

The Merger via Acquisition of Brighton and Sussex University Hospitals NHS Trust by Western Sussex Hospitals NHS Foundation Trust

Full Business Case (Abbreviated Version)



“Better for everyone”


Western Sussex Hospitals
NHS Foundation Trust


Brighton and Sussex
University Hospitals
NHS Trust

Abbreviated Version Redactions and Commercial Confidentiality

Some commercially sensitive information has been removed from the following sections:

1. Executive Summary
2. Introduction & Background
6. The New Organisation
8. Financial Strategy

The following appendices have been removed from this version on the same basis:

- Appendix A: NHSEI Strategic Case Feedback Letter
- Appendix E: Financial Modelling Assumptions
- Appendix G: Benchmarked Opportunity for Enlarged Trust
- Appendix H: Financial Sensitivity
- Appendix M: M&A Transaction Risk Register

Foreword

The biggest global health crisis in a century has taught us many lessons this year, as individuals, families, communities and nations. For health services, none have been more important than the value of working together to keep patients safe and achieve the very best outcomes we possibly can. In Sussex, staff at Western Sussex Hospitals NHS Foundation Trust (WSHFT) and Brighton and Sussex University Hospitals NHS Trust (BSUH) provided incredible support to each other throughout the COVID-19 pandemic, while both organisations have forged closer ties with their community health and social care partners too.

We have been able to respond successfully in this way because we already understood the value of collaborative working. Prior to the outbreak, health and care organisations in our county were coming together in an integrated care system to meet the changing needs of our communities and achieve the ambitions of the NHS Long Term Plan. Our two hospital trusts have been working together since April 2017 under a Management Contract that has enabled improvements in both, and BSUH to benefit from the leadership and improvement support of WSHFT.

During that time, BSUH has become the fastest improving acute hospital trust in England, emerging from special measures on finance and quality, and earning a Care Quality Commission rating of Good overall and Outstanding for caring in its most recent inspection. WSHFT meanwhile, has not only maintained its own Outstanding status but also become the first non-specialist acute Trust to achieve the top grade in all key areas of assessment.

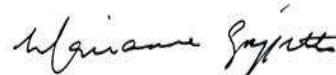
The Management Contract was originally due to end in March 2020. Recognising the achievements and benefits already delivered, but also knowing the challenges of the future, the two Trusts resolved to explore ways of strengthening their relationship more permanently building on the gains already made. The COVID-19 emergency that then engulfed us all only confirmed our view that this was the right thing to do, as the extent to which we were able to share resources and draw on a hugely expanded pool of expertise, experience, ingenuity and goodwill was absolutely crucial in enabling us to respond to the crisis.

In fact, it was this experience that steered us towards the option of pursuing a merger by showing us both the full opportunities of acting as one, and the limitations of maintaining separation between the separate organisations even with a Management Contract.

When we formally took the decision to merge in July 2020 we opened the door to a future in which we continue to deliver consistently excellent care for patients and provide fulfilling careers for staff, and a new single organisation is truly better for everyone. Thanks to the foundations already laid through shared leadership and the working practices of our Patient First improvement system, we are also equipped to achieve that mission in the shortest possible time. We will hit the ground running and build a new trust that is even greater than the sum of its already outstanding parts, an organisation where better never stops.



