



# **GLOUCESTERSHIRE HEALTH AND CARE NHS FOUNDATION TRUST**

## **Constitution**

December 2022

# GHC NHS Foundation Trust Constitution

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## **1. Introduction**

- 1.1 The name of the foundation trust is Gloucestershire Health and Care NHS Foundation Trust (the Trust). The Trust is a public benefit corporation authorised under the NHS Act 2006, with effect from 1 July 2007 under its former name of 2gether. The functions of the Trust are conferred by this legislation.
- 1.2 The headquarters of the Trust is Edward Jenner Court, 1010 Pioneer Avenue, Brockworth, Gloucester GL3 4AW.
- 1.3 As a statutory body, the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

## **2. Principal purpose and other purposes**

- 2.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 2.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 2.3 The Trust may provide goods and services for any purposes related to:
  - (a) the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - (b) the promotion and protection of public health
- 2.4. The Trust may also carry out activities other than those mentioned in paragraphs 2.1 to 2.3 above for the purpose of making additional income in order to better carry out its principal purpose.
- 2.5 Without prejudice to the principal purpose, the Trust may:
  - 2.5.1 fulfil the social care functions of any local authority as specified by an agreement under Section 75 of the 2006 Act;
  - 2.5.2 provide goods and services, including education, training and research and other facilities for purposes related to the provision of health care, in accordance with its statutory duties and the terms of the Trust's authorisation;
  - 2.5.3 carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried out by others

which together shall be the Trust's other purposes; and

2.5.4 form, acquire an interest in, invest in, participate in, and dispose of any interest in, joint ventures and partnerships, whether incorporated or not, carrying out any activity the Trust is authorised to carry out.

2.6 The Trust may also carry out activities other than those mentioned in paragraph 2.5 above subject to any restrictions in the terms of the 2006 Act and provided they do not conflict with the Trust's principal or other purposes. These activities must be for the purpose of making additional income available in order to carry out the Trust's principal purpose.

### **3. Powers**

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

3.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

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

### **4. Membership and constituencies**

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

(a) a public constituency or

(b) a staff constituency

### **5. Application for membership**

5.1 An individual who is eligible to become a member of the Trust by virtue of living in the Public Constituency may do so on application to the Trust.

5.2 It is the responsibility of members to ensure their eligibility and not the Trust, but if the Trust is on notice that a member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

### **6. Public Constituency**

6.1 An individual who lives in the area specified in Annex 1 as the area for a Public Constituency may become or continue as a member of the Trust.

6.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.

- 6.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.
- 6.4 An eligible individual shall become a member upon entry to the membership register pursuant to an application by them.
- 6.5 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Trust shall cause the applicant's name to be entered in the Trust's register of members

### **Termination of membership**

- 6.6 A member shall cease to be a member of the Public Constituency if they –
- (a) submits their resignation in writing to the Trust
  - (b) cease to live in the area specified as the Public Constituency
  - (c) fail or cease to fulfil the requirements set out in paragraph 8 of this constitution.
- 6.7 At the discretion of the Trust, where a member consistently fails to respond to requests to confirm interest in continuing membership, the Trust may remove the member's name from the register of members

## **7. Staff Constituency**

- 7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- (a) They are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - (b) They have been continuously employed by the Trust or a recognised predecessor under a contract of employment for at least 12 months.
- 7.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.3 The Staff Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.4 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

### **Automatic membership by default – staff**

- 7.5 An individual who is eligible to become a member of the Staff Constituency

shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

- 7.6 On being satisfied that the applicant is eligible the Trust shall cause the applicant's name to be entered in the Trust's register of members

#### **Termination of membership**

- 7.7 A member shall cease to be a member of the Staff Constituency if they –

- (a) submit their resignation from membership in writing to the Trust;
- (b) leave the Trust's employment; or
- (c) fail or cease to fulfil the requirements set out in paragraph 8 of this constitution.

- 7.8 Members who are no longer eligible to be members of the Staff Constituency by virtue of having left the employment of the Trust may apply to become members of the appropriate Public Constituency.

#### **8. Restriction on membership**

- 8.1 An individual member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3 An individual may not become or continue as a member of the Trust where in the last five years they have perpetrated a serious incident of violence towards any facilities of the Trust, or against any of the Trust's employees or registered volunteers, or staff contracted to provide a service for the Trust in association with their employment with the Trust, or the Trust's patients or visitors. Such incidents may be further defined in an applicable Trust policy. Notwithstanding anything contained in this constitution, no person who ceases to be a member of the Trust pursuant to this paragraph shall be re-admitted to membership except by a decision of the Board of Directors.
- 8.4 An individual may not become or continue as a member of the Trust if, in the opinion of the Board of Directors, and after following any applicable procedures as required by this constitution, there are reasonable grounds to believe that they are likely to act in a way that is detrimental to the interests of the Trust.
- 8.5 An individual must be at least 11 years old to apply to become a Public member of the Trust.

