. She took the Council through the rest of the slides, discussing the CIP target, de-escalation, the GM picture the work taking place with the local authority, how the figures are still moving and how there will be more scrutiny to the coming years plans.

Mr M Ryding questioned that if the Trust is seeing and treating patients from out of area are conversations taking place with those local authorities.

The Chief Executive responded informing the Council that it is difficult to engage with conversations with different local authorities, and if the difficulties of charging them for out of borough patients in hospital beds.

Mr M Koriba asked for further clarification of those schemes that could deliver on cost improvement being postponed and are there any processes in place to guard against this.

The Chief Finance officer responded informing the Council that any cost improvement scheme must go

through the quality improvement process and be signed off by the Executive Team. She noted that some items have been postponed as WWL is currently unable to support them and that they will go through the new cost improvement program to ensure there is the appropriate amount of challenge and rigor in place to deliver.

The Chief Executive reiterated the importance of this rigor being in place, noting that there is the danger when a scheme is committed to there can be unexpected challenges and costs which means CIP will not be delivered. He informed the Council that there are transformational projects developing that are looking at how we can promote more care in the community.

Mrs J Hilling asked what if any consequences there would be for WWL if other Trusts across GM are also in deficit.

Mrs T Gardner responded that if other Trusts are in a deficit this could impact on their services and create changes. She noted that it could make non-elective procedures more difficult, but there could be the opportunity to expand the elective surgery offered.

Mr P Woods questioned if the transformation project that community team developed be promoted across to other teams across the organisation.

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## 19. National Staff Survey results

Presentation

## Information

Rachel Gleave & Mary  
Fleming

The Deputy Chief Executive and The Associate Director of Staff Experience and Wellbeing Rachel shared the results of the National Staff Survey with members of the Council.

They informed the Council that the Trusts Our Family, Our Future, Our Focus staff engagement plan had been designed by staff for staff based on previous results from the National Staff Survey.

The results of the National Staff Survey show that this is having a positive impact.

The Deputy Chief Executive was pleased to inform the Council that WWL has seen an increased response rate. Staff are aware that WWL listened to the feedback and respond appropriately.

The Associate Director of Staff Engagement and Well-being, informed the Council that the Trust is pleased with the increased response rate and for the next survey they are aiming for a 40% response rate.

They took members of the Council through the highlights of the results.

Ms J Hilling noted that it was pleasing to see that there had been an increase in the response rate from the Estates and Facilities division, but was concerned that some staff still have the opinion that they cannot make a difference and questioned how the Trust is going to provide assurance to these members of staff.

The Chief Executive, noted that the Trust is going to continue to work with the colleagues to continue the improved response rate for the survey, and how they engage with staff to assure them that results are anonymous and that the Trust acts on the responses it receives. He further noted that WWL has reintroduced Quality Champions which aims to involve all staff.

A Talent programme is in development and the Executive Team have been looking at this during their development session and they are working to develop this further and create a leadership community.

The Deputy Chief executive noted that there had been an increase in response from all staff groups.

The Associate Director of Staff Engagement and Well-being informed the Council that although it might look like some scores are lower than previous years the number of staff invited to participate had increased.

The Chief Executive, noted that the Trust is going to continue to work with the colleagues to continue the improved response rate for the survey, and how they engage with staff to assure them that results are anonymous and that the Trust acts on the responses it receives.

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## 20. Corporate Objectives 2023/24

The Director of Corporate Affairs summarised the slide which had been circulated in advance of the meeting. He noted that the corporate objectives align with the Trusts 'Our Strategy 2030' and four on 4 strategic ambitions.

## Information

Paul Howard

The Director of Corporate Affairs continued by informing the Council that these objectives are cascaded down through the divisional business plans and if there are concerns around deliverability these will be raised in the appropriate committee who can then provide assurance to the Board of Directors.

Members of the Council received and noted update.

 27th April - Council of Governors Leaders Forum slides - Corp objectives FINAL.pdf

## 21. Non-Executive Director reports

Information

Mr I Haythornthwaite pulled the highlights of the AAA summary report .out for members of the Council and opened the floor to questions.

The Council received and noted the contents of the report.

Mrs L Lobley informed the Council that the People committee was agenda slimmed down due the industrial action taking place to ensure teams were ready to responded if needed.

She went on to pull out the highlights of the reports and opened up for questions.

Lady R Bradley summarised the Finance and Performance AAA report on behalf of Mr M Guymer.

Mr K Griffiths questioned if there was any significant financial implications to make the WWL Clinical Research Hub in Ashton in Makerfield fit for purpose.

The Chief Finance Officer responded informing the Council that this was prior to her start at the Trust but that she would go away and find the answer to Mr K Griffiths question and report her findings to the Council

**ACTION:** T Gardner

Lady R Bradley summarised Quality and Safety AAA report in Mrs F Thorpe's absence.


She noted that as a member of the safe guarding effectiveness group she can see the triangulation through the committees and where the committee is seeking assurance from. Lady R Bradley further noted that the committee's assess within a risk framework.

Discussions that took place during the committee were the quality of corridor care, the triaging of ambulance arrivals and how risks are being addressed and she noted that more data is becoming available to help address this.

Members of the Council received and noted the contents of the update.

 11. AAA Audit - Feb 2023.pdf

 11. AAA \_ People - Mar 2023.pdf

 11. AAA F&P - 29 Mar 2023.pdf

 11 AAA - Research - March 2023.pdf

 11. AAA QSfeb.23.pdf

## 22. Details of next meeting

Information

Wednesday 19 July 2023, 5.15pm to 7.15pm, Boardroom, Trust HQ

Mark Jones

# List of Signatures

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Minutes\_Council of Governors\_010623.pdf

| Name        | Method            | Signed at               |
|-------------|-------------------|-------------------------|
| Paul Howard | One-Time-Password | 2023-07-07 12:25 GMT+02 |



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# Council of Governors

Thu 01 June 2023, 17:15 - 17:45

Microsoft Teams meeting



Wrightington, Wigan and  
Leigh Teaching Hospitals  
NHS Foundation Trust

## Attendees

### Board members

Mr M Jones (Chair - in the Chair), Mr J Cavanagh (Appointed Governor - Volunteers), Mr L Chamberlain (Public Governor - Makerfield), Ms M Hartley (Staff Governor - Nursing and Midwifery), Mr A Haworth (Public Governor - Leigh), Mr M Koriba (Public Governor - Rest of England and Wales), Mrs C Martindale (Public Governor - Wigan), Mr M Ryding (Public Governor - Rest of England and Wales), Mr A Savage (Staff Governor - All other staff), Dr S Shah (Appointed Governor: LNC), Ms B Shaw (Appointment Governor - Age UK), Ms L Taberner (Public Governor - Wigan), Cllr F Walker (Appointed Governor - Wigan MBC), Mr P Woods (Public Governor - Makerfield)

### In attendance

Miss N Armstrong (Corporate Governance Officer - Minutes), Mr P Howard (Director of Corporate Affairs)

## Meeting minutes

### 1. Chair and quorum

Mr M Jones took the Chair and noted that due notice had been provided to all governors and that a quorum was present. He therefore declared the meeting duly convened and constituted.

### Information

Mark Jones

### 2. Apologies for absence

Apologies for absence were received from Ms J Hilling, Mrs S Sephton and Mr P Allard.

### Information

Mark Jones

### 3. Declarations of interest

No attendees declared an interest in respect of the item to be considered during the meeting.

### Information

Mark Jones



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## 4. Nomination and Remuneration Committee report

## Decision

Paul Howard

The Chair summarised the report which had been circulated in advance of the meeting.

He informed the Council that he had met with Mr T Hankin, who has a breadth of knowledge and experience to bring to the Non-Executive Director role. The Chair further informed the Council that Mr T Hankin has been on a site visit, spent some time in Accident and Emergency and met with the chair of the quality and safety committee and is keen to work with the Trust following this.

He then opened the floor for questions.

Mr M Koriba asked the Chair if he is sufficiently assured that there is no conflict of interest given that the proposed candidate has previously worked with the Chief Executive.

The Chair noted that he was sufficiently assured. Mr P Howard added further comment to this informing the Council that although he was previously appointed by WWL's Chief Executive there was little time when their work crossed over with the Chief Executive, leaving his previous post shortly after his appointment to take up his position at WWL.

He further noted that he is confident that the candidate will be impartial, there is minimum risk to the proposed appointment.

Following a question from Mr P Woods and a comment from Dr S Shah, the Chair clarified that when he was discussing the skills of a Non-Executive Director from a clinical background, he should have been clear that he was discussing the difficulties the candidates may have to step away and not become involved in the operational elements of the organisation.

In response to a question around the training available for Non-Executive Director roles, he further noted that discussions have been taking place with the Northwest leadership academy on the Non-Executive Director role and their roles as board members and across the organisation.

The Chair also commented on organisation where he is aware they have implemented the an associate NED role for those who have an interest in becoming a NED, but feel they need some support in ensuring they have the correct skills to undertake the role.

Dr S Shah asked if there would be a focus on home grown talent. and would the Trust be looking to speak to other clinicians to ascertain if they are aware of someone who would be interested in the role.

The Chair noted that the reason for the request to appoint an interim is so that the process is not rushed and it will give us the opportunity to appoint the correct candidate for the role.

The Council of Governors **APPROVED** the appointment of an interim Non-Executive Director.

The Director of Corporate Affairs then summarised the second ask of the Council, the proposed use of Seymour John to assist with the recruitment of the vacant Non-Executive Director post.

He noted that although the Council had given previous agreement to use Dianne Charnock Consulting to appoint the vacant NED posts, due to a delay within procurement and personal circumstances for Diane Charnock they request the Council of Governors to approve the use of Seymour John.

The Director of Corporate Affairs informed the Council that WWL have used Seymour John for the appointment of the two Executive Director posts and they support Non-Executive Directors recruitment. He further noted that a competitive cost has been provided.

Members of the Council raised concerns around a diverse selection of candidates being provided.

The Director of Corporate Affairs responded informing the Council that following conversations with Mr J Phillips from Seymour John he was assured that they would have a representative selection of candidates for the post, and that they had a robust advertising strategy to support this.

The Council **APPROVED** the use of Seymour John.

 N&R report.pdf



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## Action Log

### Council of Governors Meeting – July 2023

| Date of meeting | Minute ref. | Item                           | Action required  | Assigned to | Target date | Update  |
|-----------------|-------------|--------------------------------|--|-------------|-------------|---|
| 27 April 23     | 21/23       | Non-Executive Director reports | Ascertain if there were any significant financial implications to ensure the WWL clinical research hub fir for purpose | T Gardner   | 19 Jun 23   | An email was sent to members of the Council with the Chief Finance officers findings. |
|                 |             |                                |  |             |             |   |

# WWL Site Strategy Update

**Council of Governors**  
**19<sup>th</sup> July 2023**



# The capital landscape

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- **Internal capital** is restricted, with ~£11m per year available, as part of overall CDEL (Capital Departmental Expenditure Limit) for Greater Manchester
- **NHSE national funding opportunities** tend to be made available as a result of national initiatives or policies
- In most cases, **capital funding from outside the NHS still counts against our CDEL limit**
- **A total of £49.1m will be spent on capital projects** across WWL in 2022/23 and 2023/24
- Of this, **£26.4m comes from NHSE national funds which we have successfully bid for** through identifying potential funding opportunities and strategically positioning the Trust to attract money via a compelling business cases.
- Over and above this, **a further £7m from NHSE national funds has been secured for 24/25**; beyond this capital funding is less certain.

# Backlog Maintenance Position

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- The Trusts current position is currently standing at £39,700,274 of Backlog risk
- This comprises of –
  - High Risk                      £1,444,805
  - Significant Risk               £18,606,944
  - Moderate Risk                £12,645,944
  - Low Risk                        £7,003,176
  
  - Total Risk                      £39,700,274
- The Trust is providing Backlog funding of £950,000 for 2023 /24 financial year to assist in reducing areas of high and significant risk.
- A new 6 Facet Survey across the Trust is currently being costed and will give an up to date position of the current costs once these surveys have been completed.

