

### Constitution review

The following are sections of the constitution, which require a decision by the Trust Board (TB) for both format and inclusion in the foundation trust constitution.

#### Query 1

##### **“PREAMBLE**

An NHS Foundation Trust is a Public Benefit Corporation which is authorised under the National Health Service Act 2006 to provide goods and services for the purposes of the health service in England. A Public Benefit Corporation is a body corporate, which is constituted in accordance with Schedule 7 of the 2006 Act. The Constitution provides, inter alia, for the Foundation Trust to have Members, Councillors and Directors, and determines who may be eligible for membership and how Councillors and Directors are appointed and defines their respective roles and powers. Further, Members of the Foundation Trust may attend and participate at Members' meetings, vote in elections to, and stand for election for, the Members' Council, as provided in this Constitution”

#### Query:

Many Trusts are using a form of wording such as "preamble" to introduce the reader to the document. TB are asked to confirm whether or not this should be included in place of the "Framework" wording which was included in the initial draft, and which BB advise not be included.

#### Query 2

##### **Section 3 Powers # 1**

3.2 “In the exercise of its powers the Foundation Trust shall have regard to the core principles of the NHS and the Foundation Trust as set out in Appendix 1 of Annex 9”

#### Query

The provisions relating to the "core principles" are not required by the 2006 Act or Monitor's Model Core Constitution. BB recommends they be included as the NHS FT Code of Governance (A.1.9) says that the Board of Directors should set the values of the Foundation Trust.

##### **Powers # 2**

- 3.3 “The powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.
- 3.4 Subject to any restriction contained in this Constitution or in the 2006 Act, and to paragraph 3.5 below, any of these powers may be delegated to a committee of Directors or to an executive Director.
- 3.5 “Where the Foundation Trust is exercising functions of the managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an executive Director of the Foundation Trust, nor an employee of the Foundation Trust.

### Query

TB is asked to confirm instructions. This wording is not included in Monitor's Model Core Constitution, but is included here to reflect the position regarding delegation of powers to Mental Health Act Managers as set out in Section 45 of the Mental Health Act 2007.

### **Query 3**

#### **Section 4 Other purposes**

- 4.1 The purpose of the Foundation Trust is to 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 its Authorisation.
- 4.2 The Foundation Trust may 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 on by others.
- 4.3 The Foundation Trust may also undertake activities other than those mentioned above subject to any restrictions in the Authorisation. These activities must be for the purpose of making additional income available in order to carry out the Foundation Trust's principal purpose better.

### Query

These provisions comply with the 2006 Act, but are not include in Monitor's Model Core Constitution. BB recommends they be included. Trust Board to confirm acceptance.

### **Query 4**

#### **Section 6 Application for membership**

- 6.2 Subject to paragraph 8.6 below, applicants for membership of the Foundation Trust must complete and sign an application in the form prescribed by the Chief Executive.

### Query

This is normally a function of the Secretary. TB to confirm acceptance

### **Query 5**

#### **Section 8 Staff Constituency #1**

- 8.2 Individuals who are employed by a designated Foundation Trust Subcontractor and who otherwise exercise functions for the purposes of the Foundation Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, this excludes Volunteers and Voluntary Organisations, and individuals who assist or provide goods or services to the Foundation Trust on a voluntary basis.

### Query

BB recommends that the Secretary maintain a register of individuals/organisations who derive eligibility under paragraph 8.2 to retain discretion as to who may join the Staff Constituency. TB to confirm instructions.

These provisions currently exclude Volunteers from the Staff Constituency. TB to confirm whether Volunteers are to be included in the Staff Constituency or not. This paragraph will need to be amended accordingly, and BB recommends a register of approved Volunteer Schemes be maintained by the Secretary, which identifies those individuals who derive eligibility under paragraph 8.2 by virtue of being a "Volunteer".

### **Staff Constituency #2**

8.7.1 Subject to paragraph 8.6 above any individual who is eligible to become a member of the Staff Constituency under paragraph 8.2 above shall become a Member upon entry to the membership register pursuant to an application by them.

### Query

Can future employees exercise choice about whether to become a member? An 'opt out' arrangement exists for current staff. TB to confirm arrangements for future employees.