Alan McCarthy, MBE



Dame Marianne Griffiths, DBE

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1 Executive Summary

1.1 Introduction and Background

- 1.1.1 The purpose of this Full Business Case (FBC) is to set out the context and rationale for the merger via acquisition of Brighton and Sussex University Hospital NHS Trust (BSUH) and Western Sussex Hospitals NHS Foundation Trust (WSHFT) into a single NHS Foundation Trust. The case describes what the new organisation will look like and how the transaction process to achieve a successful merger will be delivered. The FBC builds on the Strategic Outline Case (SOC) approved by both Boards in July 2020 and approved by NHSEI in September 2020.
- 1.1.2 This merger by acquisition differs from most other mergers of NHS organisations due to the significant close working relationship that already exists between WSHFT and BSUH over the last 3.5 years under a Management Contract. This has translated into significant improvements at BSUH in the quality of care, the culture of the organisation and the financial position. These strong foundations and the starting position of the relationship have informed the approach to all aspects of planning and implementing the transaction, and the content of this FBC. This has been recognised in the feedback given to the Trusts by NHSEI in their letter in response to the Trusts' Strategic Outline Case.
- 1.1.3 WSHFT and BSUH entered into a Management Contract in 2017 with the objective of addressing BSUH's financial and quality issues, and after three years of joint leadership and shared resources, both organisations are able to demonstrate extremely positive quality, cultural, and financial improvements. The Management Contract was extended in 2020 for an additional year with the specific purpose of developing a future proposal for an ongoing relationship between the two Trusts. Whilst the Management Contract was the right vehicle for delivery of the initial significant improvements, the Boards of both organisations are clear that this arrangement does not offer a viable permanent or sustainable solution for the longer term.
- 1.1.4 The SOC for the Trusts' Future Organisational Arrangements (FOA) was developed and approved in July 2020. Within the current context of the time limited Management Contract arrangement it was recognised that there was effectively no 'do-nothing' option. From an agreed short list of four options the case identified the preferred way forward as the formation of a single organisation through the Merger & Acquisition process.
- 1.1.5 The form of transaction is an acquisition under Section 56A of the NHS Act 2006, of BSUH by WSHFT into a single NHS Foundation Trust which has University Teaching Hospital status. The new merged Trust should be established with effect from 1st April 2021.
- 1.1.6 NHSEI feedback on the SOC was very positive, as the strong case included a clear strategic rationale for the preferred option that is well supported by stakeholders and the local system. WSHFT's strong track record on quality and financial delivery, improvements at BSUH under the Management Contract, and the greater system

and local working that that has been achieved as part of the development of the Integrated Care System (ICS) in Sussex were all considered. As a result of the track record of delivery, the position of the two organisations and the significant joint working already in place, NHSEI has significantly reduced the scope of their business case review.

1.1.7 Specific potential areas to address that were identified by NHSEI as part of their SOC review were related to the following areas;

- Ensuring the Trusts' ability to meet the capacity requirements of both the merger process at a time of multiple national and local competing priorities (including the ongoing Covid-19 pandemic response and elective restoration requirements)
- Confirming the process and work on the development of a new clinical strategy for the single organisation
- Understanding the patient benefits that the merger will enable
- Resolving the required transaction funding and any financial risks associated with the formal merger
- Confirming any process associated with a future potential relationship with Queen Victoria Hospitals NHS Foundation Trust (QVHFT).

1.1.8 This case addresses all of these specific points.

1.1.9 The scope of this merger does not include QVHFT and any future relationship between the organisations is separate to the future organisational arrangements between WSHFT and BSUH described in this case. A process regarding QVHFT is being progressed by them, with involvement of the Boards of WSHFT and BSUH, but this should not mean any changes before October 2021 at the earliest, and is consistent with NHSEI expectations and guidance.

1.2 National and Local Context

1.2.1 The NHS Long Term Plan sets out the national path for transformation across health systems in England and is focused on breaking down traditional barriers between care and institutions to support care for patients. The NHS Long Term Plan was a response to the fragmented and potentially unsustainable nature of current health and social care provision in England in the context of significant increases in service demand, significantly constrained finances, workforce shortages, and population health need inequalities. Enshrined with the NHS Long Term Plan is the development of Integrated Care Systems (ICS) with the aim for them to be established covering the whole of England by April 2021.

1.2.2 Locally the Sussex Health and Care Partnership (SHCP) transitioned into an ICS in April 2020 with the intent of developing the Delivery Plan (the local response to the Long Term Plan) by working with organisations in new ways to best suit the needs of the population. Acute hospital engagement in system wide collaboration and transformation across Sussex as part of that process is facilitated through the Sussex Acute Collaborative Network (SACN).