## **9. Annual General Meeting**

9.1 The Trust shall hold an annual meeting of its members (Annual General Meeting). The Annual General Meeting shall be open to members of the public.

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

10.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

10.2 The composition of the Council of Governors is specified in Annex 3.

10.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

### **Appointed Governors**

10.4 There shall be up to five Appointed Governors, as set out in Annex 3 of this constitution.

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

11.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

11.2 The Model Election Rules, as published by the Department of Health and Social Care from time to time, shall be deemed part of this constitution.

11.3 A variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 46 of the constitution (Amendment of the Constitution). For the avoidance of doubt, the Trust cannot amend the Model Election Rules.

11.4 An election, if contested, shall be by secret ballot.

## **12. Council of Governors – tenure**

12.1 An elected governor may hold office for an initial period of up to 3 years.

12.2 An elected governor shall be eligible for re-election at the end of their term for one further period of up to 3 years. They may not hold office for longer than 2 consecutive terms, regardless of the length of each term.

12.3 An elected governor who has completed two consecutive terms of office at the Trust shall be eligible to stand again for election following a break of at least 3 years.



- 12.4 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 12.5 A Local Authority Appointed Governor may hold office until they are replaced by the organisation which nominated them, or until the appointing organisation withdraws its sponsorship, whichever is the sooner.
- 12.6 Subject to paragraph 12.7, an appointed governor who is not a Local Authority Appointed Governor:
- 12.6.1 may hold office for an initial period of up to 3 years;
- 12.6.2 shall be eligible for re-appointment at the end of their term for one further period of up to 3 years. They may not hold office for longer than 2 consecutive terms, regardless of the length of each term; and
- 12.6.3 in respect of an appointed governor who has completed two consecutive terms of office at the Trust, shall be eligible to stand again for election or re-appointment following a break of at least 3 years.
- 12.7 An appointed governor who is not a Local Authority Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.

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

- 13.1 The following may not become or continue as a member of the Council of Governors:
- 13.1.1 a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;
- 13.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his/her creditors and has not been discharged in respect of it;
- 13.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence where a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.
- 13.1.4 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).
- 13.1.5 a person who has within the preceding two years been dismissed, other than for reasons of redundancy or sickness, from any paid employment with a health service body.
- 13.1.6 a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds

that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest

- 13.1.7 a person who is an executive or non-executive director of the Trust
- 13.1.8 a person who is an executive director or non-executive director of another health service body, save where the Chair and Chief Executive are satisfied that any proposed or existing concurrent appointment would not constitute a conflict of interests which could not be managed or avoided.
- 13.1.9 a person who is a governor of another health service body, save where the Chair and Chief Executive are satisfied that any proposed or existing concurrent appointment would not constitute a conflict of interests which could not be managed or avoided.
- 13.1.10 a person who is undergoing a period of disqualification from a statutory health or social care register. This provision shall not apply where a person's registration lapses or their name has been removed at their own request, for example following retirement.
- 13.1.11 a person subject to a director's disqualification order made under the Company Directors Disqualification Act 1986
- 13.1.12 a person who has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000
- 13.1.13 a person who has not attained the age of 16 at the date they are nominated for election or appointment.
- 13.1.14 in the case of an appointed governor, a person whose appointing body withdraws its sponsorship of the governor.
- 13.1.15 in the case of an elected governor, a person who ceases to be a member of the constituency or class of constituency that they represent.
- 13.1.16 a governor who has failed to abide by the Trust's Code of Conduct for Governors.
- 13.1.17 a person who is the subject of an Order under the Sexual Offences Act 2003, or any subsequent legislation.
- 13.1.18 a person who is included in any barred list maintained by the Disclosure and Barring Service (or any successor body) or any equivalent list maintained under the laws of Scotland or Northern Ireland

- 13.1.19 a person who is a vexatious complainant as determined in accordance with the Trust's complaints procedure
- 13.1.20 a person who has been abusive or violent towards Trust staff or contractors;
- 13.2 Following election or appointment, and henceforth on an annual basis, governors shall be required to confirm that they are not disqualified from the office of Governor under any provision within section 13 of this Constitution.
- 13.3 Where a person has been elected or appointed to be a governor and subsequently becomes disqualified for appointment, they shall notify the Trust Secretary in writing of such disqualification at the earliest opportunity.