### **Query 6**

#### **Section 9 Patients' Constituency #1**

9.9 Where an individual is eligible for admission to both the Public Constituency and the Patients' Constituency he may specify which Constituency he wishes to belong to either in his application or subsequently in writing (but once he has made such a specification he shall not be entitled to subsequently change constituencies unless he shall cease to be a member of the constituency of which he has chosen to be a member).

9.10 If such an individual does not specify, in accordance with paragraph 9.9 above, or his specification is unclear he will be allocated to the Public Constituency/Patients' Constituency until such time as he shall make a clear specification.

### Query

TB to confirm allocation by default arrangement.

### **Patients' Constituency #2**

9.12 Not more than one Carer of a Patient may be registered as a Member in relation to each Patient.

### Query

TB to confirm arrangement

## Query 7

### **Section 12 Members' Council – Election of Councillors**

12.4 A person may not vote at an election for or stand for election as an Elected Councillor unless within the specified period stated in the Model Rules for Elections he has made a declaration in the specified form setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

#### Query

This provision is not included in Monitor's Model Core Constitution, but is provide for in the 2006 Act. We recommend it be included. TB to confirm acceptance.

## Query 8

### **Section 13 Members' Council - tenure**

#### **13.1 Elected Councillors**

13.1.4 An Elected Councillor may hold office for a maximum of 9 consecutive years.

#### Query

This provision is not contained in Monitor's Model Core Constitution, but is recommended to take into account the need for progressive refreshing of the Members' Council. TB to confirm acceptance

#### **13.3 Appointed Councillors #1**

13.3.1 An Appointed Councillor shall hold office for a period of 3 years.

13.3.2 An Appointed Councillor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of him by notice in writing to the Secretary.

13.3.3 An Appointed Councillor shall be eligible for re-appointment at the end of his term.

13.3.4 An Appointed Councillor may hold office for a maximum of 9 consecutive years

#### Query

These provisions are not required by Monitor, but are included to ensure that Appointed Councillors are subject to the same tenure provisions as Elected Councillors. TB to confirm acceptance

## **Members' Council – tenure #2**

13.4 For the purposes of the preceding tenure provisions, a "year" means a period of 12 consecutive months commencing immediately after the conclusion of the annual meeting of the Members' Council and ending at the conclusion of the next annual meeting of the Members' Council.

### Query

TB to confirm acceptance

## **Query 9**

### **Section 14 Members' Council – disqualification and removal #1**

14.1.3 A person who within the preceding five years has been convicted of any offence anywhere in the world and 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

### Query

The provisions of paragraph 14.1 are required by the 2006 Act save the "anywhere in the world" drafting included for consideration at paragraph 14.1.3. TB to confirm inclusion.

### **Members' Council – disqualification and removal #2**

14.6 If a Councillor is considered to have acted in a manner inconsistent with:

14.6.4 The Councillor's Code of Conduct

### Query

Will Councillors will be required to sign up to a "Code of Conduct". The NHS FT Code of Governance expects such an arrangement to be in place. TB to confirm arrangements

### **Members' Council – disqualification and removal #3**

14.6.5 he has failed to declare an interest as required by this Constitution or the Standing Orders for Councillors, or he has spoken or voted at a meeting on a matter in which he has an interest contrary to this Constitution or the Standing Orders Councillors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and

he is adjudged to have so acted by a majority of not less than 75% of the members of the Members' Council [**present and voting**] then the Councillor shall vacate his office immediately.

### Query

TB to confirm acceptance

## Query 10

### **Section 15 Members' Council – meetings of Councillors**

15.1 The Chairman of the Foundation Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or paragraph 23.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 24 below), shall preside at meetings of the Members' Council and the person chairing the meeting shall have a casting vote.

## Query

BB recommends that the Chair have a casting vote to ensure that decisions can be taken where there is an equality of votes in meetings. TB to confirm arrangements

## Query 11

### **Section 18 Members' Council – travel and other expenses**

18.1 The Foundation Trust may pay travelling and other costs and expenses to members of the Members' Council at such rates as the Board of Directors decides from time to time. **[These are to be disclosed in the Annual Report.]**

## Query

TB to confirm acceptance

## Query 12

### **Section 19 Members' Council – further provisions**

19.1 Further provisions with respect to the Members' Council are set out in Annex 6, these include:

19.1.1 Eligibility to be on the Members' Council;

19.1.2 Members' Council: Objectives;

19.1.3 Roles and responsibilities of Councillors;

19.1.4 Remuneration;

19.1.5 Vacancies;

19.1.6 Meetings;

19.1.7 Committees and sub-committees; and

19.1.8 Transitional Provisions for the Initial Councillors.

### Query

The provisions of paragraph 19 and Annex 6 are not required by the 2006 Act, but are included for consideration. Monitor's Model Core Constitution allows the Foundation Trust to insert further provisions regarding the Council (Note 23). TB to confirm which provisions (if any) are to be included.

