

Report to:	Council of Governors	Agenda item:	14
Date of Meeting:	12 September 2024		

Title of Report:	Annual Review of Trust Constitution
Status:	For approval
Board Sponsor:	Cara Charles-Barks, Chief Executive
Author:	Roxy Milbourne, Interim Head of Corporate Governance
Appendices	Appendix 1: Draft Foundation Trust Constitution 2024 v22

1.	Executive Summary of the Report
<p>As part of a review of the Trust Constitution amendments have been proposed to cover changes since the last review. The proposed key changes reflect:-</p> <ul style="list-style-type: none"> • the establishment of Joint Committees/Committees-in-Common • the revised National Health Service Act 2006 • holding virtual/hybrid meetings • various ‘tidying up’ i.e. change of job titles and gender-neutral language. <p>For ease of identification of key changes, a summary of the main elements of revision is included within this document. The full constitution is attached as an appendix.</p> <p>Changes to the Constitution require approval of both the Board of Directors and Council of Governors.</p>	

2.	Recommendations (Note, Approve, Discuss)
The Council of Governors is asked to approve the proposed amendments to the Trust’s Constitution.	

3.	Legal / Regulatory Implications
The Foundation Trust Constitution is the Trust’s fundamental governance document	

4.	Risk (Threats or opportunities, link to a risk on the Risk Register, Board Assurance Framework etc)
None identified	

5.	Resources Implications (Financial / staffing)
None identified	

6.	Equality and Diversity
None identified	

7.	References to previous reports
This paper is produced annually provided that potential amendments have been identified.	

8.	Freedom of Information
Public	

9.	Sustainability
N/A	

10.	Digital
N/A	



Royal United Hospitals Bath
NHS Foundation Trust

Constitution – Table of Amendments

Page number	Section	Current version	Amendment	Rationale
5	Interpretation and definitions	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 2006 Act	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 2006 Act as amended by the 2012 Act and the Health and Social Care Act 2022	To include reference to the Health and Social Care Act 2022.
5			“2022 Act” means the Health and Social Care Act 2022	To reference the Health and Social Care Act 2022.
7			“Code of Governance for NHS Providers” means the best practice advice published by NHS England on 27 th October 2022, with effect from 1 st April 2023.	To reference the latest published best practice advice published by NHS England.
10			“Integrated Care Partnership” An Integrated Care Partnership (ICP) is a formal partnership of organisations (commissioners and providers) working together to improve the health and care of the whole population they serve.	To take account of the establishment of the ICP

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10			<p>“Integrated Care System” In England an Integrated Care System (ICS) is a statutory partnership of organisations who plan, buy and provide health and care services in their geographical area. The organisations involved include the NHS, local authorities, voluntary and charity groups, and independent care providers</p>	To take account of the establishment of the ICS
11			<p>“NHS England” The Health and Care Act 2022 has merged “Monitor” and the Trust Development Authority (TDA) into NHS England and removed legal barriers to collaboration and integrated care, making it easier for providers to take on greater responsibility for service planning and putting Integrated Care Systems (ICSs) on a statutory footing.</p>	To take account that Monitor and the Trust Development Authority had been merged into NHS England by the Health and Social Care Act 2022.
16	Powers		<p>The Trust may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the bodies set out in section S 65Z5(i) of the 2006 Act. Where such a function is exercisable jointly the bodies may arrange for the functions to be exercised by joint committees as set out in S5 65Z6 of the 2006 Act.</p>	To recognise joint committees and the 2006 Act (revised 2022)

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			<p>In exercising its powers, the Trust will have regard to:</p> <p>4.8.1 S.63B of the 2006 Act (revised 2022) (duty to have regard to the wider effect of discussions), also referred to as the “Triple Aim”.</p> <p>4.8.2 S.63B of the 2006 Act (revised 2022) (duties in relation to climate change).</p>	As specified in the Health and Social Care Act 2022
25	Council of Governors – general duties	19A. 1.2 to represent the interests of the Members as a whole and the interests of the public	19A. 1.2 to represent the interest of the Members as a whole and the interest of the public at large	To support collaboration between organisations and the delivery of better, joined-up care, councils of governors are required to form a rounded view of the interests of the ‘public at large’. This includes the population of the local system of which the NHS Foundation Trust is part.
28	Board of Directors – appointment of initial Chair and initial other Non-Executive Directors	Remove section 23	Remove	No longer required as the Trust is an established Foundation Trust, this section was only required for initial appointments.
29	Board of Directors – appointment and removal of initial Chief Executive	<p>25 Board of Directors – appointment and removal of initial Chief Executive</p> <p>25.1 The Non-Executive Directors shall appoint the Chief officer</p>	<p>25 Board of Directors – appointment and removal of Chief Executive and other Executive Directors</p>	Removal of “initial” Chief Executive as the Trust has been a Foundation Trust since 2014. Update to include clarity on the NEDs appointing the CEO and other Directors.