#### **14. Termination of tenure**

- 14.1 If it comes to the notice of the Trust Secretary (either at the time of the governor's appointment or later) that the governor is disqualified under the provisions of paragraph 13 of this constitution, they shall immediately declare that the person in question is disqualified and notify them in writing to that effect. Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and they shall cease to act as a governor.
- 14.2 A governor may resign from office at any time during the term of that office by giving notice in writing to the Trust Secretary.
- 14.3 If a governor fails to attend three consecutive general meetings of the Council of Governors their tenure of office is to be terminated at the next meeting unless the other governors (by a simple majority) are satisfied that:-
  - (a) the absence was due to a reasonable cause; and
  - (b) they will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 14.4 The Council of Governors may terminate the tenure of a governor (regardless of their record of attendance), by a three quarters majority of the Council of Governors voting, if it is satisfied that they:
  - 14.4.1 have failed to sign and deliver to the Trust Secretary a statement in the form required confirming acceptance of the Code of Conduct for Governors
  - 14.4.2 have expressed opinions which are incompatible with the values of the Trust
  - 14.4.3 have acted or persist in acting in a manner prejudicial to the best interests of the Trust

14.5 Standing Orders shall provide for the procedure to be adopted in connection with motions to terminate the tenure of governors.

## **15. Vacancies**

15.1 Where membership of the Council of Governors ceases within 12 months of election, public and staff governors shall be replaced by the candidate in the same constituency and class with the next highest number of votes at the last election. If the vacancy cannot be filled by this method the Trust will commence another election process at the earliest opportunity, in accordance with the Model Election Rules.

15.2 Appointed governors are to be replaced in accordance with the processes set out in the relevant paragraphs of this constitution.

## **16. Council of Governors – duties and responsibilities**

16.1 The general duties and responsibilities of the Council of Governors are –

- (a) to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
- (b) to represent the interests of the members of the trust as a whole and the interests of the public

16.2 The trust will take steps to ensure that governors are equipped with the skills and knowledge they require in their capacity as such.

16.3 The specific powers and duties of the Council of Governors are:

16.3.1 in a general meeting to:

- (a) appoint or remove the Chair of the Trust and the other non-executive directors. The removal of the Chair or a non-executive director shall require the approval of three quarters of the total number of governors;
- (b) approve the appointment of the Chief Executive of the Trust by the non-executive directors;
- (c) decide the remuneration and allowances and the other terms and conditions of office of the non-executive directors;
- (d) appoint or remove the Trust's auditor;
- (e) receive and consider the Trust's annual accounts, any auditor's reports on those annual accounts, and the annual report of the Board of Directors no later than September each year;

- (f) appoint one of the non-executive directors to be the deputy Chair of the Trust, following a recommendation by the Trust Chair.
- 16.3.2 to be consulted by the Board of Directors regarding the information to be included in the Trust's annual plan;
- 16.3.3 to respond as appropriate when consulted by the Board of Directors;
- 16.3.4 to require one or more directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or the directors' performance);
- 16.3.5 to approve the entering into of any significant transaction;
- 16.3.6 to authorise an application for a merger, acquisition, separation or dissolution of the Trust;
- 16.3.7 to exercise such powers and to discharge such other duties as may be conferred on the Council of Governors under this constitution.
- 16.4 Where the Council of Governors believes it to be necessary it may appoint co-opted advisors. It may seek nominations for co-opted advisors from voluntary and community sector organisations operating in any field connected to the work of the Trust.
- 16.5 Co-opted advisors may speak at meetings of the Council of Governors but may not vote and will not count towards any quorum.
- 16.6 The co-opted advisors are to be appointed by the Council for such period and in accordance with such process as may be approved by the Council of Governors at a general meeting.

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

- 17.1 The Trust Chair (i.e. the Chair of the Board of Directors, appointed in accordance with the appropriate provisions of this constitution) or, in their absence the Deputy Chair (appointed in accordance with the appropriate provisions of this constitution), shall preside at meetings of the Council of Governors. In the absence of the Trust Chair and Deputy Chair a non-executive director nominated by the Trust Chair shall preside at meetings of the Council of Governors.
- 17.2 An absent governor may not vote at a meeting of the Council of Governors, save in exceptional circumstances where alternative arrangements have been agreed in advance with the Trust Chair on advice of the Trust Secretary as provided for in the Standing Orders. Absence is defined as being not present

(either physically or via teleconference, video conference or other electronic means) at the time of the vote.