- 1.2.3 The SACN's role is to strengthen strategic partnership between acute Trusts, foster collaborative working in development of sustainable services and oversee a programme of work operating across the ICS. The drive for increased collaboration and integration of acute service providers through the Delivery Plan and the SACN reinforces the existing Trust Boards' strategic aim of improving services through collaboration.
- 1.2.4 WSHFT is a Foundation Trust and serves a population of around 450,000 people across West Sussex. The Trust runs three hospitals and provides a full range of district general hospital services at both Worthing Hospital in Worthing and St. Richard's Hospital in Chichester. The Trust employs nearly 7,000 staff (wte). In late 2019 WSHFT was rated 'Outstanding' by the CQC for a second time.
- 1.2.5 BSUH is a University Hospital Teaching Trust providing services across two main sites, the Royal County Sussex Hospital in Brighton and the Princess Royal Hospital in Haywards Heath. The Trust provides district general hospital services to the local population in and around Brighton, Hove, Mid Sussex and western part of East Sussex. The Trust also provides specialised and tertiary services including being the Major Trauma Centre for Sussex. The Trust employs over 8,000 staff (wte). In early 2019 the Trust was rated 'Good' by the CQC.
- 1.2.6 Both WSHFT and BSUH have a single integrated strategy and delivery framework that drives improvement and delivery. This is described in both Trusts as the 'Patient First' approach. Patient First encapsulates the Board's philosophy for leading and delivering excellence with the patient first and foremost. It is an integrated model for defining the organisation's vision, strategy and goals. It laid the foundation for WSHFT success and has also been implemented at BSUH as part of the Management Contract with WSHFT, where it has directly influenced the sustainable improvement in safety and quality, performance and culture that has been achieved.

1.3 Case for Change

- 1.3.1 WSHFT has a strong track record and is a well led and high performing Trust. Under the Management Contract (since 2017) the leadership team has stabilised BSUH, and both Trusts have continued to improve as demonstrated by their recent CQC ratings. However, there remains more to do at both Trusts and there are a number of specific and complex issues that can be better tackled by developing a consistent single approach and integrated leadership.
- 1.3.2 In common with the rest of the NHS, both Trusts have challenges in the sustainable delivery of services, linked to increasing demand, fragility of workforce, financial challenge and increasing need for mutual service support to ensure resilience. The SOC identified the primary drivers for change and the FBC includes an additional two, linked to fragility of workforce and financial opportunities. Collectively they demonstrate why the continuation of the current arrangement is not clinically and financially optimal, nor sustainable.
- 1.3.3 The primary drivers for change are as follows;

- **Opportunities to improve clinical models of care** – the Quality domain of Patient First aims to achieve clinical excellence, avoid harm and reduce mortality. Both Trusts are committed to maximising benefit to patients and whilst the Management Contract has led to closer working in some clinical services, with shared learning and mutual aid, this has not always been achieved in a systematic and structured way, or at scale. The development of a strategic framework for clinical services and a coherent clinical strategy, aligned with national policy and the ICS, is much more difficult to achieve across two separate organisations than within one integrated Trust.
- **Challenges with complexity of governance** – over the last three years the experience of the Management Contract and more latterly through COVID-19, has shown that the duplication, delay and inherent inefficiency of delivering a single strategy through two statutory organisations, using a traditional governance model, can distract from the capacity to focus on the delivery of key organisational objectives. This challenge is recognised by both current Trusts, and is pertinent as the increased collaboration with the wider NHS system, ICS and other partners continues to increase.
- **Increasing collaboration and system leadership** – one of the identified strategic aims of the existing organisational strategies is to build system wide partnerships through the ICS. The Sussex system is regarded as a ‘Maturing ICS’ and the WSHFT and BSUH experience is that increasingly significant input and more development and influence is both necessary and beneficial. Removing the duplication of leadership and further integration of services improve the Trusts’ combined ability to ensure decision making and processes are representative of the whole system. The increasing strategic and decision making importance of the ICS, reinforces the existing and agreed design principle for WSHFT and BSUH, that the future organisational arrangements need to enable the more effective ability to respond, influence and contribute at an ICS system level.
- **Fragility of workforce** – both organisations, in common with most of the NHS, share a number of workforce challenges. Both Trusts experience shortages of staff in key groups and specific services, and have different opportunities for resolving them. The national challenge with workforce supply, in nursing generally and some medical and AHP specialities, in particular, are mirrored locally. Working as one organisation, whilst benefiting from the experience and expertise of both, opportunities can be further improved by building and sharing capacity and capability, utilising more specialist resources and skills, and through a greater breadth of roles and development opportunities by working with partners to coordinate joint aims.
- **Financial opportunities** – for both organisations, experience during the Management Contract has demonstrated that while it is possible to achieve some financial benefits through collaboration and closer working, the legally separate nature of the organisations and their distinct clinical strategies means that this is limited in nature. From a financial perspective a larger, single organisation operating with a common strategic purpose and single legal framework would be able to exploit opportunities for collaboration more readily, be more agile in