# Site Strategy - Overview

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- Service strategy drives site strategy
- Multiple sites – traditionally considered expensive, but offer flexibility and resilience. Each site has its strengths and constraints
- Royal Albert Edward Infirmary remains the ‘hot’ site centred on the provision of A&E
- Covid has highlighted the strength of having dedicated “cold” sites:
  - Wrightington will continue to be a dedicated elective site focused on the provision of elective orthopaedics – developing our orthopaedic centre of excellence
  - Leigh Infirmary will remain an elective and diagnostics site with provision for reablement and rehabilitation services as part of an integrated model
  - Thomas Linacre Centre offers efficient outpatient space in the centre of Wigan and reduces footfall at RAEI
- The Community Estate is varied, but offers an opportunity to deliver services closer to neighbourhoods and integrate with other services (e.g. primary and social care)
- The emergence of funding opportunities can be hard to predict, however the strategic planning work we have undertaken (including *Our Strategy 2030* and the Clinical Strategy) has supported the Trust to maximise opportunities.
- The Strategy and Planning team have co-ordinated the development of bids for national funding when it becomes available, ensuring that they are aligned to our strategic intent, deliver solutions that are clinically led, supported by a multi-disciplinary team including operational, estates, finance and IM&T colleagues



# Key capital developments in 22/23 and 23/24

As well as ensuring that essential maintenance work is undertaken, medical equipment is replaced and development of our ICT systems and infrastructure, the capital is supporting several key developments which include:

| Site                          | Scheme  | Scheme Status           |   |
|-------------------------------|---|-------------------------|---|
| Leigh                         | ✓ Laminar flow theatre and new recovery area  | Scheme underway         | To complete Nov 2023  |
|                               | ✓ Community Diagnostics Centre <ul style="list-style-type: none"> <li>- New MRI / CT facility / mammography</li> <li>- Refurbishment of X-Ray</li> <li>- Expansion of cardio-respiratory, sleep studies and phlebotomy</li> </ul> | Scheme underway         | To complete Nov 2023  |
|                               | ✓ Expansion of Endoscopy Rooms in Hanover   | To begin Q3 2023/24     | To complete Aug 2024  |
| Wrightington                  | ✓ Enhanced Care Unit – increase in capacity   | Completed in 2022/23    | Room 1 to complete March 2024<br>To complete Oct 2024<br>To complete Oct 2024 |
|                               | ✓ Mains Theatres Environment Improvements   | Completed in 2022/23    |   |
|                               | ✓ Wrightington X-Ray Rooms Refurbishment  | Room 3 Complete 2022/23 |   |
| Royal Albert Edward Infirmary | ✓ Electrical infrastructure upgrades (essential for further site development)   | To begin in 2023/24     | To complete Oct 2024  |
|                               | ✓ Additional Theatre  | To begin in Q4 2023/24  | To complete Oct 2024  |
|                               | ✓ Palliative Care (Gidlow Ward)   | Complete 2022/23        | To Complete June 2023   |
| Royal Albert Edward Infirmary | ✓ Mental Health Assessment Area in ED   | Scheme underway         | To Complete June 2023   |
|                               | ✓ Electrical Infrastructure upgrades (essential for further site development)   | Scheme underway         | To Complete Feb 2024  |
|                               | ✓ Cath Lab Upgrade  | Scheme underway         | To complete Oct 2024  |
| Royal Albert Edward Infirmary | ✓ Endoscopy – Refurbishment and expansion of unit to support JAG accreditation (*includes 2 additional floors above with scope to develop future plans to support ED and our theatres)  | To begin Q3 2023/24     | To complete Mar 2025  |

# Spotlight on Leigh CDC, Theatre 4

## Strategic development of Leigh Infirmary as a diagnostic and surgical centre

The pandemic increased the importance of elective sites as key assets. This has been a shot in the arm for the Leigh site as it has resulted in £18.1m of strategic investment. In November 2023, we will open the Community Diagnostic Centre (£10.2m) and Theatre 4 and recovery bays (£7.9m).

### Community Diagnostic Centre

- ✓ Increased diagnostic capacity for several investigations, including x-ray, CT, MRI, ultrasound, ECG, ECHO, blood pressure / heart monitoring, lung function tests, sleep studies and phlebotomy
- ✓ Co-location with our existing endoscopy services at Leigh provides the opportunity to develop 'one-stop' pathways, with patients receiving multiple diagnostics in a single visit
- ✓ CT and MRI are new to Leigh, ensuring convenient access to these key diagnostic tests, with opportunity to reduce in health inequalities

### Elective Capacity (Theatre 4 at Leigh; and Wrightington)

- ✓ The laminar flow theatre will create momentum for Leigh as a day case surgery centre; also providing greater flexibility and resilience in the overall use of our theatre stock. Breast surgery will move from its temporary base at Wrightington – freeing up their T&O capacity. Some Urology, Gynaecology and General Surgery activity will also transfer from RAEI, releasing pressure on over-subscribed theatres.
- ✓ Part of the budget for this scheme funded doubling the capacity of increased dependency beds at Wrightington from 4 to 8, to create an Enhanced Care Unit.



# Leigh CDC & Theatre 4



November 2022



June 2023





# A spotlight on Wrightington Theatre 11 and recovery area



- ✓ Approved by NHSE national panel on 11th July for £6.1m of regional TIF money to be allocated to start build in Jan 24, subject to planning permission
- ✓ Expected to be operational by October 2024
- ✓ Will enable up to 1,200 additional T&O procedures p/y
- ✓ Value-added upgrades to surroundings – new Admissions Lounge, Sterile Storage, office space and car parking
- ✓ Potential for twin theatre to be added in future in mirror design, if required

# What will these changes bring us?

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**A common theme for many of the developments is that they are aligned to achieving the ambitions described in *Our Strategy 2030*.**

- ✓ The greatest investments have gone into creating additional elective and diagnostic capacity.
- ✓ Greater elective capacity will improve waiting lists and treatment times across several specialties
- ✓ The new diagnostic assets will improve equity of access and support earlier diagnosis
- ✓ The Enhanced Care Unit will reduce the number of on-the-day cancellations for some of the more complex T&O procedures by ensuring we have the appropriate perioperative bed space
- ✓ Investments will improve staff morale in the impacted areas and positively influence recruitment and retention prospects
- ✓ Investments will improve patient experience in the impacted areas
- ✓ Many of the changes being implemented will act as enablers for future phases of development at each site

# Where next?

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- ✓ The developments to date have all been in line with the overall strategy and implemented in a way to be consistent with current site development plans
- ✓ Given the significant investment on all sites we are now planning to refresh the site development plans
- ✓ Priority focus areas include:
  - **Wrightington:**
    - understanding the future strategy for orthopaedics services and using this to inform a refreshed site development plan
  - **RAEI:**
    - Reviewing the options for developing the floors above endoscopy, understanding how these impact future site development;
    - The need to replace our aged ward stock and the requirement for more side rooms
    - Car parking; and
    - Considering the potential that the availability of the Bellingham site has for future system wide development.

## Committee report

|                         |                  |
|-------------------------|------------------|
| <b>Report from:</b>     | People Committee |
| <b>Date of meeting:</b> | 9 May 2023       |
| <b>Chair:</b>           | Lynne Lobley     |

### Key discussion points and matters to be escalated from the discussion at the meeting:

| ALERT   |
|---|
| <ul style="list-style-type: none"> <li>The Committee noted that industrial action may continue and that the consultants are balloting before the end of July 2023 as to whether to hold a period of industrial action. Trusts are yet to be notified as to the Royal College of Nursing's intent and whether they will hold any further periods of action.</li> <li>The Committee noted the need moving forwards, to ensure that equality diversity and inclusion items feature as standing on some board and committee agendas.</li> </ul>   |
| ASSURE  |
| <ul style="list-style-type: none"> <li>The plans which had been put in place to manage the periods of industrial actions were set out for the Committee and provided assurance that strikes moving forward will be effectively managed. The Staff Story provided further assurance around the experience of staff who were involved.</li> <li>In respect of doctors' pay, WWL will no longer be an outlier in respect of paying the BMA rate card rate.</li> <li>Both of the above risks are set out on the corporate risk register.</li> <li>The People Dashboard was presented as usual, this has become a key monitoring tool for the Committee, allowing it to see clearly where WWL is performing well and areas where further monitoring and assurance is required.</li> <li>WWL published its Equality Delivery System 3 pilot results before the set deadline, receiving a rating of 'developing'. The Committee agreed to set its equality diversity and inclusion objectives for the year moving forwards, these will be considered at a future meeting.</li> </ul> |
| ADVISE  |
| <ul style="list-style-type: none"> <li>Building on the success of the Guardian Service exit interview provision, the Committee received the proposal for how data collected around staffs' reasons for leaving the Trusts would be gathered via survey feedback moving forwards, and how this would be implemented.</li> <li>The Talent Program was presented and the Committee heard how this will begin by piloting in three areas (estates and facilities, information management and technology and board level). It noted how well this triangulated with the appraisal work; recruitment and retention work and will act as the mechanism for taking forwards the Shadow Board program.</li> <li>The Committee reviewed the previous years' corporate objectives through the board</li> </ul>   |

assurance framework and agreed that these will be closed down.

- For the first time, the Committee received and considered data from the NHS National Education and Training Survey and was given verbal information to evidence that WWL were performing well.
- The Committee received the Freedom to Speak Up Guardian's Report and the audit and risk report.
- On receiving the 'fair experience for all report' the Committee noted that a three-year action plan will be developed to deliver timely, long-lasting improvement in closing the gap in disproportionate rates of disciplinary action between BAME and white colleagues into non-adverse range between 0.8-1.25.

#### **RISKS DISCUSSED AND NEW RISKS IDENTIFIED**

- See above.



## Committee report

|                         |                              |
|-------------------------|------------------------------|
| <b>Report from:</b>     | Quality and Safety Committee |
| <b>Date of meeting:</b> | 12 <sup>th</sup> April 2023  |
| <b>Chair:</b>           | Francine Thorpe              |

### Key discussion points and matters to be escalated from the discussion at the meeting:

| ALERT  |
|--|
| <ul style="list-style-type: none"> <li>Corporate Objectives for 2022/23 <ul style="list-style-type: none"> <li>➤ The committee received confirmation that due to the sustained demands across the Trust during the year we have been unable to achieve objectives C01, C02, C05.</li> <li>➤ Partial achievement of objective C03 was noted in terms of the expected numbers of staff trained in Human Factors and significant progress has been made in the reduction of pressure ulcers.</li> <li>➤ It is expected that we will achieve objective C04 in relation to the ward accreditation programme</li> <li>➤ Due to the timing of the committee year-end reports that provide information on the level of progress made with each objective were not available; these will be presented in June</li> </ul> </li> <li>The Urgent and Emergency Care Governance report and the Divisional Highlight report for Medicine provided some information on actions taken as a result of learning from incidents, patient and staff feedback. However further assurance has been requested for the next meeting in relation to safety and patient experience whilst corridor care is being provided. The development of Standard Operating Procedures was reported but the committee requested evidence that these are being fully implemented.</li> </ul> |
| ASSURE   |
| <ul style="list-style-type: none"> <li>An audit report was received from maternity services providing assurance that there were no lapses in care in relation to the administration of steroids during premature labour.</li> <li>The spotlight report from the Division of Medicine provided assurance that: <ul style="list-style-type: none"> <li>➤ Patient safety priorities are directly aligned to STEIS (serious incidents) reportable incidents as well as patient complaints, concerns raised by staff and corporate objectives</li> <li>➤ High levels of compliance with the emergency department safety checklist</li> <li>➤ Standard Operating Procedures developed to support safe corridor care</li> </ul> </li> </ul>   |

- Evidence of shared learning through weekly bulletins
- Regular huddles (3 x daily) to deploy staff according to patient need
- Patient experience improvement priorities aligned to the themes identified through complaints analysis
- The committee received a bi-annual quality impact assessment report providing assurance of the the scrutiny given to quality impact assessments.
- Information received from the CQC Stakeholder Group and the Medicine Divisional Highlight report provided assurance of ongoing work to prepare for a CQC inspection. This included review of recent CQC reports from other organisations to identify any learning that is relevent for WWL so that appropriate action can be taken
- The corporate objectives for 2023/24 were discussed and committee members confirmed their support for the improvement plans outlined. The use of Advancing Quality (AQ) measures to track progress against sepsis and AKI were particularly welcomed.
- The Trust-wide pressure ulcer improvement plan developed in response to Mersey Internal Audit (MIA) undertaken in early 2021, has been reviewed and all actions aligned to the original themes completed. The subsequent MIAA audit undertaken in August 2022 received substantial assurance.
- The Aspire Accreditation report provided assurance that the process continues despite the organisational pressures and during quarter 3 was rolled out into community settings. A year-end report is expected at the next meeting.