17.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

17.4 The Council of Governors is to hold up to 6 scheduled meetings per year.

## **18. Council of Governors – committees and sub-committees**

18.1 The Council of Governors may appoint committees consisting of its own members to assist in carrying out the functions of the Council of Governors. A committee appointed under this paragraph may appoint a sub-committee where permitted by that committee's terms of reference.

## **19. Council of Governors – referral to the Panel**

19.1 In this paragraph, 'the Panel' means a panel of persons appointed by NHS England to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing –

(a) to act in accordance with its own constitution

(b) to act in accordance with the provision made by or under Chapter 5 of the 2006 Act

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

## **20. Declarations of Governors' interests and register of interests**

20.1 Each governor has a duty to avoid a situation in which the governor has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

20.2 Each governor has a duty not to accept any benefit from a third party by reason of being a governor (save for low value gifts and hospitality as permitted by the Trust's policy on Managing Conflicts of Interest) for doing (or not doing) anything in that capacity. Where such a benefit is offered to a governor, the governor must decline that offer and report the matter to the Trust Secretary.

20.3 If a governor has a pecuniary, personal, family, loyalty or other interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor must declare such interests as soon as they become aware of them, in accordance with policies agreed from time to time by the Trust in respect of conflicts of interest.

20.4 Examples of interests which should be declared include, but are not limited to:

- (a) directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- (b) ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (c) majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- (d) an office or position of authority in another organisation in the field of health and social care.
- (e) any connection with a voluntary or other organisation contracting for NHS services.
- (f) research funding/grants that may be received by an individual or their department.
- (g) interests in pooled funds that are under separate management.
- (h) any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
- (i) membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means. Such organisations include Masonic lodges and societies whose membership consists of professional and business people.
- (j) any other commercial interest in a matter under discussion at a meeting of the Council of Governors.
- (k) any other employment or business or other relationship of theirs, or of a member of their family or of someone with whom they have a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

20.5 At the time any interest is declared, it should be recorded in the Council of Governors minutes as appropriate. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring. Governors must inform the Trust Secretary in writing within 7 days of becoming aware of the existence of any relevant or material interest.

20.6 Governors' directorships of companies or ownerships/directorships in companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in subsequent annual reports.

- 20.7 The Chair may exclude a Governor from a meeting (or part thereof) of the Council of Governors, or any committee of the Council of Governors, where any contract, proposed contract or other matter in which they are determined by the Chair to have an interest, is under consideration.
- 20.8 In the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this paragraph 20 to be also an interest of the other.
- 20.9 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair or Trust Secretary. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

### **Register of governors' interests**

- 20.10 The Trust Secretary will ensure that a register of interests is established to record formally declarations of interests of governors. In particular the register will include details of all directorships and other relevant and material interests which have been declared, as defined in the relevant Trust policy on Managing Conflicts of Interests.
- 20.11 The details of governors' interests recorded in the register will be kept up to date by the Trust Secretary who will ensure any changes to interests declared are incorporated promptly.
- 20.12 The register will be available to the public and the Chair will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it.
- 20.13 The register of governors' interests will be reviewed by the Audit Committee at least annually.

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

- 21.1 The Trust may pay travelling and other reasonable expenses to members of the Council of Governors at rates determined by the Trust.

### **22. Council of Governors – remuneration**

- 22.1 Governors are not permitted to receive remuneration.

### **23. Code of Conduct for Governors**

- 23.1 The Council of Governors will adopt its own Code of Conduct for Governors.



## **24. Council of Governors – Standing Orders**

24.1 The Council of Governors will adopt Standing Orders for the practice and procedure of the Council of Governors. Such Standing Orders will NOT form part of this constitution and any amendments to Standing Orders shall not constitute a variation of the terms of this constitution for the purposes of the paragraph relating to amendment of the constitution.

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

25.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

25.2 The Board of Directors is to comprise:

- (a) a non-executive chair; and,
- (b) no fewer than 5 but no more than 7 other non-executive directors; and
- (c) no fewer than 5 but no more than 7 executive directors.

25.3 One of the executive directors shall be the Chief Executive.

25.4 The Chief Executive shall be the Accounting Officer.

25.5 One of the executive directors shall be the finance director.

25.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

25.7 One of the executive directors is to be a registered nurse or a registered midwife.

25.8 The aggregate number of non-executive directors (including the Trust Chair) is to be more than half of the Board of Directors.