responding to opportunities and as a result have a higher ambition for and confidence in delivery of benefits.

- **COVID-19 and restoring services** – over the last six months the Trusts have had the real experience of testing ways of working more collaboratively across organisations for both the initial pandemic response and latterly the restoration and recovery of services. This experience has in many ways exemplified the factors outlined above in relation to complexity of governance (local autonomy versus central coordination), aligned decision-making, best use of resources (including meeting the workforce challenges the pandemic brought), and collaboration in service design and delivery.

1.3.4 The Boards of both WSHFT and BSUH are clear that there is a compelling Case for Change that requires the organisations to take a new approach to meeting future challenges, and building on potential shared opportunities. The optimal and preferred approach to achieving this is the merger of the two Trusts through the acquisition of BSUH by WSHFT.

1.4 Benefits of the Merger

1.4.1 The two Trusts have agreed a joint approach to identifying, prioritising, and realising the benefits of merger. The new Trust will apply its tried and proven Patient First approach to support delivery of these. Within Patient First, the priorities and objectives of the Trusts are encapsulated in five 'True North' domains, which are Patients, Staff, Sustainability, Quality, and System and Partnerships.

1.4.2 Benefits of the merger have been identified from a wide range of sources, including from the creation of a new single Vision, Values and Strategy for the merged Trust, and the on-going creation of a new single Clinical Strategy. Alongside ongoing wider consultation with staff, the Trusts have also held Executive-led workshops centred on the Patient First True North domains. These were attended by a wide cross section of senior staff, clinical and non-clinical, from across both organisations and generated more than 200 individual ideas. From these, twenty-one key benefits have been recognised and grouped by Patient First domain.

1.4.3 The key benefits in the **Patient** domain are centred on improving access and continuity of care through the availability and collaboration of a wider range of acute services in Sussex.

1.4.4 The new Trust will be of sufficient size and scale to provide these services. Integral to Patient First is the Lean based improvement methodology which will ensure that the new Trust's underlying continuous improvement ethos is strengthened. Focusing on improving the patient experience, safety, and the quality and sustainability of services will be enabled by potential better use of available resources across all hospitals (physical and workforce capacity and expertise). The merger was also clearly identified as an opportunity to help improve fragmented or fragile services, recognising the beneficial impact on patients that local access has, which will be supported through a more sustainable networked approach for clinical services where needed across the merged Trust.