#### **ADVISE**

- The Q4 Harm Free Care report highlighted:
  - An increase in Hospital Acquired Pressue Ulcers with a slight increase in lapses of care
  - A reduction in Community Acquired Pressure Ulcers with no lapses in care identified
  - A reduction in the total number of falls across the Trust, however an increase in the number of falls with moderate or above harm
  - 4 wards have achieved a full year without any reportable pressure ulcers
  - The report contunues to provide the committee with detailed information and analysis of the harm occurring across the organisation and assurance that this is being closely monitored with improvements being targeted appropriately
- Further work continues in relation to the them of patients being lost to follow up with 2 deep dives having been undertaken in different areas. A full report is expected at the next meeting.
- Information received from the Patient Safety Group indicated that the Trust is on track in the implementaion of the new Patient Safety Incident Response Framework

#### **RISKS DISCUSSED AND NEW RISKS IDENTIFIED**

- Risks relating to the BAF for 2022/23 were discussed and potential risks for the 2023/24 corporate objectives were highlighted. These will be considered at the next meeting.
- The 3 high risks relating to potential safety issues within the ED were discussed as part of the Divisional Highlight report along with the mitigating actions being taken

## Committee report

|                         |                                   |
|-------------------------|-----------------------------------|
| <b>Report from:</b>     | Finance and Performance Committee |
| <b>Date of meeting:</b> | 31 May 2023                       |
| <b>Chair:</b>           | Julie Gill                        |

### Key discussion points and matters to be escalated from the discussion at the meeting:

| <b>ALERT</b>   |
|--|
| <ul style="list-style-type: none"> <li>The finance report set out the month one position as £0.9m adverse to plan.</li> <li>It further set out a high level of unidentified cost improvement programme (CIP) as at month one.</li> <li>National chose and book system – 78 and 104 week waits.</li> <li>There will be a further three days of strike action which will impact the trust in a variety of ways, which were discussed by the Committee.</li> </ul>  |
| <b>ASSURE</b>  |
| <ul style="list-style-type: none"> <li>The Committee commented on the revised assurance processes set out for CIP delivery and were assured by the arrangements now in place.</li> <li>CIP identified and transacted has improved upon 2022/23 performance.</li> <li>Both de-escalation and corridor care have seen significant improvements in performance in April 2023.</li> <li>The majority of key performance indicators to support delivery of performance corporate objectives are on target or area ahead of trajectory.</li> </ul>   |
| <b>ADVISE</b>  |
| <ul style="list-style-type: none"> <li>The committee received a report from PwC collated across Grater Manchester, but tailored for WWL. The committee considered there were opportunities to work with locality leadership to better understand pressures on the locality and make improvements to services as a result, by identifying the correct strategic focus in the borough.</li> <li>Further, the report should be used to influence and guide WWL's internal transformation plans and identify areas of focus as well as areas for investment.</li> <li>The Committee received the national cost collection report and noted that to compare this with the findings of PwC would also help the Trust to identify further CIP and where costs can be taken out safely.</li> </ul> |
| <b>RISKS DISCUSSED AND NEW RISKS IDENTIFIED</b>  |
| <ul style="list-style-type: none"> <li>Risks to delivery of corporate objectives CO12 and CO13 were noted.</li> <li>The Committee agreed that the risk rating of risk 3291 (PR2) to delivery of CO11, needs to increase from a score of 8 and, since it relates to CIP delivery.</li> </ul>  |

## Committee report

|                         |                     |
|-------------------------|---------------------|
| <b>Report from:</b>     | Audit Committee     |
| <b>Date of meeting:</b> | 4 May 2023          |
| <b>Chair:</b>           | Ian Haythornthwaite |

### Key discussion points and matters to be escalated from the discussion at the meeting:

| ALERT   |
|---|
| <ul style="list-style-type: none"> <li>▪ In the last round of internal audit reviews, the Trust received one 'limited' assurance report relating to medical e-rostering. This report has been deferred to the 19 June 2023 meeting so that the appropriate executive lead is in attendance for the discussion.</li> <li>▪ The Committee raised concerns around the progress being made with outstanding audit recommendations, in particular those pertaining to private patients and overseas visitors.</li> <li>▪ The Committee wishes to alert the Board that four audits will be reported later than scheduled, at either the June or September 2023/24 meeting, these are those relating to: <ul style="list-style-type: none"> <li>▪ Safe and timely discharge of patients</li> <li>▪ The Global Training and Education Centre</li> <li>▪ Safeguarding</li> <li>▪ Patient Access System upgrade</li> </ul> </li> </ul>  |
| ASSURE  |
| <ul style="list-style-type: none"> <li>▪ The Committee agreed that the safeguarding report would make reference to the prior audit report in this area, to ensure consistency in application of controls.</li> <li>▪ Two internal audit reports were completed in this period, one of which was 'limited' as described above, the other was 'substantial'.</li> <li>▪ The Committee received satisfactory assurance around the single tender waivers report; losses and special payments report and the counter fraud report.</li> <li>▪ The Committee received the fraud risk strategy and assurance that this has now been implemented, with fraud risks now added to the organisational risk register and reviewed by Risk Management Group.</li> <li>▪ The Committee received the internal audit opinion for the year which provided 'substantial' assurance.</li> <li>▪ The Committee received assurance from the external auditors (KPMG) that the final accounts audit had commenced and that no issued have been identified to date.</li> </ul> |
| ADVISE  |

- The Committee received the risk register and associated deep dives, although there was no opportunity for queries to be raised.
- The Committee received the draft annual accounts and the going concern declaration in advance of external audit and recommended these for the approval of the Board.
- It approved the changes to accounting policies.
- The Committee also received via consent:
  - Freedom to Speak Up Guardian
  - Legal services annual report
  - Register of interests
  - Minutes of reporting Committees

|   |
|---|
| <b>RISKS DISCUSSED AND NEW RISKS IDENTIFIED</b> |
| ▪ Not applicable.                               |

|                         |   |
|-------------------------|---|
| <b>Title of report:</b> | Review of constitution                      |
| <b>Presented to:</b>    | Council of Governors                        |
| <b>On:</b>              | 19 July 2023                                |
| <b>Item purpose:</b>    | Approval                                    |
| <b>Presented by:</b>    | Director of Corporate Affairs               |
| <b>Prepared by:</b>     | Director of Corporate Affairs               |
| <b>Contact details:</b> | T: 07867 462561   E: paul.howard@wwl.nhs.uk |

### Executive summary

Every foundation trust is required to have a constitution. Legal requirements for the content of a constitution are contained in statute, such as in Schedule 7 to the National Health Service Act 2006, and best practice is set out in the Code of Governance for NHS Provider Trusts.

Approval of a foundation trust's constitution requires the approval of the Board of Directors and the Council of Governors and the changes take effect immediately on being approved by the second of these two bodies. Following approval by the Council of Governors, it will be submitted to the board for approval at its meeting on 2 August 2023.

The constitution has been reviewed by the Director of Corporate Affairs and by Browne Jacobson, the foundation trust's legal advisors. This was coordinated with other GM organisations to ensure that generic changes to the constitution which are relevant to all NHS organisations were shared without the need for separate legal fees to be incurred for the same work.

All proposed changes are shown as tracked changes in the attached version. The rationale for the changes is as follows:

- To reflect new legislative requirements set out in the Health and Care Act 2022 – these are the parts of the constitution where whole paragraphs have been included, such as references to considering the effects of decision-making and climate change considerations within paragraph 5 and the entirety of paragraphs 13 and 14
- Amendment of references to 'Monitor' and to 'NHS England and NHS Improvement' to read 'NHS England' to reflect the current national organisational structure

- Amendment of references to Clinical Commissioning Groups to the Integrated Care Board, both within the definitions section but also contextually as needed within the wider content
- To reflect current practices, such as confirming that any part-year term served by a governor by virtue of the fact that they are invited to take up post as the next highest polling candidate because the original appointee stands down will not prevent them from serving up to 9 years in their own right; the arrangements for having non-voting directors on the board; and arrangements relating to the attestation of the common seal
- To correct an error within the previous version – paragraph 12.3 now correctly reflects the position set out in legislation

The draft constitution was circulated by email to all directors and governors for comment on 20 June 2023, with comments requested by 9 July 2023. No comments were received, other than to note a typographical error.

In addition, two drop-in sessions were held (one in person on 29 June 2023 and one online on 3 July 2023), to which all directors and governors were invited if they wished. One person took the opportunity to attend and discuss the changes, with no issues being raised.

#### **Link to strategy and corporate objectives**

There is nothing to highlight in this regard.

#### **Risks associated with this report and proposed mitigations**

There is nothing to highlight in this regard.

#### **Financial implications**

There is nothing to highlight in this regard.

#### **Legal implications**

The attached constitution has been reviewed by the foundation trust's legal advisors.

#### **People implications**

There is nothing to highlight in this regard.

#### **Wider implications**

There is nothing to highlight in this regard.

#### **Recommendation(s)**

The Council of Governors is recommended to approve the changes to the constitution as presented.



**Wrightington, Wigan and  
Leigh Teaching Hospitals**  
NHS Foundation Trust

# Constitution of Wrightington, Wigan and Leigh Teaching Hospitals NHS Foundation Trust

Draft

Approved by Board of Directors: [2 August 2023]

Approved by Council of Governors: [19 July 2023]