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		<p>Executive of the Applicant Trust as the initial Chief Executive of the Trust, if he wishes to be appointed.</p> <p>25.2 The appointment of the chief officer of the Applicant Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.</p>	<p>The Non-Executive Directors shall appoint or remove the Chief Executive.</p> <p>The appointment of the Chief Executive is subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.</p> <p>A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.</p>	
51	Composition of the Council of Governors	Bath and North East Somerset Integrated Care Partnership may appoint one Partnership Governor by notice in writing signed by the Chief Executive of the Integrated Care Partnership and delivered to the Secretary.	Bath and North East Somerset, Swindon and Wiltshire Integrated Care Board may appoint two Partnership Governor's by notice in writing signed by the Chief Executive of the Integrated Care Board and delivered to the Secretary. One nominee should represent BaNES and the other Wiltshire.	Updated to reflect BSW ICB.
109	Transitional provisions for the initial Elected Governors	Remove section 5	Remove	No longer required as the Trust is an established Foundation Trust, this section was only required for initial elections.

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118	Annex 6 – Standing Orders for the Practice and Procedure of the Council of Governors 4.2 Calling Meetings	4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least four meetings in any year including:	4.2.1 Meetings of the Council of Governors shall be held at such times and places and of such format including in person, by using electronic communication or hybrid as the Council of Governors may determine and there shall be at least four meetings in any year including:	Updated to take account of holding virtual meetings
119	Annex 6 – Standing Orders for the Practice and Procedure of the Council of Governors 4.3 Notice of Meetings and Agenda	4.3.2 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and if possible the public part of the agenda, shall be displayed at the Trust's Headquarters and shall be advertised on the Trust's website at least 3 Clear Days before the meeting, save in the case of emergencies.	4.3.2 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and if appropriate remote access/electronic communication arrangements, of the meeting, and if possible the public part of the agenda, shall be displayed at the Trust's Headquarters and shall be advertised on the Trust's website at least 3 Clear Days before the meeting, save in the case of emergencies.	Updated to take account of holding virtual meetings
125/126	Annex 6 – Standing Orders for the Practice and Procedure of the Council of Governors 4.12 Voting	4.12.6 All questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request. 4.12.9 A Governor may only vote if present at the time of the vote on which the question is to be decided;	4.12.6 All questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request. In the event of a meeting held using electronic communication, an electronic voting facility will be made available, including when	Updated to take account of holding virtual meetings

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		no Governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone or video link and so is therefore entitled to vote.	appropriate, the facility for holding a secret ballot. 4.12.9 A Governor may only vote if present (either in person or by electronic communication) at the time of the vote on which the question is to be decided; no Governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone or video link and so is therefore entitled to vote.	
143	Annex 7 – Standing Orders of Practice and Procedure of the Board of Directors 13.13 Voting	13.13.2 All questions put to the vote shall, at the discretion of the Chair, be determined by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.	13.13.2 All questions put to the vote shall, at the discretion of the Chair, be determined by a show of hands or by appropriate electronic means. A paper ballot may also be used if a majority of the Directors present so request.	Updated to take account of holding virtual meetings
150	Annex 7 – Standing Orders of Practice and Procedure of the Board of Directors 15.2 Joint Committees		5.2.1 Joint committees may be established by the Trust, by joining together with one or more other trusts, consisting of wholly or partly of the Chair and Directors of the Trust or other health service bodies, or of Directors of the Trust with non-directors of other health bodies in question.	Added to reflect the establishment of Joint Committees and Committee-in Common

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			<p>5.2.2 Any Committee-in-Common or Joint Committee established under standing orders may, subject to such directions or guidance as may be given by NHS England or the Trust or any other health bodies in question, appoint sub-committees consisting wholly or partly of directors sitting on the Committee or Joint Committee (whether or not they are directors of the other health bodies in question) or wholly of persons who are not directors of the other health bodies in question provided that the Trust is always represented by an Executive Director (or deputy nominated by the Executive Director) on such Committees, Joint Committees or sub committees.</p>	
Throughout	Throughout	<p>He/his/him/himself</p> <p>NHSE/I</p> <p>Applicant Trust</p>	<p>They/their/them/themselves</p> <p>NHS England</p> <p>Trust</p>	<p>To update the constitution in terms of gender-neutral language which is inclusive of everyone.</p> <p>Updated name since NHSE/I merged.</p> <p>Updated as no longer an “applicant Trust”</p>