- 1.4.5 The key benefit opportunities for the **People** domain include the positive impact on recruitment, improved retention, and greater scope to flexibly deploy staff. Within the single organisation there will be more opportunity to develop staff and grow the Trust's own talent, supporting the new organisation's ambition to become the best possible employer.
- 1.4.6 The key **Sustainability** domain benefits are a range of productivity gains through economies of scale, efficiency gains from integrated and streamlined functions and processes, ability to offer a greater range of services across Sussex, and potential to streamline leadership and decision making process through one Board and set of Committees, whilst still retaining appropriate local autonomy and focus where appropriate.
- 1.4.7 The key **Quality** domain benefits are improved clinical pathways as an expected outcome of the Clinical Strategy, support for the future of fragile and critical services through facilitating the easier sharing of resources, and where appropriate clinically the integration of services. There will be improved specialist input to services across the single Trust. As a large University Hospitals Trust, there should also be an opportunity to increase sharing of innovation, as well as developing further the already well-regarded research and education functions of the existing organisations.
- 1.4.8 The key benefits in the **Systems and Partnership** domain are the increased ability of the new merged Trust to support, engage, and influence local partners, opportunities to improve access times with greater flexibility to match capacity and demand, and improved flow of information with integrated IM&T and information sharing. Improved use of physical and corporate assets was also identified in Capital and Estates, more widely through pooling resources at a corporate level, and greater opportunity to share best practice in all areas.
- 1.4.9 The benefits identified will also form a key element of the two Trusts' engagement plans going forward in the preparation for merger, and have been consolidated into the following key messages for ongoing communication, sharing with stakeholders that by merging the new Trust will;
- Deliver outstanding, compassionate care locally and increase the opportunities for specialised services to flourish in Sussex
 - Grow our clinical expertise and make Sussex a leader in health excellence
 - Bring together the very best of both organisations to innovate and improve the health of our communities
 - Continue to equip and empower our people to improve services for patients through Patient First
 - Make the best use of our shared resources.
- 1.4.10 Benefits will continue to be identified as the Trust prepares for merger, in particular through the development of the new single Clinical Strategy.

1.4.11 The Trusts both already have a well-developed approach to strategy deployment and delivery through the single aligned Patient First framework. This will enable the realisation of benefits to be embedded into the new Trust's business as usual (BAU) planning and delivery of services. Oversight of the required organisational changes and the benefits realisation will be tracked by the ongoing Merger and Acquisition programme through the Post Transaction Implementation Plan (PTIP) – but delivery and monitoring will be embedded in the delivery and strategic programmes of work of the new organisation.

1.5 The New Organisation

1.5.1 The new organisation created through the merger of WSFHT and BSUH will be a Trust running five main hospitals and multiple services in satellite and community settings. The organisation will be responsible for all district general acute services for Brighton and Hove, West and Mid Sussex and parts of East Sussex. It will also be responsible for specialised and tertiary services across Sussex and parts of the wider South East region, including neuroscience, arterial vascular surgery, neonatology, specialised paediatric, cardiac, cancer, renal, infectious diseases and HIV medicine services.

1.5.2 The merged organisation will retain the positive aspects of both predecessors but, importantly, will seek to forge a clear new identity. It will require new organisational arrangements to be fit for purpose as a single entity, in order to ensure the continued successful delivery of existing services, alongside realising the identified merger benefits.

1.5.3 Given that WSFHT and BSUH are already working together within a Management Contract arrangement a significant amount of the partnership development, integration of leadership, alignment of strategy, and common processes required to successfully form a new Trust have already occurred. There is a solid foundation for the work needed to fully integrate and develop the new organisation.

1.5.4 The process to agree the name of the new organisation has followed the established guidance for naming an NHS Trust, including engagement with staff, public and other stakeholders. The proposed new name agreed by the Boards and submitted to DHSC is 'University Hospitals Sussex NHS Foundation Trust'.

1.5.5 The Patient First is an integrated model familiar to all staff within the two Trusts that defines and aligns the strategy and goals of the organisations. As part of the communication and engagement strategy of the merger programme, this framework has been used and BSUH and WSFHT have jointly developed a new vision, set of values, and strategic objectives for the new organisation. This has been done through extensive engagement, with staff and the public involved in their development.

1.5.6 The agreed mission and vision for the new organisation is "Excellent Care, Every Time – Where Better Never Stops".

1.5.7 The values chosen for the new organisation are communication, respect, teamwork, compassion, professionalism and inclusion.