**Date of adoption (effective date): [2 August 2023]**





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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, as amended by ~~the Health and Social Care Act 2012~~ Act, the 2022 Act and other amending legislation.
- 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”            | means the Health and Social Care Act 2012;   |
| <u>“the 2022 Act”</u>     | <u>means the Health and Care Act 2022;</u>   |
| “Accounting Officer”      | means the person who, from time to time, discharges the functions specified in paragraph 25(5) of schedule 7 to the 2006 Act;  |
| “Annual Members’ Meeting” | is defined at paragraph 10 of this Constitution;   |
| “Appointed Governor”      | means either a Local Authority Governor or a Partnership Governor and “Appointed Governors” means the Local Authority Governor and the Partnership Governors collectively; |
| “Authorisation”           | means an authorisation given <del>by Monitor</del> pursuant to Section 35 of the 2006 Act;   |
| “Board of Directors”      | means the board of directors of the Foundation Trust as constituted in accordance with this Constitution from time to time;  |
| “Chair”                   | means the Chair of the Foundation Trust appointed under this Constitution;   |
| “Chief Executive”         | means the Chief Executive of the Foundation Trust appointed under this Constitution;   |
| “Constitution”            | means this Constitution and all annexes to it;   |
| “Council of Governors”    | means the Council of Governors of the Foundation Trust as constituted in accordance with this Constitution from time to time;  |
| “Director”                | means a member of the Board of Directors, <u>irrespective of voting rights;</u>  |

|                                      |   |
|--------------------------------------|---|
| “Elected Governors”                  | means those members of the Council of Governors elected by the members of the public constituencies and the members of the classes of the staff constituency;                             |
| “Executive Director”                 | means an executive director of the Foundation Trust appointed under this Constitution;  |
| “Financial Auditor”                  | means the person appointed to audit the accounts of the Foundation Trust, who is called the auditor in the 2006 Act;  |
| “Financial Year”                     | means each successive period of twelve (12) months, beginning with 1 April;   |
| “Governor”                           | means a member of the Council of Governors;   |
| <u>“ICB”</u>                         | <u>means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act;</u>   |
| “Local Authority Governor”           | means a member of the Council of Governors appointed by one or more qualifying local authority;   |
| “Member”                             | means a member of the Foundation Trust;   |
| <del>“Monitor”</del>                 | <del>means the body corporate known as Monitor, as provided by section 61 of the 2012 Act</del>   |
| <del>“NHS Improvement England”</del> | <del>means the organisation that brings together Monitor and the NHS Trust Development Authority body corporate known as NHS England, established under section 1H of the 2006 Act;</del> |
| “Non-Executive Director”             | means a non-executive director of the Foundation Trust appointed under this Constitution;   |
| “partner”                            | means, in relation to another person, a member of the same household living together as a family unit;  |
| “Partnership Organisation”           | means an organisation listed in paragraph 11.7;   |
| “Partnership Governor”               | means a member of the Council of Governors appointed by a Partnership Organisation;   |
| “Provider Licence”                   | means the licence granted <del>by Monitor</del> to the Foundation Trust under section 87 of the 2012 Act;   |
| “Public Constituency”                | means an area specified in Annex 1 as an area for a public constituency;  |
| “Public Governor”                    | means a member of the Council of Governors elected by the members of the Public Constituency;   |
| “qualifying local authority”         | means a local authority for an area which includes the whole or part of a Public Constituency;  |

|  |  |
|--|--|
| “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 practise under that Act;   |
| “Regulated Activities Regulations”                 | means the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;   |
| “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;                                      |
| “Senior Staff”                                     | means the Executive Directors and other senior staff designated by the Remuneration Committee or any successor body as such;   |
| “Staff Governor”                                   | means a member of the Council of Governors elected by the members of one of the classes of the staff constituency;   |
| “the Foundation Trust”                             | means Wrightington, Wigan and Leigh <u>Teaching Hospitals</u> NHS Foundation Trust; and  |
| “ <del>V</del> vexatious <del>C</del> complainant” | means an individual who has been found by the <del>Foundation Trust</del> Chair, having applied the relevant policy, to have abused or used inappropriately the Foundation Trust’s complaints procedure. |

- 1.6 In the event of any doubt or dispute about the meaning of any provision in this Constitution, the Chair, acting on the advice of the Secretary, shall rule about the true meaning and interpretation of it.

## 2. NAME AND STATUS

- 2.1 The name of this Foundation Trust is Wrightington, Wigan and Leigh Teaching Hospitals NHS Foundation Trust.

## 3. PRINCIPAL PURPOSE

- 3.1 The Foundation Trust’s principal purpose is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Foundation 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 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 to better carry on its principal purpose.

## 4. POWERS

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

4.2 The Foundation Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions, within the terms of its Authorisation and Provider Licence.

4.3 In particular, it may:

4.3.1 acquire and dispose of property;

4.3.2 enter into contracts;

4.3.3 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); and

4.3.4 employ staff.

4.4 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).

4.5 The Foundation Trust may borrow money for the purposes of or in connection with its functions.

4.6 Subject to any restrictions imposed by ~~NHS Improvement~~NHS England, and taking into account any guidance issued by ~~NHS Improvement~~NHS England, the Foundation Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:

4.6.1 forming, or participating in forming, bodies corporate; or

4.6.2 otherwise acquiring membership of bodies corporate.

4.7 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.

4.74.8 The Foundation Trust may enter into arrangements for the carrying out, on such terms as the Foundation Trust considers appropriate, of any of its functions jointly with any other person.

4.84.9 Any power conferred on the Foundation Trust by section 23 of the Mental Health Act 1983 may be exercised by any three (3) or more persons authorised by the Board of Directors, each of whom is to be neither an Executive Director nor an employee of the Foundation Trust.

## 5. COMMITMENTS

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

5.2 Subject to paragraph 5.3 below and having regard to any guidance published by NHS England, in making a decision about the exercise of its functions, the Foundation Trust shall have regard to all likely effects of the decision in relation to:

5.2.1 the health and wellbeing of the people of England;

5.2.2 the quality of services provided to individuals by Relevant Bodies, or in pursuance of arrangements made by Relevant Bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England; and

5.2.3 efficiency and sustainability in relation to the use of resources by Relevant Bodies for the purposes of the health service in England.

5.15.3 The requirement to have regard to the wider effect of its decisions set out at paragraph 5.2 shall not apply to decisions about services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.

In paragraph 5.2, 'relevant bodies' has the meaning set out in paragraph 63A(4) of the 2006 Act.

5.2

### **Representative membership**

5.35.4 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:

5.3.15.4.1 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 (3) years;

5.3.25.4.2 the Council of Governors shall present to each Annual Members' Meeting:

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

5.3.2.25.4.2.2 the progress of the membership strategy; and

5.3.2.35.4.2.3 any changes to the membership strategy.

### **Co-operation with health bodies**

5.5 In exercising its functions, the Foundation Trust shall co-operate with special health authorities, ~~clinical commissioning groups, ICBs,~~ NHS trusts and NHS foundation trusts and with ~~NHS Improvement~~ NHS England and the Care Quality Commission in the exercise of their statutory functions.

5.4

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

5.6 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 Human Rights Act 1998.

### **Climate change**

5.55.7 In exercising its functions, the Foundation Trust shall have regard to the need to contribute towards compliance with the UK net zero emissions target set out at section 1 of the Climate Change Act 2008 and the environmental targets set out at section 5 of the Environment Act 2021, and to adapt

to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008. In doing so, the Foundation Trust shall also have regard to guidance published by NHS England.

## Openness

5.65.8 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.

## Prohibiting distribution

5.75.9 The 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.

## 6. FRAMEWORK

6.1 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 and Provider Licence.

## Members

6.2 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.

## Council of Governors

6.3 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:

6.3.1 at a general meeting:

6.3.1.1 to appoint or remove the Chair and the other Non-Executive Directors;

6.3.1.2 to approve an appointment (by the Non-Executive Directors) of the Chief Executive;

6.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;

6.3.1.4 to appoint or remove the Foundation Trust's Financial Auditor;

6.3.1.5 to appoint or remove any other external auditor appointed to review and publish a report on any other aspect of the Foundation Trust's affairs;

6.3.1.6 to be presented with the annual accounts, any report of the Financial Auditor on them and the annual report. These documents shall also be presented to the Members of the Foundation Trust at the Annual Members' Meeting by at least one (1) member of the Board of Directors in attendance. The Foundation Trust may combine a meeting of the Council of Governors convened for this purpose with the Annual Members' Meeting;

6.3.2 to hold the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors;

- 6.3.3 to represent the interests of the Members as a whole and the interests of the public;
- 6.3.4 to approve significant transactions;
- 6.3.5 to approve an application by the Foundation Trust to enter into a merger, acquisition, separation or dissolution;
- 6.3.6 to decide whether the Foundation Trust's non-NHS work would significantly interfere with the fulfilment of its principal purpose or the performance of its other functions;
- 6.3.7 to approve amendments to this Constitution;
- 6.3.8 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;
- 6.3.9 to respond as appropriate when consulted by the Board of Directors in accordance with this Constitution;
- 6.3.10 to undertake such functions as the Board of Directors shall from time to time request;
- 6.3.11 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the composition of the Council of Governors; and
- 6.3.12 where appropriate, to act collectively and through individual Governors to communicate with Members of the Foundation Trust about developments in the Foundation Trust and the work of the Council of Governors.

## **Board of Directors**

- 6.4 The business of the Foundation Trust is to be managed by the Board of Directors.
- 6.5 All the powers of the Foundation Trust shall be exercisable by the Board of Directors on its behalf.

## **7. MEMBERS**

- 7.1 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 a Public Constituency or a member of one of the classes of the staff constituency.
- 7.2 Subject to this Constitution, membership is open to any individual who:
  - 7.2.1 is over sixteen (16) years of age;
  - 7.2.2 is entitled under this Constitution to be a member of a Public Constituency or one of the classes of the staff constituency; and
  - 7.2.3 completes a membership application form in whatever form the Secretary specifies.

## **Public Constituency**

- 7.3 Membership of the Public Constituencies is open to individuals:
  - 7.3.1 who live in an area specified in Annex 1 as an area for a Public Constituency; and
  - 7.3.2 who are not eligible to be members of any of the classes of the staff constituency.



The members of the public constituencies are collectively referred to in this Constitution as the Public Constituency.

7.4 The minimum number of Members of each Public Constituency is to be four (4).

#### **Staff constituency**

7.5 The staff constituency is divided into three classes, as follows:

7.5.1 doctors and dentists who are registered to practise;

7.5.2 registered nurses and midwives; and

7.5.3 all other staff.

7.6 Membership of one of the classes of the staff constituency is open to individuals:

7.6.1 who are employed under a contract of employment by the Foundation Trust and who either:

7.6.1.1 are employed by the Foundation Trust under a contract of employment which has no fixed term or which has a fixed term of twelve (12) months or more; or

7.6.1.2 who have been continuously employed by the Foundation Trust under a contract of employment for at least twelve (12) months; or

7.6.2 who are not so employed but who nevertheless exercise functions for the purposes of the Foundation Trust and have exercised these functions continuously for a period of at least twelve (12) months. For the avoidance of doubt, this does not include those who assist or provide services to the Foundation Trust on a voluntary basis.

The members of the classes of the staff constituency are collectively referred to in this Constitution as the staff constituency.

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

7.8 All individuals who are entitled under this Constitution to become members of one of the classes of the staff constituency and who:

7.8.1 have been invited by the Foundation Trust to become a member of the appropriate class; and

7.8.2 have not informed the Foundation Trust that they do not wish to do so

shall become members of the appropriate class.

7.9 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 the Public Constituency and may not become or continue as a Member of more than one class of the staff constituency.

7.10 The minimum number of Members of each class of the staff constituency is to be four (4).

## **8. DISQUALIFICATION FROM MEMBERSHIP**

- 8.1 A person may not become or continue as a Member of the Foundation Trust if within the last five (5) years they have been involved as a perpetrator in an incident or incidents of aggression 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 any volunteer.
- 8.2 An individual who has threatened, harassed, harmed or abused staff, patients and/or visitors of the Foundation Trust, or has been a vexatious complainant, shall be refused membership of the Foundation Trust or, where an existing Member, shall have their membership of the Foundation Trust withdrawn.
- 8.3 An individual will not be eligible for membership of the Foundation Trust if they have been removed from membership of another Foundation Trust for cause.

## **9. TERMINATION OF MEMBERSHIP**

- 9.1 A Member shall cease to be a Member if:
- 9.1.1 they resign by notice to the Secretary;
  - 9.1.2 they die;
  - 9.1.3 they are expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors attending and voting at a meeting of the Council of Governors;
  - 9.1.4 they cease to be entitled under this Constitution to be a Member;
  - 9.1.5 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.
- 9.2 Any person may complain to the Secretary that a Member has acted in a way detrimental to the interests of the Foundation Trust.
- 9.3 Where:
- 9.3.1 the Secretary has reason to believe that an individual is ineligible for membership or (if they are already a Member) should be disqualified from membership of the Foundation Trust by virtue of paragraph 8 above; or
  - 9.3.2 the Secretary receives a complaint from any person about a Member acting in a way detrimental to the interests of the Foundation Trust
- they shall conduct such investigations as are necessary and advise the individual of their findings.
- 9.4 Where the Secretary determines that an individual is ineligible for membership or should be disqualified from membership by virtue of the matters set out in paragraph 8 above, they shall notify the individual directly of their determination. The individual shall be entitled to appeal to the Chair, whose decision in this regard shall be final.