### **Query 13**

#### **20 Board of Directors – Composition #1**

20.2 The Board of Directors is to comprise:

20.2.1 a non-executive Chairman;

20.2.2 [up to a maximum of] X (XXX) other non-executive Directors; and

20.2.3 [up to a maximum of] X (XXX) executive Directors.

### Query

TB to confirm whether wording in square brackets is required to allow for flexibility in numbers. If so then paragraph 20.8 below should also be included.

20.8 [In the event that the number of non-executive Directors (including the Chairman) is equal to the number of executive Directors, the Chairman (and in his absence, the Deputy Chairman), shall have a casting vote at meetings of the Board of Directors in accordance with the Standing Orders for Directors attached at Annex 8]

#### **Board of Directors – Composition #2**

20.9 The validity of any act of the Foundation Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

### Query

BB recommends these provisions be included to protect the Board if vacancies, etc. should arise which may call into question the legitimacy of Board decisions. TB to confirm approval.

### **Query 14**

#### **Section 23 Board of Directors – appointment of initial Chairman and initial other non-executive Directors**

23.1 The Chairman of the NHS Trust shall be appointed as the initial Chairman of the Foundation Trust if he wishes to be appointed.

23.2 The power of the Members' Council to appoint the other non-executive Directors of the Foundation Trust is to be exercised, so far as possible, by appointing as the initial non-executive Directors of the Foundation Trust any of the non-executive directors of the NHS Trust (other than the Chairman) who wish to be appointed.

23.4 An individual appointed as the initial Chairman or as an initial non-executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as chairman or (as the case may be) non-executive director of the NHS Trust, but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

#### Query

TB to confirm whether the suggested process is accepted. The process to be used is a matter for the Foundation Trust to determine and is not set out in the 2006 Act, or Monitor's Model Core Constitution.

#### **Query 15**

##### **Section 24 Board of Directors – appointment of Deputy Chairman**

24.1 The Members' Council at a general meeting of the Members' Council shall appoint one of the non-executive Directors as a Deputy Chairman. If the Chairman is unable to discharge his functions as Chairman of the Foundation Trust, the Deputy Chairman will be the "acting chairman" of the Foundation Trust until such time as the Chairman is able to discharge his functions as Chairman, or a new Chairman is appointed by the Members' Council in accordance with paragraph 22 above.

#### Query

Provision may be made for a Vice Chairman. Neither the 2006 Act, nor Monitor's Model Core Constitution provide for a Vice Chair, but the inclusion of such a power may ensure that if both the Chairman and the Deputy Chairman are unavailable, then there is a clear process to ensure that meetings of the Council are chaired properly. TB to confirm whether arrangements acceptable

#### **Query 16**

##### **Section 25 Board of Directors - appointment and removal of the Chief Executive and other executive Directors**

25.2 Subject to the provisions of paragraph 26.2 below, the appointment of the Chief Executive is subject to the approval of a majority of the members of the Members' Council present and voting at a meeting of the Members' Council.

26.2 The appointment of the chief officer of the NHS Trust as the initial Chief Executive of the Foundation Trust shall not require the approval of the Members' Council.

#### Query

BB recommends the above wording to ensure that there is a clear process. TB is asked to approve



## Query 17

### **Section 27 Board of Directors – disqualification**

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

- 27.1.3 a person who within the preceding five years has been convicted [of any offence anywhere in the world] and 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;
- 27.1.4 [a person whose tenure of office as a chairman or member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service;
- 27.1.5 a person who has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
- 27.1.6 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;
- 27.1.7 a person who is a member of the Members' Council, an executive or non-executive director or a governor of another NHS Foundation Trust, an executive or non-executive director, chairman, chief executive officer of another Health Service Body or [a body corporate whose business includes the provision of health care services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Foundation Trust];
- 27.1.8 a person who is a member of a Patient and Public Involvement Forum;
- 27.1.9 a person who is a member of a local authority Health Overview and Scrutiny Committee;
- 27.1.10 a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 27.1.11 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 27.1.12 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;
- 27.1.13 a person who is an Immediate Family Member of a Director; or

- 27.1.14 a person who is the subject of a Sex Offenders Order and/or his name in included in the Sex Offenders Register.]