- 1.5.8 As part of the Patient First approach the Trusts have long term unifying organisational objectives – known as True North. Aligned with this both Trusts have a well-developed methodology for implementing the programmes of work, improvements, and delivery priorities to support achieving the True North goals. This methodology is known as Strategy Deployment.
- 1.5.9 Strategy Deployment takes the five strategic themes in the Patient First - Patients, People, Sustainability, Quality and Systems and Partnerships – and identifies for each of these the True North goals and targets with supporting Breakthrough Objectives, Strategic Initiatives and Corporate Projects. These are explained in detail in Chapter 6. Combined they form the core strategy for the organisation, covering both key priorities and improvement changes, and the strategic ‘must do can’t fail’ programmes and projects to create the environment in which the Trust can successfully deliver.
- 1.5.10 The full True North Strategy for the new merged organisation has been jointly developed and agreed as part of the merger programme process.
- 1.5.11 A new Clinical Strategy for the new organisation is under development, and will ensure clinical services are configured to realise the full advantage of working as a single merged Trust, allowing the new organisation to best meet local need and optimise both the quality and sustainability of service provision. The Clinical Strategy will identify opportunities to deliver benefits from the merger and tackle long-standing challenges and issues that historically have proved too big or complex for either Trust to overcome in isolation.
- 1.5.12 The Clinical Strategy will be developed and implemented within a set of agreed strategic boundaries and will be developed in four phases. Phase 1 has commenced and involves clinical and wider representation from both WSHFT and BSUH, and is planned for completion by March 2021. It will identify the priorities for service transformation and will result in the publication of a new Clinical Strategy. Phases 2-4 will focus on delivering agreed transformations to clinical services.
- 1.5.13 As a Foundation Trust the new organisation will be regulated under arrangements described in the Health and Social Care (Community Health and Standards Act 2006). As the acquiring organisation the existing WSHFT governance arrangements have been refreshed and where appropriate redesigned to ensure they are fit for purpose.
- 1.5.14 The existing WSHFT Council of Governors and Constitution will have to continue but have been significantly amended in respect of its elected constituencies to reflect the expanded geographic footprint of the new Trust.
- 1.5.15 The new proposed Constitution follows the model Foundation Trust constitution and has been developed with active governor engagement. It has been reviewed by the Trust solicitors who have confirmed its compliance with the 2006 NHS Act.
- 1.5.16 The Foundation Trust membership has been extended to include any person whose normal place of residence is within the BSUH catchment area and the minimum membership level is 0.2% of the adult population. A recruitment campaign for the

extended membership is underway and new members are registered as shadow members until the new organisation is formed.

- 1.5.17 The new Council of Governors will have 21 members. It was agreed to reduce the representation from the district and borough local authorities to enable the inclusion of appointed governors from the upper tier local authorities of Brighton and Hove City Council and East Sussex County Council. The Council will also include a new representative from the Trusts' inclusion networks covering BAME, LGBTQ+ and Disability. The Staff Constituencies have been reviewed and will be linked to the key acute sites along with having one constituency for staff providing services in the wider community.
- 1.5.18 The arrangements for the new Council will mirror the existing arrangements for the WSHFT Council, including induction, workshop seminar programme and meeting schedules. WSHFT Staff and Public Governors are actively involved in supporting engagement with both BSUH staff and the public as part of the merger programme for the organisations.
- 1.5.19 Previous external expert assurance on governance in both Trusts has given confidence in the new proposed arrangements. WSHFT and BSUH are rated 'Outstanding' and 'Good' respectively within the CQC Well Led assessment domain and neither is in special measures. Neither organisation has regulatory action against them.
- 1.5.20 The WSHFT and BSUH Boards already have a substantively shared Board membership and as a result shadow board arrangements will not be required. Non-Executive Directors (NEDs) on the Boards have a range of public sector and commercial backgrounds relevant to leading a successful M&A transaction including in accountancy, finance and managing complex public sector change. As a group, the Executives and NEDs bring significant expertise and experience in mergers and transactions, successful leadership of large complex healthcare and other organisations, and transformational and organisational change.
- 1.5.21 The Executive leadership of the merged organisation will be through a single Chief Executive Officer. The Executive structure and portfolios have been developed to reflect and support the integration to a significant sized, merged organisation. The proposed new structure requires some changes to the roles and responsibilities of all existing Executive posts, and creates three new Executive level roles.
- 1.5.22 There will be seven Executive officers in addition to the Chief Executive, with a further two Board level, non-voting Directors.
- 1.5.23 The proposed leadership structure reflects the developing Sussex ICS arrangements, and the merged organisation will be the primary acute provider for services in both the West Sussex, and the Brighton and Hove Places. This is reflected with the creation of additional capacity through the Executive Managing Director roles responsible for operational delivery of the Trust's services aligned to each Place.