9.5 Where the Secretary considers that other grounds for removing an individual from membership exist, this shall be referred to the Council of Governors for determination in accordance with paragraph 9.1.3 above.

9.6 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 who are present at the relevant Council of Governors meeting.

## **10. MEMBERS' MEETINGS**

10.1 The Foundation Trust is to hold a Members' Meeting (called the Annual Members' Meeting) within nine (9) months of the end of each Financial Year. The Annual Members' Meeting shall be open to members of the public.

10.2 All Members' Meetings other than Annual Members' Meetings are called Special Members' Meetings.

10.3 Members' Meetings are open to all Members of the Foundation Trust, Governors, Directors, representatives of the Foundation Trust's Financial Auditor and to members of the public. 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.

10.4 All Members' Meetings are to be convened by the Secretary by order of the Council of Governors.

10.5 The Council of Governors may decide where a Members' Meeting is to be held and may also for the benefit of Members:

10.5.1 arrange for the Annual Members' Meeting to be held in different venues each year; or

10.5.2 make provisions for a Members' Meeting to be held at different venues simultaneously by video or audio link.

10.6 At the Annual Members' Meeting:

10.6.1 one of more Directors shall present to the Members:

10.6.1.1 the annual accounts;

10.6.1.2 any report of the Financial Auditor on them;

10.6.1.3 any report of any other external auditor to the Foundation Trust's affairs;

10.6.1.4 the annual report; and

10.6.1.5 forward planning information for the next Financial Year;

10.6.2 one of more Governors shall present to the Members:

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

10.6.2.2 the progress of the membership strategy;

- 10.6.2.3 any changes to the membership strategy;
- 10.6.2.4 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors; and
- 10.6.2.5 the results of the election and appointment of members of the Council of Governors and the appointment of Non-Executive Directors will be announced.

10.7 Notice of a Members' Meeting is to be given:

- 10.7.1 by notice in the Members' newsletter;
- 10.7.2 by notices in the main premises of the Foundation Trust; and
- 10.7.3 by notice on the Foundation Trust's website

at least fourteen (14) clear days before the date of the meeting. The notice must:

- 10.7.4 be given to the Council of Governors and the Board of Directors and to the Financial Auditor;
- 10.7.5 state whether the meeting is an annual or special Members' Meeting;
- 10.7.6 give the time, date and place of the meeting; and
- 10.7.7 indicate the business to be dealt with at the meeting.

10.8 Before a Members' Meeting can do business, there must be a quorum present. Except where this Constitution says otherwise, a quorum shall be formed on the attendance of one (1) Member from each of the Foundation Trust's constituencies.

10.9 The Foundation Trust may make arrangements for Members to vote by post or by using electronic communications.

10.10 It is the responsibility of the Board of Directors, the Chair of the meeting and the Secretary to ensure that at any Members' Meeting:

- 10.10.1 the issues to be decided are clearly explained; and
- 10.10.2 sufficient information is provided to Members to enable rational discussion to take place.

10.11 The Chair of the Foundation Trust shall act as chair at all Members' Meetings of the Foundation Trust. The Chair may nominate a Director of the Foundation Trust to chair a Members' Meeting in their absence. If neither the Chair nor any Director nominated to act as chair is present, the Governors present shall elect one (1) of the Public Governors present to be chair. If there is only one Governor present and willing to act, they shall be chair.

10.12 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.

- 10.13 A resolution put to the vote at a Members' Meeting shall be decided upon by a poll.
- 10.14 Every Member present and every Member who has voted by post or using electronic communications is to have one (1) vote. In the case of an equality of votes, the chair of the meeting is to have a second or casting vote.
- 10.15 The result of any vote will be declared by the chair and recorded in the minutes of the meeting. The minutes of the meeting shall be conclusive evidence of the result of the vote.

## **11. COUNCIL OF GOVERNORS**

- 11.1 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.

- 11.2 The general duties of the Council of Governors are:

11.2.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

11.2.2 to represent the interests of the Members of the Foundation Trust as a whole and the interests of the public

- 11.3 The Foundation Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

- 11.4 The number of Public Governors is to be more than half of the total number of Governors on the Council of Governors.

- 11.5 The composition of the Council of Governors, subject to the 2006 Act, shall seek to ensure that:

11.5.1 the interests of the community served by the Foundation Trust are appropriately represented; and

11.5.2 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:

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

11.5.4 shall from time to time, and not less than every three (3) years, review the policy for the composition of the Council of Governors; and

11.5.5 when appropriate shall propose amendments to this Constitution.

- 11.6 Subject to paragraph 11.7 below, the Council of Governors of the Foundation Trust is to comprise:

11.6.1 sixteen (16) Public Governors from the following public constituencies:

11.6.1.1 Leigh – four (4) Public Governors;

11.6.1.2 Makerfield – four (4) Public Governors;

11.6.1.3 Wigan – four (4) Public Governors; and

- 11.6.1.4 the rest of England and Wales – four (4) Public Governors
- 11.6.2 five (5) Staff Governors from the following classes of the staff constituency as defined in paragraph 7.5:
  - 11.6.2.1 doctors and dentists – one (1) Staff Governor;
  - 11.6.2.2 registered nurses and midwives – two (2) Staff Governors; and
  - 11.6.2.3 all other staff – two (2) Staff Governors
- 11.6.3 one (1) Local Authority Governor from Wigan Council
- 11.6.4 six (6) Partnership Governors who may be appointed by Partnership Organisations.
- 11.7 The Partnership Organisations that may appoint a Partnership Governor and which are specified for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act are as follows:
  - 11.7.1 NHS Greater Manchester Integrated Care Board Wigan Borough Clinical Commissioning Group who may appoint one (1) Partnership Governor who is representative of its functions relating to the Foundation Trust;
  - 11.7.2 the Local Medical Committee, who may appoint one (1) Partnership Governor;
  - 11.7.3 Age UK Wigan Borough, who may appoint one (1) Partnership Governor;
  - 11.7.4 the University of Central Lancashire, who may appoint one (1) Partnership Governor;
  - 11.7.5 Edge Hill University, who may appoint one (1) Partnership Governor; and
  - 11.7.6 the Foundation Trust's Volunteers, who may appoint one (1) Partnership Governor.

### **Elected Governors**

- 11.8 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.
- 11.9 If contested, the elections must be by secret ballot.
- 11.10 Elections shall be carried out in accordance with the Model Election Rules as published from time to time by NHS Providers. The Model Election Rules current at the date of this Constitution being approved are set out in Annex 3. A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 24 of this Constitution.
- 11.11 Elections shall be carried out using the single transferable vote system.
- 11.12 A member of the Public Constituency may not vote at an election for a Public Governor unless within twenty-one (21) 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 Public Constituency. It is an offence to knowingly or recklessly make a declaration which is false in a material particular.

## Local Authority Governor

- 11.13 The Secretary, having consulted the local authority, is to adopt a process for agreeing the appointment of the Local Authority Governor.

## Partnership Governors

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

## Lead Governor

- 11.15 The Council of Governors shall appoint one of the Governors to be its Lead Governor. This appointment shall be made on an annual basis and the role of the Lead Governor shall be in accordance with the role description within the ~~NHS Foundation Trust~~ Code of Governance for NHS Provider Trusts.

## Terms of office for Governors

- 11.16 Governors:
- 11.16.1 shall normally hold office for a period of three (3) years, commencing immediately after the Annual Members' Meeting at which their election or appointment is announced;
  - 11.16.2 are eligible for re-election or re-appointment (as applicable) at the end of that period;
  - 11.16.3 may not hold office for longer than a maximum of nine (9) consecutive years in the capacity of either an Elected or Appointed Governor of the Foundation Trust; and
  - 11.16.4 shall not be eligible for re-election if they have already held office for more than six (6) consecutive years, or will have by the date of the Annual Members' Meeting at which the results of the election are to be announced.

For the purposes of these provisions concerning terms of office for Governors, one (1) "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, and one year is consecutive with another unless there is a period of more than 12 calendar months between them.

## Eligibility to be a Governor

- 11.17 A person is not eligible to become a Governor and, if already holding such office, will immediately cease to be eligible, if:
- 11.17.1 they are under sixteen (16) years of age;
  - 11.17.2 they are a Director of the Foundation Trust, or a Governor or Director of an NHS Body or of another NHS foundation trust, or a director or chairman of a body corporate whose business competes or potentially competes with the healthcare services provided by the Foundation Trust;
  - 11.17.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 11.17.4 they are a member of a local authority's Scrutiny Committee covering health matters;

- 11.17.5 they are a member of a local Healthwatch organisation, although for the avoidance of doubt membership of a Healthwatch group outside of the local area shall not be a bar;
- 11.17.6 being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Council of Governors;
- 11.17.7 they are subject to a sex offender order;
- 11.17.8 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 11.17.9 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;
- 11.17.10 they have within the preceding five (5) years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three (3) months or more (without the option of a fine) was imposed;
- 11.17.11 they have within the preceding two (2) years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service body;
- 11.17.12 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;
- 11.17.13 they have been removed from being a governor of another foundation trust for cause;
- 11.17.14 they have had their name removed, other than by reason of resignation, from any list prepared or maintained under regulations made pursuant to sections 91, 106, 123 and 147A of the 2006 Act and have not subsequently had their name included on such a list;
- 11.17.15 they have within the preceding five (5) years been involved as a perpetrator in an incident or incidents of serious abuse or 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;
- 11.17.16 they are an unfit person within the meaning of the Foundation Trust's Provider Licence, save where ~~NHS Improvement~~NHS England has provided its approval in writing to them becoming or continuing as a Governor;
- 11.17.17 they fail to provide the required confirmation of their fitness to continue as a Governor to the Secretary in the form prescribed by the Secretary, within fourteen (14) days of such confirmation being demanded, without reasonable cause;
- 11.17.18 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 11.17.19 they are a Vexatious Complainant; or



11.17.20 the Council of Governors has ever resolved in accordance with paragraph 11.19.8 that his or her tenure as a Governor be terminated.

11.18 Where a question as to an individual's eligibility to be a Governor arises, this shall be determined by the Secretary. The individual subject to this determination shall be entitled to appeal to the Chair, whose decision in this regard shall be final.

### **Termination of office and removal of members of the Council of Governors**

11.19 A person holding office as a Governor shall immediately cease to do so if:

11.19.1 they cease to be eligible to be a Governor pursuant to paragraph 11.17;

11.19.2 they resign by notice in writing to the Secretary, provided that if a Governor's tenure of office or conduct is subject to investigation, or in the opinion of the Secretary may become so, any notice of resignation shall not be effective without the written consent of the Chair or the chair of any appeal;

11.19.3 they fail to attend three (3) consecutive Council meetings, unless the other Governors are satisfied that:

11.19.3.1 the absences were due to reasonable causes; and

11.19.3.2 they will be able to start attending meetings of the Foundation Trust again within such a period as the Governors consider reasonable;

11.19.4 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;

11.19.5 in the case of an appointed Governor, the appointing organisation withdraws its sponsorship of him or her;

11.19.6 they have refused to undertake training which the Council of Governors deems necessary for the relevant Governor to undertake for the proper discharge of his or her duties as a Governor;

11.19.7 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the Foundation Trust's code of conduct within fourteen (14) days of such confirmation being demanded, without reasonable cause;

11.19.8 they are removed from the Council of Governors under the following provisions by a resolution approved by not less than two-thirds of the remaining Governors present and voting at a Council meeting on any one of the following grounds:

11.19.8.1 they have committed a material breach of the Foundation Trust's code of conduct;

11.19.8.2 they have acted in a manner detrimental to the interests of the Foundation Trust; or

11.19.8.3 the Council of Governors considers that it is not in the best interests of the Foundation Trust for them to continue as a Governor;

11.19.9 the Council of Governors has ever resolved in accordance with paragraph 11.19.8 that his or her tenure as a Governor be terminated.

11.20 A Staff Governor who is suspended from their role as an employee shall be suspended from their role as a Governor for the period of the suspension.