#### Query

The provisions of paragraphs 27.1.1 to 27.1.3 save the "anywhere in the world" drafting are required by the 2006 Act and Monitor's Model Core Constitution. The remaining provisions (i.e. paragraphs 27.1.4 to 27.1.14) are included for consideration. TB to confirm which provisions (if any) are to be included, and whether any additional provisions are to be inserted.

TB to confirm whether Directors will be required to sign up to a "Code of Conduct". The NHS FT Code of Governance requires such an arrangement to be in place.

### **Query 18**

#### **Section 32 Admission to and removal from the registers**

##### **32.6 Register of Designated Foundation Trust Subcontractors**

- 32.6.1 The register shall contain the names of each Foundation Trust Subcontractor which is designated by the Foundation Trust for the purposes of membership of the Foundation Trust.

##### **32.7 Register of Designated Volunteers and Voluntary Organisations**

- 32.7.2 The register shall contain the names of each Volunteer and/or (as the case may be), each Voluntary Organisation which is designated by the Foundation Trust for the purposes of membership of the Foundation Trust.

#### Query

Recommended for inclusion for clarity

### **Query 19**

#### **Section 35 Auditor**

- 3.53 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

#### Query

Monitor's Model Core Constitution does not require this provision. BB recommends this provision be included to provide clarity in respect of the Auditor's duties. TB to confirm approval

- 35.4 The Board of Directors may resolve that an "external auditor" be appointed to review and publish a report on any other aspect of the Foundation Trust's performance. Any such "external auditor" is to be appointed by the Members' Council/Board of Directors.

### Query

This provision is not required by the 2006 Act, but is included to address the Board's responsibilities under paragraph F.2 of the NHS FT Code of Governance (annual review of the systems of internal control, etc.). TB to confirm whether this provision is to be included.

### **Query 20**

#### **ANNEX 4 – COMPOSITION OF MEMBERS' COUNCIL**

(Paragraph 11)

The composition of the Members' Council shall be as follows:

#### **Section 2 Appointed Councillors**

(XXX organisation) as established by (XXX order/act), or its successor organisation may appoint 1 (one) Councillor by notice in writing signed by the (XXX) and delivered to the Secretary.

### Query

TB to confirm the details of the person authorised in the appointed organisation to make the appointment (e.g. **(chief executive / leader of the Council /governor/ Vice-Chancellor, or Deputy Vice-Chancellor of the university President, Provost or a Vice-Provost [PBC Islington & Haringey])** (appointor).

### **Query 21**

#### **Appendix 4:**

#### **Members' Council: Further Provisions**

#### **1 Remuneration**

- 1.1 Councillors are not to receive remuneration, provided that this shall not prevent the remuneration of Councillors by their employer.

#### **2 Vacancies**

- 2.1 Where a vacancy arises on the Members' Council for any reason other than expiry of a term of office, the following provisions will apply.
- 2.2 Where the vacancy arises amongst the Elected Councillors, the Members' Council shall decide either:
- 2.2.1 to call an election within three months or to fill the seat for the remainder of that term of office; or

- 2.2.2 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 until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office, or
- 2.2.3 to leave the seat vacant until the next scheduled elections are held if the unexpired period of office is less than **six** months.
- 2.3 Where the application of paragraph 2.2.2 of Appendix 4 to Annex 6 above would result in a breach of the requirements of paragraph [insert] of this Constitution then the Members' Council must apply either paragraph 2.2.1 or 2.2.3 above.
- 2.4 Where the vacancy arises amongst the Appointed Councillors the Trust will request that the relevant Partnership Organisation appoint a "Replacement Councillor" within **30** days to hold office for the remainder of the term of office. Appointed Councillors shall be replaced in accordance with the processes agreed pursuant to paragraph 2 of Annex 4 of this Constitution.
- 2.5 The validity of any act of the Members' Council is not affected by any vacancy among the Councillors or by any defect in the appointment of any Councillor.