## **26. Board of Directors – general duty**

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

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

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

- (a) they are a member of the Public Constituency, and

- (b) they are not disqualified by virtue of any other provision set out in the constitution.

**28. Board of Directors – appointment and removal of the Trust Chair and other non-executive directors**

- 28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Trust Chair and the other non-executive directors. A nominations committee shall be established to make recommendations to the Council of Governors in respect of appointments made under this provision.
- 28.2 The Trust Chair and other non-executive directors are to be appointed by the Council of Governors following a process of open competition, as agreed by the Nominations and Remuneration Committee.
- 28.3 Non-Executive directors (including the Trust Chair):
  - (a) subject to paragraph 28.3(b), shall be appointed for an initial term of up to 3 years, and may be reappointed at the end of that term for a further term of up to 3 years, subject to a maximum of 6 consecutive years. Any proposed re-appointment shall be subject to satisfactory performance appraisal carried out in accordance with procedures which the Council of Governors has approved; and
  - (b) in exceptional circumstances may be reappointed for further term(s) of 1 year beyond the term(s) set out in paragraph 28.3(a), up to a maximum of 3 consecutive years in total. Any proposed reappointment under this paragraph shall be subject to annual re-appointment, rigorous review and a satisfactory appraisal carried out in accordance with procedures which the Council of Governors has approved.
- 28.4 Removal of the Trust Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

**29. Board of Directors – appointment and powers of Deputy Chair**

- 29.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the current non-executive directors as Deputy Chair, on recommendation of the Trust Chair.
- 29.2 Any director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another non-executive director as Deputy Chair in accordance with the provisions of this Constitution.
- 29.3 Where the Chair has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his/her duties, as the case may be; and references to the Chair in this

constitution shall, so long as there is no Chair able to perform those duties, be taken to include references to the Deputy Chair.

**30. Board of Directors - Senior Independent Director**

30.1 The Board of Directors shall appoint one of the independent non-executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director should be available to members and Governors if they have concerns which contact through the normal channels of Chair, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate.

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

31.1 The non-executive directors shall appoint or remove the Chief Executive.

31.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

31.3 A committee consisting of the Trust Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

**32. Board of Directors – disqualification**

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

32.1.1 a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged.

32.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his/her creditors and has not been discharged in respect of it.

32.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence where a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.

32.1.4 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

32.1.5 in the case of a non-executive director, a person who is no longer a member of the public constituency.

32.1.6 a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health from any paid employment with a health service body.

- 32.1.7 a person whose tenure of office as a chairman or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 32.1.8 a person who is undergoing a period of disqualification from a statutory health or social care register. This provision shall not apply where a person's registration lapses or their name has been removed at their own request, for example following retirement.
- 32.1.9 a person who has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000
- 32.1.10 a person subject to a director's disqualification order made under the Company Directors Disqualification Act 1986
- 32.1.11 a person who is the subject of an Order pursuant to the Sexual Offences Act 2003 or any subsequent legislation.
- 32.1.12 a person who is included in any barred list maintained by the Disclosure and Barring Service (or any successor body) or any equivalent list maintained under the laws of Scotland or Northern Ireland
- 32.1.13 a person who does not meet, either upon appointment or subsequently, the Fit and Proper Person Requirements for directors, as specified in the Trust's provider licence.
- 32.1.14 a person who is a governor of another health service body, save where the Chair and Chief Executive are satisfied that any proposed or existing concurrent appointment would not constitute a conflict of interests which could not be managed or avoided.
- 32.1.15 a person who is an executive director or non-executive director of another health service body. This exclusion shall not apply in the context of any joint appointments in contemplation of a merger or acquisition in accordance with section 56/section 56A of the 2006 Act, or in the context of a joint local health system-wide appointment, or where the Chair and Chief Executive are satisfied that any proposed or existing concurrent appointment would not constitute a conflict of interests which could not be managed or avoided.
- 32.1.16 a person who is a vexatious complainant as determined in accordance with the Trust's complaints procedure
- 32.1.17 a person who has been abusive or violent towards Trust staff or contractors;

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

- 33.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 33.2 Before holding a meeting in public, the Board of Directors must send a copy of the agenda to the Council of Governors. As soon as practicable after holding a meeting, the Board must send a copy of the minutes to the Council of Governors.