11.21 It is the responsibility of each Governor to ensure their eligibility at all times and not the responsibility of the Foundation Trust to do so on their behalf. A Governor who becomes aware of their ineligibility shall inform the Foundation Trust as soon as practicable.

11.22 Where the Foundation Trust has reason to believe that a Governor may be removed from the Council of Governors pursuant to paragraph 11.19, the investigation procedure set out in Annex 2 must be followed.

### **Vacancies amongst Governors**

11.23 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.

11.24 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.

11.25 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:

11.25.1 to call an election within four (4) months to fill the seat for the remainder of that term of office; or

11.25.2 to invite the next highest polling candidate for that seat at the most recent election who is willing to take office, to fill the seat ~~for the remainder of that term of office until the date of the next Annual Members' Meeting, at which point they will vacate the seat and it will be filled through election.~~

~~11.25.2~~ 11.26 Any period of time served by a person under paragraph 11.25.2 shall not be counted for the purposes of determining their maximum term of service under paragraph 11.16.

### **Expenses and remuneration of Governors**

~~11.26~~ 11.27 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.

~~11.27~~ 11.28 Governors are not to receive remuneration.

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

~~11.28~~ 11.29 The Council of Governors is to meet at least three (3) times in each Financial Year. Save in the case of emergency or the need to conduct urgent business, the Secretary shall give at least fourteen (14) days' written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Foundation Trust's website.

~~11.29~~ 11.30 Meetings of the Council of Governors may be called by the Secretary, or by the Chair, or by eight (8) members of the Council of Governors (including at least two (2) Elected Governors and one (1) Appointed Governor) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after

receipt of such a request. The Secretary shall call a meeting on at least fourteen (14) but not more than twenty-eight (28) days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or eight (8) Governors, whichever is the case, shall call such a meeting.

~~11.30~~11.31 All meetings of the Council of Governors are to be held in public unless the Council of Governors decides otherwise in relation to all or part of a meeting for special reasons, which may include 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.

~~11.31~~11.32 A quorum of the Council of Governors shall be formed upon the attendance of at least twelve (12) Governors, of which the majority must be Public Governors.

~~11.32~~11.33 The Chair of the Foundation Trust or, in their absence, the Vice-Chair 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, a Director nominated by the Chair, or in the event that all Directors present are conflicted, the Lead Governor, will chair that part of the meeting.

~~11.33~~11.34 The Council of Governors may invite the Chief Executive or any other members of the Board of Directors, or a representative of the Foundation Trust's auditor or other advisors to attend and speak at a meeting of the Council of Governors.

~~11.34~~11.35 For the purpose of obtaining 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 Foundation Trust's or Directors' performance) the Council of Governors may require one or more of the Directors to attend a meeting.

~~11.35~~11.36 Members of the Council of Governors may participate in 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.

~~11.36~~11.37 Questions arising at a meeting of the Council of Governors shall be decided by a majority of votes, save that no resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.

~~11.37~~11.38 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of Governors, Directors, and other persons to assist the Council 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.

~~11.38~~11.39 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 Governors attending the meeting.

#### **Referral to the independent panel**

~~11.39~~11.40 In this paragraph, "the independent panel" means a panel of persons appointed by **NHS Improvement****NHS England**, to which a Governor of an NHS foundation trust may refer a question as to whether the Foundation Trust has failed or is failing:

~~11.39.1~~11.40.1 to act in accordance with its Constitution; or

~~11.39.2~~11.40.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act

~~11.40~~11.41 A Governor may refer a question to the independent panel only if more than half of the members of the Council of Governors voting approve the referral.

### Conflicts of interest

~~11.41~~11.42 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is director or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

### Declaration

~~11.42~~11.43 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 Governor. An Elected Governor shall be deemed to have confirmed the declaration on 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.

## 12. BOARD OF DIRECTORS

12.1 The Foundation Trust is to have a Board of Directors. It is to consist of Executive Directors and Non-Executive Directors. The general duty of the Board of Directors and of each Director individually is to act with a view to promoting the success of the Foundation Trust so as to maximise the benefits for the Members of the Foundation Trust as a whole and for the public.

12.2 The board is to include:

12.2.1 the following Non-Executive Directors:

12.2.1.1 a Chair,

12.2.1.2 not less than five (5) but not more than eight (8) other Non-Executive Directors;

12.2.2 the following Executive Directors:

12.2.2.1 a Chief Executive (who is the Accounting Officer);

12.2.2.2 a Director of Finance;

12.2.2.3 a Medical Director who is to be a Registered Medical Practitioner or a Registered Dentist;

12.2.2.4 a Director of Nursing who is to be a registered nurse or registered midwife; and

12.2.2.5 at least one (1) but not more than four (4) other Executive Directors;

provided always that at least half of the Board of Directors appointed under paragraph 12.2, excluding the Chair, should comprise Non-Executive Directors determined by the Board of Directors to be independent.

12.3 It is for the Council of Governors at a general meeting to appoint or remove the Chair and the other Non-Executive Directors, and:

12.3.1 Appointment of the Chair and the Non-Executive Directors requires the approval of a majority of the members of the Council of Governors present and voting at the meeting;

~~12.3.2~~12.3.2 Removal of the Chair and the Non-Executive Directors requires the approval of three quarters of members of the Council of Governors. The Chair and the Non-Executive Directors are to be appointed (and removed) by a majority of the members of the Council of Governors present and voting at the meeting.

12.4 The Chief Executive is to be appointed (and removed) by the Non-Executive Directors, and his/her appointment is subject to the approval of a majority of the members of the Council of Governors ~~present and voting at the meeting.~~

12.5 The other Executive Directors are to be appointed (and removed) by a committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors. At its sole discretion, this committee may also appoint additional Executive Directors without voting rights and who shall be additional to Executive Directors appointed under paragraph 12.2.2 above.

12.6 The Council of Governors may appoint one (1) of the Non-Executive Directors appointed under paragraph 12.2.1 to be Vice-Chair 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.

12.7 The Board of Directors shall appoint one of the Executive Directors to be the Deputy Chief Executive.

12.8 The Board of Directors, in consultation with the Council of Governors, shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director.

12.9 ~~Only a member of the Public Constituency is eligible for appointment as a Non-Executive Director. A person may be appointed as a Non-Executive Director only if he or she is a member of a public constituency or, where any of the corporation's hospitals includes a medical or dental school provided by a university, he or she exercises functions for the purposes of that university.~~

12.10 Non-Executive Directors are to be appointed by the Council of Governors using the following procedure:

12.10.1 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 (3) years.

12.10.2 The Board of Directors will determine the skills and experience required for Non-Executive Directors, taking external advice where appropriate.

- 12.10.3 Appropriate candidates (normally not more than five (5) for each vacancy) 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.
- 12.10.4 The Nominations Committee will comprise the Chair of the Foundation Trust (or the Vice-Chair, unless they are standing for appointment, in which case another Non-Executive Director when a Chair is being appointed), three (3) Elected Governors and one (1) Appointed Governor. The Chair of another foundation trust or another appropriate person will be invited to act as an independent assessor to the Nominations Committee.
- 12.11 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the Governors and shall be in accordance with the following procedure:
  - 12.11.1 Any proposal for removal must be proposed by the Chair or by not less than half of the Governors, including at least four (4) Elected Governors and four (4) Appointed Governors.
  - 12.11.2 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.
  - 12.11.3 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.
  - 12.11.4 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 twelve (12) months of the meeting.

#### **Terms of office**

- 12.12 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 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. A Non-Executive Director (including the Chair) may serve on the Board of Directors for longer than six (6) consecutive years, subject to annual reappointment. A Non-Executive Director of the Foundation Trust (including the Chair) may not hold office for longer than a maximum of nine (9) years in aggregate in the capacity of either the Chair or a Non-Executive Director of the Foundation Trust.
- 12.13 For the avoidance of doubt, the provisions of paragraph 12.12 above shall not affect any terms of office agreed by the Council of Governors prior to the date of approval of this Constitution.
- 12.14 The Remuneration Committee of Non-Executive Directors shall decide the terms and conditions of office including the remuneration and allowances of Senior Staff.

#### **Disqualification**

- 12.15 A person may not become or continue as a Director of the Foundation Trust if:

- 12.15.1 they are a member of the Council of Governors, or a Governor of an NHS body or another NHS foundation trust or NHS trust, or they are a Governing Body member or an officer of a Clinical Commissioning Group;
- 12.15.2 they are a member of a Patient's Forum of an NHS organisation;
- 12.15.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
- 12.15.4 they are a member of a local authority's Scrutiny Committee covering health matters;
- 12.15.5 they are a member of a local Healthwatch organisation, although for the avoidance of doubt membership of a Healthwatch organisation outside of the local area shall not be a bar;
- 12.15.6 they are under the age of eighteen (18) years;
- 12.15.7 they have been adjudged bankrupt or their estate has been sequestrated and, in either case, they have not been discharged;
- 12.15.8 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;
- 12.15.9 they have within the preceding five (5) years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three (3) months or more (without the option of a fine) was imposed;
- 12.15.10 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 12.15.11 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;
- 12.15.12 they have had their name removed, other than by reason of resignation, from any list prepared or maintained under regulations made pursuant to sections 91, 106, 123 and 147A of the 2006 Act and have not subsequently had their name included on such a list;
- 12.15.13 they have within the preceding two (2) years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 12.15.14 in the case of a Non-Executive Director, they have refused to fulfil any training requirement established by the Board of Directors;
- 12.15.15 they have refused to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct;
- 12.15.16 they are an unfit person within the meaning of the Foundation Trust's Provider Licence, save where ~~NHS Improvement~~NHS England has provided its approval in writing to them becoming or to continuing as a Director;
- 12.15.17 they fail to satisfy the requirements of Regulation 5(3) of the Regulated Activities Regulations;

- 12.15.18 they fail to provide the required confirmation of their fitness to continue in post to the Secretary, in the form prescribed by the Secretary, within fourteen (14) days of such confirmation being demanded, without reasonable cause; or
- 12.15.19 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

### **Committees and delegation**

- 12.16 The Board of Directors may delegate any of its powers to a committee of Directors or to an Executive Director.
- 12.17 The Board of Directors shall appoint an Audit Committee of at least three (3) Non-Executive Directors to perform such monitoring, reviewing and other functions as are appropriate.
- 12.18 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 Senior Staff.

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

- 12.19 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen (14) days' written notice of the date and place of every meeting of the Board of Directors to all Directors.
- 12.20 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 12.21 Meetings of the Board of Directors are called by the Secretary, or by the Chair, or by four (4) 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 (14) but not more than twenty-eight (28) days' notice to discuss the specified business. If the Secretary fails to call such a meeting, then the Chair or four (4) Directors, whichever is the case, shall call such a meeting.
- 12.22 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 12.23 Six (6) Directors, including not less than three (3) Executive Directors, one of whom must be the Chief Executive (or another Executive Director nominated by the Chief Executive), and not less than three (3) Non-Executive Directors, one of whom must be the Chair or the Senior Independent Director, shall form a quorum.
- 12.24 Members of the Board of Directors may participate in 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.
- 12.25 The Chair, or in their absence the Vice-Chair of the Board of Directors, is to chair meetings of the Board of Directors.
- 12.26 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.



- 12.26.1 In the case of an equality of votes, the Chair shall have a second and casting vote unless they are prevented from voting by paragraph 12.37.
- 12.26.2 No resolution of the Board of Directors shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.
- 12.27 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.