### **3 Meetings**

- 3.1 The Members' Council is to meet at least **[four]** times per year, including an annual meeting no later than 30 September in each year apart from the first year, when the Members' Council is to receive and consider the annual accounts and any report of the Auditor on them and the Board of Directors is to present to the Members' Council the Annual Report.
- 3.2 The Secretary shall call meetings in accordance with paragraph 3.1 of Appendix 4 of Annex 6 above.
- 3.3 Any meeting of the Members' Council requires a quorum of **[one third]** of the total number of Councillors to be present with a majority of those present being Public Councillors and Patients' Councillors.

### **4 Committees and Sub-Committees**

- 4.1 The Members' Council may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 4.2 The Members' Council may appoint members to serve on joint committees with the Board of Directors or committees thereof.

- 4.3 These committees or sub-committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Members' Council and the Board of Directors under this paragraph will be determined in accordance with paragraph 2 of Appendix 4 of Annex 9 (Dispute Resolution Procedure).

## **5 Transitional Provisions for the Initial Councillors**

The following provisions shall apply for the initial Elected Councillors of the Foundation Trust.

### **5.1 The Initial Public Councillors**

- 5.1.1 Not less than one third of the initial candidates who polled the most votes at the initial election of Public Councillors shall serve a term of office ending at the conclusion of the Annual Members' Meeting in 2010.
- 5.1.2 Not less than one third of the initial candidates who polled the next highest number of votes will serve a term of office ending at the conclusion of the Annual Members' Meeting in 2009.
- 5.1.3 The remaining candidates elected at the initial election of Public Councillors shall serve a term of office ending at the conclusion of the Annual Members' Meeting in 2008.

### **5.2 The Initial Staff Councillors**

- 5.2.1 Two of the initial Staff Councillors (to be chosen by lot) will serve a term of office ending at the conclusion of the Annual Members' Meeting in 2009.
- 5.2.2 The remaining candidates elected at the initial election for Staff Councillors shall serve a term of office ending at the conclusion of the Annual Members' Meeting in 2010.

### **5.3 The Initial Patient Councillors**

- 5.3.1 Two of the initial Patient Councillors (to be chosen by lot) will serve a term of office ending at the conclusion of the Annual Members' Meeting in 2009.
- 5.3.2 The remaining candidates elected at the initial election of Patient Councillors shall serve a term of office ending at the conclusion of the Annual Members' Meeting in 2010.

- 5.4 For the purposes of eligibility to seek re-election or to be re-appointed as Councillors under this Constitution, the period between their election or appointment as initial Councillors

and the conclusion of the Annual Members' Meeting in 2008 shall be treated as a year.

Query

TB is asked to confirm inclusion of this section and approve details highlighted in bold

**Query 22**

**ANNEX 9 - FURTHER PROVISIONS**

(Paragraphs 3, 7, 10, 14, 22 and 41)

**Appendix 1:**

**NHS and Foundation Trust Core Principles**

**2 Foundation Trust Core Principles**

- 2.1 The Foundation Trust aims to become the hospital of choice for local people, providing the highest quality services to them by implementing the "Whittington Promise".
- 2.2 The Foundation Trust will make cleanliness and the prevention of hospital acquired infections a major priority.
- 2.3 The Foundation Trust will provide its patients, staff and visitors with a welcoming and caring environment in which to either work or recuperate.
- 2.4 The Foundation Trust will provide prompt and effective treatment and care to each person it treats in an organised and efficient manner.
- 2.5 The Foundation Trust will provide the best possible treatment and care to each of its patients in order to meet their individual needs.
- 2.6 The Foundation Trust will keep patients informed about what is happening with regard to their treatment in a clear and concise manner.
- 2.7 The Foundation Trust shall exercise its functions effectively, efficiently and economically.
- 2.8 In conducting its affairs, the Foundation Trust shall have regard to the need to provide information to Members and to conduct its affairs in an open and accessible way.

Query

TB to confirm if they are happy with the inclusion of these provisions and also if any further information is to be included here. NB The vision for the future of the hospital as a Foundation Trust is out to consultation.