- 1.5.24 The new Trust will have eight Non-Executive Directors and plans are in place to ensure that the replacement and expansion of the Non-Executives is completed in line with the revised constitution.
- 1.5.25 The new Board and Committee structure for the merged Trust builds on the successful structures adopted by both WSHFT and BSUH and these will be strengthened and aligned with the strategic True North domains with the establishment of five specific committees to focus on Patient, Quality, People, Sustainability and Systems and Partnerships, in addition to the required statutory committees of the Board.
- 1.5.26 Prior to the Management Contract the Clinical Operating Model of WSHFT and BSUH were distinctly different. Through the last 3.5 years the two have been brought in line, with a functional and effective Divisional, Directorate and Specialty level operating structure. All clinical areas, at all levels, are led by a triumvirate leadership team consisting of medical, nursing or AHP, and managerial leads.
- 1.5.27 The size and geographic scope of the new merged organisation means that simple merger of the different clinical operating levels, Divisions and Directorates, into a similar (but bigger) structure will not provide optimal arrangements for leadership, and will risk losing the local focus at a hospital and place / locality level that has been identified as a key objective and requirement for the new Trust.
- 1.5.28 The strong local hospital identity of both staff and patients is mirrored by the maturing nature of the Sussex ICS and the ongoing establishment of distinct Place based planning, and delivery of services. This means there is an incentive to ensure that the new integrated Clinical Operating Model reflects and maximise input into and delivery of this Place arrangement. The merged organisation will be the primary acute provider for services in both the West Sussex Place, and the Brighton and Hove Place. These are coterminous with the corresponding local authorities, and mirror the locality arrangements of both the Community and Mental Health providers for Sussex.
- 1.5.29 The integration of clinical services for the merged organisation has agreed objectives as follows;
- Ensuring where possible and appropriate emergency and secondary care services are arranged and led at a local hospital level to continue to build on the already strong local identity of the five main hospital sites
 - Recognising and aligning Tertiary services, leveraging the opportunities enabled by the 3Ts Hospital building programme, and centring them at the Royal Sussex County Hospital (RSCH) in Brighton. Although centred at the RSCH as the Major Trauma, Tertiary and Cancer centre, many of the services will continue delivering care in multiple locations across the merged Trust
 - Taking the opportunity to integrate currently duplicated services across WSHFT and BSUH where there are issues of critical mass, sustainability, or fragility (either capacity or workforce), to create more sustainable single services that are

better placed to redesign and transform care pathways and maximise use of resources

- Ensuring that the increasingly collaborative and virtual nature of very high volume support services, particularly diagnostic services, needs to be arranged in a way that maximises the benefits and interoperability of the scale of the new organisation.

1.5.30 The Boards have agreed a set of design principles through which the design of the future clinical service operating model will be undertaken as follows;

- Design will be inclusive and done through engagement and consultation with the existing clinical and managerial leads for the Divisions and specialties across both WSHFT and BSUH
- Design will take account of emerging themes from, and will not be confirmed until the outputs of, the Clinical Strategy in March 2021; ensuring that the form of the clinical operating model will support and compliment the priority service changes identified
- Design will organise services on the principle of bottom up, arranging the specialties and clinical support services/units into a series of service provision levels, which will enable mapping into appropriately scaled Directorate and Divisional structures
- Leadership of all clinical operating model resulting structures will follow the existing established principles underpinning the Trusts' triumvirate leadership model with a medical, nursing or AHP, and managerial leadership team.
- Design will reorganise services but adhere to the well-recognised and effective Divisional, Directorate, and Specialty level structural framework and units of leadership.
- Clinical Operational services are the 'spine' of the organisation, and corporate support services will orientate around these, where relevant providing a Business Partner support arrangement to supplement the triumvirate leadership.