### **Conflict of interest of Directors**

- 12.28 The duties that a Director of the Foundation Trust has, by virtue of being a Director, include in particular:
- 12.28.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Foundation Trust;
- 12.28.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 12.29 The duty referred to in sub-paragraph 12.28.1 above is not infringed if:
- 12.29.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 12.29.2 the matter has been authorised in accordance with the Constitution. For a matter to be authorised, it must:
- 12.29.2.1 have been approved in advance by the Board of Directors and the minutes of the meeting shall be conclusive evidence of such approval; or
- 12.29.2.2 be linked with a course of action previously approved by the Board of Directors, such that a reasonable person would expect the Director to find themselves in such a situation or to accept such a benefit as a result.
- 12.30 The duty referred to in sub-paragraph 12.28.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 12.31 In sub-paragraph 12.28.2, "third party" means a person other than:
- 12.31.1 the Foundation Trust; or
- 12.31.2 a person acting on its behalf
- 12.32 If a Director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 12.33 If a declaration under paragraph 12.32 proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 12.34 Any declaration required by paragraph 12.32 must be made before the Foundation Trust enters into the transaction or arrangement.

- 12.35 Paragraph 12.32 does not require declaration of interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 12.36 A Director need not declare an interest:
- 12.36.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 12.36.2 if, or to the extent that, the Directors are already aware of it;
  - 12.36.3 if, or to the extent that, it concerns terms of the Directors' appointment that have been or are to be considered:
    - 12.36.3.1 by a meeting of the Board of Directors; or
    - 12.36.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 12.37 Any Director who has an interest in a matter that is required to be declared in accordance with paragraphs 12.32 to 12.36 above shall declare such interest in writing to the Secretary within seven (7) days of the interest arising and to the Board of Directors at the next meeting, and:
- 12.37.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
  - 12.37.2 shall not vote on any issue arising out of or in connection with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 12.38 Details of any such interest shall be recorded in the register of interests of Directors.
- 12.39 Any Director who fails to disclose any interest required to be disclosed under the preceding paragraphs must permanently vacate their office if required to do so:
- 12.39.1 in the case of an Executive Director, by a decision taken pursuant to paragraph 12.2.2 above; and
  - 12.39.2 in the case of a Non-Executive Director, by a decision taken pursuant to paragraph 12.11 above.
- 12.40 If a Director is in any doubt as to whether an interest should be disclosed, they should discuss the position with the Chair or Secretary.

## Expenses

- 12.41 The Foundation Trust may reimburse Senior Staff's 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.
- 12.42 The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

## **13. JOINT WORKING AND DELEGATION ARRANGEMENTS**

**13.1 Subject to paragraph 13.2, the Foundation Trust may arrange, in accordance with section 65Z5 of the 2006 Act, for the joint exercise of functions with any one or more of the following bodies:**

**13.1.1 a relevant body;**

13.1.2 a local authority (within the meaning of section 2B);

13.1.3 a combined authority.

13.2 Where the Trust has entered into arrangements for the joint exercise of functions with one or more bodies in accordance with paragraph 13.1, it may make arrangements for

13.2.1 the function to be exercised by a joint committee of theirs; or

13.2.2 for one or more of them, or a joint committee of them, to establish and maintain a pooled fund.

13.3 The Trust must have regard to any guidance published by NHS England under section 65Z7.

13.4 In this paragraph 13, the following terms have the following meanings:

13.4.1 'Relevant body' has the meaning set out in section 65Z5(2) of the 2006 Act;

13.4.2 'Local authority' means a local authority within the meaning of section 2B of the 2006 Act;

13.4.3 'Combined authority' has the meaning set out in s275 of the 2006 Act; and

13.4.4 'Pooled fund' has the meaning set out in s65Z6(3) of the 2006.

#### **14. DUTIES RELATING TO INTEGRATED CARE SYSTEM FINANCIAL CONTROLS**

14.1 The Foundation Trust must seek to achieve financial objectives that apply to it under section 223L of the 2006 Act.

14.2 The Foundation Trust must exercise its functions with a view to ensuring that it complies with its duties:

14.2.1 Under section 223LA of the 2006 Act to limit expenditure

14.2.2 under section 223M and section 223N of the 2006 Act to limit local capital resource use and local revenue resource use.

#### **13.15. SECRETARY**

13.15.1 The Foundation Trust shall have a Secretary, who may be an employee. The Secretary may not be a Governor, nor the Chief Executive or the Director of Finance. The Secretary's functions shall include:

13.1.115.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;

13.1.215.1.2 summoning and attending all Members' Meetings, meetings of the Council of Governors and the Board of Directors and keeping the minutes of those meetings;

13.1.315.1.3 keeping the register of Members and other registers and books required by this Constitution to be kept;

13.1.415.1.4 having charge of the Foundation Trust's common seal;

13.1.515.1.5 acting as returning officer in any elections;

13.1.615.1.6 publishing to Members in an appropriate form information which they should have about the Foundation Trust's affairs;

~~13.1.7~~15.1.7 preparing and sending to ~~NHS Improvement~~NHS England and any other statutory body all returns which are required to be made.

~~13.2~~15.2 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. The minutes will be conclusive evidence of the events of the meeting.

~~13.3~~15.3 The Secretary is to be appointed and removed by the Board of Directors.

## ~~14.16.~~ **REGISTERS**

~~14.1~~16.1 The Foundation Trust is to have:

~~14.1.1~~16.1.1 a register of Members showing, in respect of each Member, the constituency and (where relevant) the class of constituency to which they belong;

~~14.1.2~~16.1.2 a register of members of the Council of Governors;

~~14.1.3~~16.1.3 a register of Directors;

~~14.1.4~~16.1.4 a register of interests of members of the Council of Governors; and

~~14.1.5~~16.1.5 a register of interests of the Directors.

~~14.2~~16.2 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.

~~14.3~~16.3 The Secretary is to provide ~~NHS Improvement~~NHS England with up to date information on elected and appointed members of the Council of Governors and Directors on request.

~~14.4~~16.4 The registers referenced in paragraph 16.1 above shall be made available for inspection by members of the public, except in circumstances prescribed by regulations and in particular where any Member requests that their details are not available for inspection pursuant to the Public Benefit Corporation (Register of Members) Regulations 2004.

~~14.5~~16.5 So far as the registers are required to be made available:

~~14.5.1~~16.5.1 the registers are to be available for inspection free of charge at all reasonable times; and

~~14.5.2~~16.5.2 a person who requests a copy or extract from the registers is to be provided with a copy or extract.

~~14.6~~16.6 If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

## ~~15.17.~~ **PUBLIC DOCUMENTS**

~~15.1~~17.1 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:

~~15.1.1~~17.1.1 a copy of the current Constitution;

~~15.1.2~~17.1.2 a copy of the latest annual accounts and of any report of the auditor on them;

~~15.1.3~~17.1.3 a copy of the report of any other external auditor of the Foundation Trust's affairs appointed by the Council of Governors or members of the Council of Governors;

~~15.1.4~~17.1.4 a copy of the latest annual report;

~~15.1.5~~17.1.5 a copy of the latest information as to its forward planning;

~~15.1.6~~17.1.6 a copy of the Foundation Trust's membership strategy; and

~~15.1.7~~17.1.7 a copy of the Foundation Trust's policy for the composition of the Council of Governors.

~~15.2~~17.2 The Foundation Trust shall also make the following documents relating to a special administration of the Foundation Trust available for inspection by members of the public free of charge at all reasonable times:

~~15.2.1~~17.2.1 a copy of any order made under s.65D (appointment of trust special administrator), s.65J (power to extend time), s.65KC (action following Secretary of State's rejection of final report), s.65L (trusts coming out of administration) or s.65LA (trusts to be dissolved) of the 2006 Act;

~~15.2.2~~17.2.2 a copy of any report laid under s.65D (appointment of trust special administrator) of the 2006 Act;

~~15.2.3~~17.2.3 a copy of any information published under s.65D (appointment of trust special administrator) of the 2006 Act;

~~15.2.4~~17.2.4 a copy of any draft report published under s.65F (administrator's draft report) of the 2006 Act;

~~15.2.5~~17.2.5 a copy of any statement provided under s.65F (administrator's draft report) of the 2006 Act;

~~15.2.6~~17.2.6 a copy of any notice published under s.65F (administrator's draft report), s.65G (consultation plan), s.65H (consultation requirements), c.65J (power to extend time), s.65KA (~~Monitor's NHS England's~~ decision), s.65KB (Secretary of State's response to ~~Monitor's NHS England's~~ decision), s.65KC (action following Secretary of State's rejection of final report) or s.65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;

~~15.2.7~~17.2.7 a copy of any statement published or provided under s.65G (consultation plan) of the 2006 Act;

~~15.2.8~~17.2.8 a copy of any final report published under s.65I (administrator's final report) of the 2006 Act;

~~15.2.9~~17.2.9 a copy of any statement published under s.65J (power to extend time) or s.65KC (action following Secretary of State's rejection of final report) of the 2006 Act; or

~~15.2.10~~17.2.10 a copy of any information published under s.65M (replacement of trust special administrator) of the 2006 Act

~~15.3~~17.3 Any person who requests it is to be provided with a copy or extract from any of the above documents. The Foundation Trust may impose a reasonable charge for providing the copy or extract, but a Member is entitled to a copy or extract free of charge.

## ~~16.18.~~ **FINANCIAL AUDITOR AND OTHER EXTERNAL AUDITORS**

~~16.1~~18.1 The Foundation Trust is to have a Financial Auditor and is to provide the Financial Auditor with every facility and all information which he may reasonably require for the purposes of his functions under Part 2 of the 2006 Act.

~~16.2~~18.2 A person may only be appointed as the Financial 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 7 to the 2006 Act.

~~16.3~~18.3 The Council of Governors at a general meeting shall appoint or remove the Foundation Trust's Financial Auditor.

~~16.4~~18.4 The Financial Auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by ~~NHS Improvement~~NHS England on standards, procedures and techniques to be adopted.

~~16.5~~18.5 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. Any such auditors are to be appointed by the Council of Governors.

## ~~17.19.~~ **ACCOUNTS**

~~17.1~~19.1 The Board of Directors shall cause the Foundation Trust to keep proper accounts and proper records in relation to the accounts.

~~17.2~~19.2 ~~NHS Improvement~~NHS England may, with the approval of the Secretary of State, give directions to the Foundation Trust as to the content and form of its accounts.

~~17.3~~19.3 The accounts are to be audited by the Foundation Trust's Financial Auditor.

~~17.4~~19.4 The following documents will be made available to the Comptroller and Auditor General for examination at his request:

~~17.4.1~~19.4.1 the accounts;

~~17.4.2~~19.4.2 any records relating to them; and

~~17.4.3~~19.4.3 any report of the Financial Auditor on them.

~~17.5~~19.5 The Accounting Officer shall cause the Foundation Trust to prepare in respect of each Financial Year annual accounts in such form as ~~NHS Improvement~~NHS England may, with the approval of the Secretary of State, direct.

~~17.6~~19.6 The annual accounts, any report of the Financial Auditor on them, and the annual report are to be presented to the Council of Governors at a general meeting.

~~17.7~~19.7 The Chief Executive as Accounting Officer is responsible for laying a copy of the annual accounts, and any report of the Financial Auditor on them, before Parliament and for sending copies of these documents to ~~NHS Improvement~~NHS England.

## **18-20. REPORTS, FORWARD PLANS AND NON-NHS WORK**

**18-120.1** The Foundation Trust is to prepare reports in a manner consistent with ~~NHS Improvement~~NHS England's directions and guidance and send them to ~~NHS Improvement~~NHS England.

**18-220.2** The Foundation Trust is to give information as to its forward planning in respect of each Financial Year to ~~NHS Improvement~~NHS England. The document containing this information is to be prepared by the Directors, and in preparing the document, the Directors must have regard to the views of the Council of Governors.

**18-320.3** Each forward plan must include information about:

**18-3-120.3.1** 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

**18-3-220.3.2** the income it expects to receive from doing so.

**18-420.4** Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in sub-paragraph 20.3.1 above, the Council of Governors must:

**18-4-120.4.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its principal purpose or the performance of its other functions; and

**18-4-220.4.2** notify the Directors of the Foundation Trust of its determination.

**18-520.5** If the Foundation Trust proposes to increase by five per cent (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, it may implement the proposal only if more than half of the members of the Council of Governors of the Foundation Trust voting approve its implementation.