#### **4 Co-operation with health service and other bodies**

In exercising its functions the Foundation Trust shall co-operate with Health Service Bodies and any local authority with which the Foundation Trust has a **[Local Authority Partnership Agreement]**.

#### Query

TB to confirm whether this is relevant.

#### Query 23

### **Appendix 3:**

#### **Board of Directors – Further Provisions**

#### **3 Appointment of Chairman and non-executive Directors**

- 3.1 The Members' Council shall appoint as the initial Chairman and non-executive Directors of the Foundation Trust, the chairman and non-executive directors of the NHS Trust for the unexpired period of their respective terms of office as chairman or non-executive director of the NHS Trust, or twelve months whichever is the longer unless they notify the Members' Council that they do not wish to be appointed.
- 3.2 Appropriate candidates (not more than 5 for each vacancy) will be identified by a Nominations Committee through a process of open competition, which takes account of the policy referred to in paragraph 1.2.1 of Appendix 2 to Annex 6 of this Constitution that is maintained by the Members' Council.
- 3.3 Subject to the provisions of paragraph 1.1 of Appendix 3 above, the process for appointing new non-executive Directors and the Chairman will be as follows:
  - 3.3.1 The Chairman and other non-executive Directors are to be appointed by the Members' Council following a process of open competition. The current Chairman or a non-executive Director may stand for reappointment.
  - 3.3.2 Six months before the end of the term of office of the Chairman or a non-executive Director (as the case may be), the Members' Council will appoint a Nominations Committee to seek a suitable replacement. The Nominations Committee will be constituted in accordance with paragraphs 1.3.5 and 1.3.6 of Appendix 3 below.
  - 3.3.3 Notwithstanding the provisions of paragraph 1.3.2 of Appendix 3 above, the post will be advertised.

- 3.3.4 The Nominations Committee will make recommendations to the Members' Council, including recommendations about pay.
- 3.3.5 The Nominations Committee for the Chairman will consist of the Deputy Chairman (or another non-executive Director if they are standing for appointment), two Elected Councillors, and one Appointed Councillor. If the number of Councillors prepared to serve on the Nominations Committee is greater than the number of places available, the committee members will be selected by election by their peer Councillors. A Public Councillor will chair the Nominations Committee. Each member of the Nominations Committee will have one vote. The Chairman of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee.
- 3.3.6 The Nominations Committee for the non-executive Directors will consist of the Chairman, two Elected Councillors, and one Appointed Councillor. If the number of Councillors prepared to serve on the Nominations Committee is greater than the number of places available, the committee members will be selected by election by their peer Councillors. The Chairman will chair the Nominations Committee. Each member of the Nominations Committee will have one vote.
- 3.3.7 The Nominations Committees constituted under paragraphs 1.3.5 and 1.3.6 of Appendix 3 above will be supported by appropriate advice from the Foundation Trust's Director of Human Resources and Corporate Affairs on the qualifications, skills and experience required for each position. They may also work with an external organisation recognised as expert at appointments to identify the qualifications, skills and experience required for non-executive Directors.
- 3.3.8 The Members' Council will not consider nominations for membership of the Board of Directors other than those made by the appropriate Nominations Committee.

#### Query

These provisions will only be appropriate if the Foundation Trust is to have a separate Nominations Committee responsible for the identification and nomination of executive directors, as set out in section C of the NHS FT Code of Governance. TB to confirm intentions



## Query 24

### Appendix 4:

#### Further Provisions – General

## 2 Dispute Resolution Procedures

- 2.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within **[14 days]** of the Secretary's decision to the Members' Council whose decision shall be final.
- 2.2 In the event of any dispute in relation to this Constitution that concerns anything other than membership, the dispute shall be referred to the Chairman who shall make a determination on the point in issue. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chairman he may appeal in writing within **[14 days]** of the Chairman's decision to the Board of Directors whose decision shall be final.

### Query

TB to confirm duration

## 3 Amendment of the Constitution

- 3.1 The Foundation Trust may make amendments to this Constitution with the approval of the Independent Regulator.
- 3.2 No proposals for amendment of this Constitution will be put to the Independent Regulator unless it has been approved by **[three-quarters]** of the Board of Directors following consultation with the Members' Council and consideration of their views.

### Query

TB to confirm