### **34. Board of Directors – standing orders**

- 34.1 The Board will adopt Standing Orders for the practice and procedure of the Board of Directors. Such Standing Orders will NOT form part of this constitution and any amendments to Standing Orders shall not constitute a variation of the terms of this constitution for the purposes of the paragraph relating to amendment of the constitution.

### **35. Declarations of directors' interests and register of interests**

- 35.1 The duties that a director of the Trust has by virtue of being a director include in particular:
  - 35.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
  - 35.1.2 A duty not to accept a benefit from a third party by reason of being a director, (save for low value gifts and hospitality as permitted by the Trust's policy on Managing Conflicts of Interest) for doing (or not doing) anything in that capacity. Where such a benefit is offered to a director, the director must decline that offer and report the matter to the Trust Secretary.
  - 35.1.3 If a director has a pecuniary, personal, family, loyalty or other interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board, the director must declare such interests as soon as they become aware of them to the Trust Secretary and to the Board in accordance with policies agreed from time to time by the Trust in respect of Managing Conflicts of Interest.
- 35.2 Examples of interests which should be declared include, but are not limited to:
  - (a) directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).

- (b) ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (c) majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- (d) an office or position of authority in another organisation in the field of health and social care.
- (e) any connection with a voluntary or other organisation contracting for NHS services.
- (f) research funding/grants that may be received by an individual or their department.
- (g) interests in pooled funds that are under separate management.
- (h) any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
- (i) membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means. Such organisations include Masonic lodges and societies whose membership consists of professional and business people.
- (j) any other commercial interest in a matter under discussion at a meeting of the Board.
- (k) any other employment or business or other relationship of their, or of a member of their family or of someone with whom they have a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

35.3 At the time any interest is declared, it should be recorded in the Board minutes as appropriate. Any changes in interests should be declared at the next Board meeting following the change occurring. Directors must inform the Trust Secretary in writing within 7 days of becoming aware of the existence of any relevant or material interest.

35.4 Directors' directorships of companies or ownership/directorship of companies likely or possibly seeking to do business with the NHS should be published in the Board's annual report. The information should be kept up to date for inclusion in subsequent annual reports.

35.5 Where the Trust Chair or chair of a Board committee determines that a director has an interest in any contract, proposed contract or other matter under consideration, the director may be excluded from that meeting or part thereof.

- 35.6 The Trust Board may exclude the Chair or a director of the Board from a meeting of the Board while any contract, proposed contract or other matter in which they have an interest is under consideration.
- 35.7 In the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this paragraph 35 to be also an interest of the other.
- 35.8 If directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair or Trust Secretary. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.
- 35.9 The duty to avoid a conflict of interest is not infringed if the matter has been authorised in advance by the Trust Board.
- 35.10 In relation to the duty not to accept a benefit from a third party, 'third party' means a person other than:
- (a) the Trust, or
  - (b) a person acting on its behalf.
- 35.11 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 35.12 Any declaration required by this paragraph must be made before the Trust enters into the transaction of arrangement.
- 35.13 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 35.14 A director need not declare an interest –
- 35.14.1 If, or to the extent that, the directors are already aware of it;
  - 35.14.2 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
    - (a) by a meeting of the Board of Directors, or
    - (b) by a committee of the directors appointed for the purpose under the constitution.
- 35.15 Any remuneration, compensation or allowance payable by the Trust to the Chair or a director shall not be treated as a pecuniary interest for the purpose of the provisions of this constitution.

### **Register of directors' interests**

- 35.16 The Trust Secretary will ensure that a register of interests is established to record formally declarations of interests of directors. In particular the register will include details of all directorships and other relevant and material interests which have been declared, as defined in the relevant Trust policy on conflicts of interests.
- 35.17 The details of directors' interests recorded in the register will be kept up to date by the Trust Secretary who will ensure any changes to interests declared are incorporated promptly.
- 35.18 The register will be available to the public and the Chair will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it.
- 35.19 The register of directors' interests will be reviewed by the Audit Committee at least annually.

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

- 36.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Trust Chair and the other non-executive directors.
- 36.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.
- 36.3 The remuneration and allowances for non-executive directors, as set by the Council of Governors, are to be published in the annual report.

### **37. Registers**

- 37.1 The Trust shall have:
- (a) a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
  - (b) a register of members of the Council of Governors;
  - (c) a register of interests of governors;
  - (d) a register of directors; and
  - (e) a register of interests of the directors.