## **19-21. INDEMNITY**

**19-121.1** 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.

## **20-22. EXECUTION OF DOCUMENTS**

**20-122.1** 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.

**20-222.2** The Foundation Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors. Attestation by any two Directors shall be deemed to constitute affixing the seal under the authority of the Board of Directors.

## **21-23. DISPUTE RESOLUTION PROCEDURES**

**21-123.1** Every unresolved dispute which arises out of this Constitution between the Foundation Trust and:

[21.1.123.1.1](#) a Member;

[21.1.223.1.2](#) a Governor;

[21.1.323.1.3](#) an office-holder of the Foundation Trust;

[21.1.423.1.4](#) any person aggrieved who has ceased to be a Member, a Governor or an office-holder of the Foundation Trust within the six (6) months prior to the date of the dispute; or

[21.1.523.1.5](#) any person bringing a claim under this Constitution

is to be referred to an arbitrator.

[21.223.2](#) The parties will co-operate in good faith to agree on the appointment of the arbitrator. If the parties fail to agree on an arbitrator within twenty-one (21) days of the date upon which a party notified the other party of their intention to refer the dispute to arbitration, then the parties shall request that the Chartered Institute of Arbitrators nominates an arbitrator.

[21.323.3](#) The arbitrator's decision will be binding and conclusive on all parties.

[21.423.4](#) Any person bringing a dispute must, if required to do so by the Secretary, deposit with the Foundation Trust a reasonable sum 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.

## [22.24.](#) **AMENDMENT OF THE CONSTITUTION**

[22.124.1](#) No amendment shall be made to this Constitution unless:

[22.1.124.1.1](#) more than half of the Council of Governors of the Foundation Trust voting approve the amendments; and

[22.1.224.1.2](#) more than half of the members of the Board of Directors of the Foundation Trust voting approve the amendments.

[22.224.2](#) Amendments made under paragraph 24.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

[22.324.3](#) Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust):

[22.3.124.3.1](#) at least one (1) Governor must attend the next Annual Members' Meeting and present the amendment; and

[22.3.224.3.2](#) the Foundation Trust must give the Members an opportunity to vote on whether they approve the amendment.

[22.424.4](#) If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.

[22.524.5](#) Amendments by the Foundation Trust of its Constitution are to be notified to ~~NHS Improvement~~**NHS England**. For the avoidance of doubt, ~~NHS Improvement~~**NHS England**'s functions do not include a



power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 to the 2006 Act.

## **23-25. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

**23-125.1** The Foundation Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

**23-225.2** The Foundation Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.

**23-325.3** “Significant transaction” means a transaction that is not a transaction under paragraph 25.1, but otherwise meets any of the following criteria:

**23-3-125.3.1** it is a significant transaction as determined by NHS Improvement NHS England following an assessment under such transaction guidance as may be in force; or

**23-3-225.3.2** the proposed transaction would directly affect 25% or more (based on headcount) of the Foundation Trust’s staff; or

**23-3-325.3.3** the proposed transaction is deemed to be novel or unusual by both the Board of Directors and the Council of Governors.

## **24-26. DISSOLUTION OF THE FOUNDATION TRUST**

**24-126.1** The Foundation Trust may not be dissolved except by order of the Secretary of State for Health and Social Care, in accordance with the 2006 Act.

## **25-27. HEAD OFFICE**

**25-127.1** The Foundation Trust’s Head Office is at Royal Albert Edward Infirmary, Wigan Lane, Wigan, WN1 2NN.

## ANNEX 1

### THE PUBLIC CONSTITUENCIES

The Foundation Trust has four public constituencies, as described below. Each Public Constituency shall comprise all of the component electoral wards in the specified Local Authority areas, save that the Rest of England and Wales Public Constituency shall comprise all electoral wards in England and Wales that are not covered by the other public constituencies:

#### Leigh constituency

- Astley Mosley Common
- Atherleigh
- Atherton
- Golborne and Lowton West
- Leigh East
- Leigh South
- Leigh West
- Lowton East
- Tyldesley

#### Makerfield constituency

- Abram
- Ashton
- Bryn
- Hindley
- Hindley Green
- Orrell
- Winstanley
- Worsley Mesnes

#### Wigan constituency

- Aspull New Springs Whelley
- Douglas
- Ince
- Pemberton
- Shevington with Lower Ground
- Standish with Langtree
- Wigan Central
- Wigan West

#### Rest of England and Wales constituency

- Any electoral ward in England or Wales not listed above

## **ANNEX 2**

### **PANEL INVESTIGATION PROCEDURE FOR GOVERNORS**

#### **1. PANEL**

- 1.1 A panel consisting of the Chair, the Lead Governor and an Appointed Governor (“the Panel”) shall be convened to carry out enquiries to investigate whether there are grounds to remove an existing Governor from the Council of Governors, and to recommend to the Council of Governors what action should be taken.
- 1.2 Where the matter concerns the Lead Governor, that individual shall be excluded from the Panel and will be substituted by a second Appointed Governor.
- 1.3 The Panel may at any time determine that it is in the best interests of the Foundation Trust for the Governor concerned to be suspended from the Council of Governors pending the outcome of the Panel’s deliberations. Suspension is a neutral act and is not a presumption of guilt nor an indication of the Panel’s eventual recommendation. Suspension shall not be applied automatically and will be considered on a case-by-case basis. The suspension of a Governor shall be reviewed by the Chair after a period of fourteen (14) calendar days, and every seven (7) calendar days thereafter until such a time as the matter has been determined.
- 1.4 The Panel may investigate the matter itself, or appoint a suitably experienced investigating officer (who may be external to the Foundation Trust) to investigate the matter and to prepare a report for the Panel.
- 1.5 The Governor concerned shall be invited to make written or oral representations to the Panel or to the investigating officer (or to be accompanied at his or her own cost) in respect of the matter, and such representations must be provided within a period of twenty-eight (28) days from the date of the invitation. Any representations received shall be considered by the Panel or the investigating officer as applicable.

#### **2. DECISION BY THE PANEL**

- 2.1 Subject to paragraph 3 below, the Panel shall make a decision on the Governor’s disqualification from the Council of Governors as soon as reasonably practicable and shall give notice in writing of that decision to the Governor concerned within seven (7) days of the decision being made. The decision shall be based on a majority vote.
- 2.2 If the Governor concerned disputes the decision made by the Panel, the decision will be referred to an arbitrator, following which the procedure set out in paragraph 23 of the Constitution (Dispute Resolution Procedures) shall apply.

#### **3. RECOMMENDATION BY THE PANEL TO THE COUNCIL OF GOVERNORS**

- 3.1 Where the matter concerns allegations that:
  - 3.1.1 the relevant Governor has committed a material breach of the Foundation Trust’s code of conduct; or
  - 3.1.2 the relevant Governor has acted in a manner detrimental to the interests of the Foundation Trust; or
  - 3.1.3 it is not in the best interests of the Foundation Trust for the relevant Governor to continue as a Governor

as set out in paragraph 11.19.8 of the Constitution, the Panel will make a recommendation to the Council of Governors rather than come to a decision itself. The Panel's recommendation shall be based on a majority vote, and may include a recommendation to the Council of Governors to terminate the tenure of office of the Governor concerned.

- 3.2 The Council of Governors will consider the Panel's recommendation in private session at its next scheduled Council meeting. Where the Panel considers it appropriate for the Council of Governors to consider the recommendation earlier than the next scheduled Council meeting, the Panel may request the Secretary to convene an extraordinary Council meeting on at least seven (7) days' notice. The Council of Governors will receive representations from the Panel and from the Governor concerned. If the Governor concerned fails to attend the Council meeting without due cause, the Council meeting may proceed in their absence.
- 3.3 The decision of the Council of Governors will be confirmed in writing, including the reasons for the decision, to the Governor concerned by the Secretary within seven (7) days of the date of the Council meeting.
- 3.4 If the Governor concerned disputes the decision made by the Council of Governors, they may apply in writing to the Council of Governors within seven (7) days of the date of the written confirmation referred to in paragraph 3.3 above for the decision of the Council of Governors to be referred to an arbitrator, following which the procedure set out in paragraph 23 of the Constitution (Dispute Resolution Procedures) shall apply.

**ANNEX 3**  
**MODEL ELECTION RULES 2014**

[To be inserted once approved]

Draft version - not for onward circulation

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|                         |  |
|-------------------------|--|
| <b>Title of report:</b> | Council of Governors Effectiveness Review Feedback |
| <b>Presented to:</b>    | Council of Governors                               |
| <b>On:</b>              | 19 July 2023                                       |
| <b>Presented by:</b>    | Consent agenda                                     |
| <b>Prepared by:</b>     | Deputy Company Secretary                           |
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### Executive summary

At its last meeting, the Council of Governors was invited to submit comments on committee effectiveness. These have now been collated and included verbatim at appendix 1.

Following review of the comments provided, this report sets out proposals for improvement or provides relevant updates, where it is not considered necessary that any action is taken.

### Link to strategy

Evidences how the Trust lives its five core behaviours, particularly those of ‘accountability’ and ‘working together’.

### Risks associated with this report and proposed mitigations

NA

### Financial implications

NA

### Legal implications

NA

### People implications

N/A

**Wider implications**

Potential implications for the Board/board members.

**Recommendation(s)**

- Council members are asked to accept the proposals and note the updates provided.



## Proposals and updates

- To hear about what is going on at the Trust in between meetings, governors may wish to watch the **vlog updates issued by the executive team**. These are included in the staff newsletter email from our communications team, which governors receive. *It should be noted however that the messages therein are aimed at staff and they may not always contain material relevant to governors.*
- To address queries around governor duties (both individually and collectively) and to better facilitate provision and receipt of assurance, our updated **governor handbook** and a copy of our **induction slides** were circulated for governors with papers for this meeting.
- Although papers or slides are provided in advance of the meeting for the most part, occasionally these do follow the meeting papers. Authors will therefore be asked to ensure that papers are submitted to the relevant lead executive for review and approval one week prior to the deadline for **papers** so that they may be **shared before the day of the meeting**.
- The **Chief Executive** will be asked to provide a **written report** for meetings moving forwards.
- Governors are welcome to submit any **queries** on meeting materials or reports to the Chair or to [company.secretary@wwl.nhs.uk](mailto:company.secretary@wwl.nhs.uk) **in advance of meetings**.
- Any **actions that arise during meetings are logged via an action log**. The action log does not feature within papers where there are no actions outstanding.
- At the September 2023 **workshop**, a session will be held with the Assistant Director of Communications and Engagement (Wigan) for NHS Greater Manchester Integrated Care in attendance, **where we will discuss how governors can better fulfil their roles by going out into the community** to meet and liaise with constituents, in groups or as individuals.
- Opportunities for better use of data available virtually will be explored as we continue to work with system partners to **develop the way forward for data collection and utilisation at Integrated Care Board level**.

## **Appendix 1**

### **Feedback gathered at June 2023 meeting**

#### **1. Can we strengthen our ways of working as the Council of Governors? Ie. Are there opportunities for better alignment with our duties?**

- Be realistic of agenda expectations
- Reminder of governor duties
- Good to know what roles people have, networks etc
- Submitting questions to the Chair in advance of board to enable them to identify themes (would not replace Q&A in meetings)
- Identify if any support required in an area during the meeting to enable governors to offer this
- Using podcasts for updates in between meetings

#### **2. Can we strengthen our ways of working together to provide and seek assurance?**

- Strong chairing – prompting discussion?
- Everyone is able to contribute
- Not sure assurance is sought/given
- Papers required, still reliance on verbal reports
- Feedback on actions could be delivered via an action log
- This would also provide a record of questions by default and demonstrate governor engagement.

#### **3. Can we strengthen how we interface and support WWL's wider governance and assurance framework?**

- Community liaison appointed person?
- Greater use of data available virtually, enabling further insights and opportunity for other connections
- Special interest groups of governors
- Opportunity to inform/involve communications team colleagues more effectively