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

- 38.1 The Trust shall make available for inspection by members of the public the registers specified in paragraph 40, except in the circumstances set out below or as otherwise prescribed by regulations.
- 38.2 The Trust shall not make available for inspection by members of the public any part of its registers which shows details of any member of the Trust (other than a governor or a director) if the member so requests.
- 38.3 So far as the registers are required to be made available:
- (a) they are to be available for inspection free of charge at all reasonable times; and
  - (b) a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 38.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **39. Documents available for public inspection**

- 39.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times and on the Trust's website:
- (a) a copy of the current constitution;
  - (b) a copy of the latest annual accounts and of any report of the auditor on them, and
  - (c) a copy of the latest annual report;
- 39.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times and on the Trust's website:
- (a) a copy of any order made under Section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report, 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - (b) a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - (c) a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

- (d) a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- (e) a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- (f) a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- (g) a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- (h) a copy of any final report published under section 65I (administrator's final report) of the 2006 Act.
- (i) a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- (j) a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

39.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

39.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

#### **40. Auditor**

40.1 The Trust shall have an auditor.

40.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

#### **41. Audit committee**

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

#### **42. Accounts**

42.1 The Trust must keep proper accounts and proper records in relation to the accounts.

- 42.2 NHS England (or any successor body) may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts
- 42.3 The accounts are to be audited by the Trust's auditor.
- 42.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England may, with the approval of the Secretary of State, direct.
- 42.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 43.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 43.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 43.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 43.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 43.5 Each forward plan must include information about:
- (a) the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - (b) the income it expects to receive from doing so
- 43.6 Where a forward plan contains a proposal to conduct activities other than the provision of goods and services for the purposes of the health service in England the Council of Governors must:
- (a) determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of other functions, and
  - (b) notify the directors of the Trust of its determination
- 43.7 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half the members of the Council of Governors of the Trust voting approve its implementation.

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

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

- (a) the annual accounts
- (b) any report of the auditor on them
- (c) the annual report.

44.2 The Trust may combine a meeting of the Council of Governors convened for this purpose with the Annual General Meeting.

44.3 The documents shall also be presented to members of the Trust at the Annual General Meeting by at least one member of the Board of Directors in attendance.

**45. Instruments**

45.1 The Trust shall have a seal.

45.2 The seal shall not be affixed except under the authority of the Board of Directors.

**46. Amendment of the constitution**

46.1 the Trust may make amendments to the constitution only if –

- (a) More than half the members of the Council of Governors of the Trust voting approve the amendments, and
- (b) More than half of the members of the Board of Directors of the Trust voting approve the amendments.

46.2 Amendments made under paragraph 46.1 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.

46.3 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –

- (a) At least one member of the Council of Governors must attend the next Annual General Meeting and present the amendment, and
- (b) The Trust must give the members an opportunity to vote on whether they approve the amendment.

- 46.4 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 Trust must take such steps as are necessary as a result.
- 46.5 Amendments by the Trust of its constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

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

- 47.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 47.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 47.3 'Significant transaction' means any transaction with a value equal to or greater than 20% of the Trust's income, assets or capital, excluding the Trust's principal contract with commissioners setting out the services to be delivered by the Trust in a given year.

#### **48. Dispute Resolution Procedures**

- 48.1 In the event of dispute between the Council of Governors and the Board of Directors:
- (a) In the first instance the Trust Chair on advice of the Trust Secretary, and such other advice as the Trust Chair may see fit to obtain, shall seek to resolve the dispute.
  - (b) If the Trust Chair is unable to resolve the dispute they shall appoint a special committee comprising equal numbers of directors and governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute.
  - (c) If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Trust Chair may refer the dispute to an external mediator appointed by the Centre for Dispute Resolution or such other organisation as they consider appropriate

#### **49. Indemnity**

- 49.1 Members of the Council of Governors and Board of Directors 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 Council or Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

## **50. Dissolution of the Trust**

50.1 The Trust may not be dissolved except order of NHS England, in accordance with section 57A of the 2006 Act, following authorisation of a relevant application by the Council of Governors in accordance with the relevant paragraph of this constitution, or by order of NHS England under section 65LA of the 2006 Act.

## **51. Relationship with the County Council**

51.1 Where the Trust has entered into a partnership agreement pursuant to the 2006 Act with a County Council:

- (a) it will be contractually accountable to the County Council for the performance of County Council functions under such agreement
- (b) it may establish a joint committee pursuant to regulation 10 of the partnership regulations, or such other board or officer group with delegated authority from the Board of Directors to oversee the arrangements as the Board of Directors see fit.

51.2 Subject to any delegation of functions to any group established under the paragraphs above, the function of supervising the management of the County Council functions shall vest in the Board of Directors or a single director nominated by the Board.

51.3 In the event that any such partnership agreement establishes a pooled fund within the meaning of the partnership regulations, then subject to the terms of the agreement and the provisions of the Partnership regulations regarding the role of the Pooled Fund Manager. The responsibility for any pooled fund hosted by the Trust shall be vested in the Board of Directors.

## **52. Interpretation and definitions**

52.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

52.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

52.3 References in this constitution to legislation include all amendments, replacements or re-enactments made.

52.4 In this constitution:

**the 2006 Act** is the National Health Service Act 2006

**the 2012 Act** is the Health and Social Care Act 2012

**Local Authority Appointed Governor** means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the area set out in Part 1A or, as the case maybe, Part 1B of Annex 1 to this constitution

**NHS England** is the organisation (or any successor body) responsible for overseeing foundation trusts and NHS trusts, as well as independent providers that provide NHS-funded care.

**voluntary organisation** is a body, other than a public or local authority, the activities of which are not carried on for profit.

the **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act. The Chief Executive is the Accounting Officer.

**Director** means executive or non-executive director of the Board as the context permits. For the avoidance of doubt, the Chair is a non-executive director.

**Executive director** means a director who is an officer of the Trust.

**ANNEX 1 – THE PUBLIC CONSTITUENCY**

<b><u>Name of constituency</u></b>	<b><u>Area</u></b>	<b><u>Minimum no. of members</u></b>	<b><u>Number of governors</u></b>
Cheltenham	The electoral area of Cheltenham Borough Council	100	2
Cotswold	The electoral area of Cotswold District Council	100	2
Forest	The electoral area of Forest of Dean District Council	100	2
Gloucester	The electoral area of Gloucester City Council	100	2
Stroud	The electoral area of Stroud District Council	100	2
Tewkesbury	The electoral area of Tewkesbury Borough Council	100	2
Greater England and Wales	All other electoral wards in England and Wales save those electoral wards that fall within the Cheltenham, Cotswold, Forest, Gloucestershire, Stroud, and Tewkesbury constituencies.	100	1



**ANNEX 2 – THE STAFF CONSTITUENCY**

<u>Name of Staff Class</u>	<u>Description</u>	<u>Minimum no. of members</u>	<u>Number of governors</u>
the medical dental and nursing staff class	Staff who are registered with the General Medical Council; or  Staff who are registered with the General Dental Council; or  Staff who are registered with the Nursing and Midwifery Council	100	3
the health and social care professions staff class	Staff who are either:  allied health professionals and psychologists who are registered with the Health and Care Professions Council or any successor body; or  social workers registered with the Health and Care Professions Council or Social Work England, or any successor body; or  individuals who are employed wholly or mainly in direct clinical and care roles but not eligible for membership of those classes described above	100	2
the management, administrative and other staff class.	individuals who are management or administrative staff or others entitled to be members of the staff constituency who do not come within those classes described above	100	2

## ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

1.1 The Trust will have a Council of Governors consisting of public, staff and appointed governors.

1.2 The Council of Governors is to comprise:

### **Elected Governors:**

#### **Category of Governor**

#### **Number of Governors**

#### **Public governors:**

• Cheltenham	2
• Cotswold	2
• Forest	2
• Gloucester	2
• Stroud	2
• Tewkesbury	2
• Greater England and Wales	1

#### **Staff governors:**

• Medical Dental and Nursing staff class	3
• Health and Social Care Professions staff class	2
• Management, administrative and other staff class	2

#### **Appointed governors\*:**

• Gloucestershire County Council	1
• Inclusion Gloucestershire	1
• Young Gloucestershire	1

**Total** **23**

*\* The Trust may have a maximum of 5 Appointed Governors at any one time. Subject to this maximum number, Appointed Governors will be approved by the Trust Board and Council of Governors, and this Annex 3 shall be amended to reflect any such appointments in accordance with this constitution.*

1.3 Subject to paragraph 1.4 below, of the three (3) Staff Governors in the Medical Dental and Nursing class:

1.3.1 one (1) seat shall be reserved for a nurse;

1.3.2 one (1) seat shall be reserved for a doctor; and

1.3.3 one (1) seat shall be reserved for a doctor, dental professional or nurse.

1.4 The electoral constraints set out herein will apply to all Staff Governor seats in the Medical Dental and Nursing staff class, regardless of the number of Staff Governors being elected from that staff class at any particular time.