1.5.31 Work has already begun at a clinical and operational level in specific clinical areas such as Paediatrics, Ophthalmology, ENT, Neurology and other smaller specialised areas to consider potential service configuration options. This will be developed further in Q4 of 2020/21 through a structured clinical and operational engagement and design process, based on a clinical alignment model, and will then be further tested through the Clinical Strategy development process in March 2021.

1.5.32 As outlined previously there is not an intention to change any of the existing Trusts' clinical operating models before the formal merger of the organisations on the 1st April 2021. This minimises the risks of change over the operationally busy Winter period, and concurrent with the Covid-19 and Restoration and Recovery priorities of the organisations.

- 1.5.33 A timeline for integration has been agreed with the formal consultation and change process being undertaken from July-September 2021, to achieve transition ahead of the winter and planning periods, with full transition to business as usual for the start of 2022/23.
- 1.5.34 The existing Trusts have already aligned and integrated some of the corporate functions through single points of leadership and shared Subject Matter Experts (SMEs). These functions are generally where there has been a benefit to ensure aligned and integrated capacity, shared processes, and best practice.
- 1.5.35 Executive portfolios have been refined and the development of the Corporate Operating Models and substructures in each portfolio is underway in line with agreed principles.
- 1.5.36 Senior structures for all corporate functions are expected to be available for consultation in mid-January 2021 with appointments made for 1st April 2021. This will allow senior post holders to support Q1 and Q2 delivery and the development of remaining Clinical and Corporate operating structures.

1.6 People and Organisational Development

- 1.6.1 The Board focus and importance placed on People and Organisational Culture is a recognised strength of both WSHFT and BSUH. Engaging the workforce is essential to ensuring both a positive transition to the new organisation and to set the scene for future success. In addition, it is important to celebrate the past achievements of each of the merging Trusts. It is recognised that a period of organisational change can be distracting for the workforce and to minimise this staff will be kept informed of progress, have an opportunity to express their views, and have access to appropriate support.
- 1.6.2 As the Trusts have been working together under the Management Contract for the last 3.5 years there is a large amount of commonality and understanding of both people and processes across the Trusts, which provides a robust and substantial base for organisational development in the new organisation.
- 1.6.3 The aspiration for the new organisation is defined in the People True North for which the agreed goal is to be the 'top Acute Trust in the country for Staff Engagement'. The corresponding Breakthrough Objective of 'an increase in the number of staff who would recommend the organisation as a place to work' further reinforces that objective.
- 1.6.4 As part of the preparation for merger the Trusts have extensively consulted with staff to understand their hopes, fears and aspirations for the new organisation. The outcome of this work are the six values for the new organisation; communication, respect, teamwork, compassion, professionalism and inclusion. In order to address the aspirations and align Trust values a People Plan for the new organisation is being developed.
- 1.6.5 The People Plan will be developed within a set of underpinning principles and under four themes;

- Theme 1: Leadership Capacity and Capability
 - Theme 2: Culture “I feel....”
 - Theme 3: Education and Development
 - Theme 4: Workforce Transformation.
- 1.6.6 Achievement against the People Plan will be tracked against the People True North and the corresponding Breakthrough Objective as well as standard workforce performance metrics.
- 1.6.7 A number of workforce technical and legal requirements must be put in place for the 1st April transaction date of which the most significant is planning for Transfer of Undertakings Protection of Employment (TUPE) which is the legal process by which BSUH workforce are transferred to WSHFT as the new employing organisation under the acquisition process. A plan for TUPE has been developed and will be communicated in partnership with trade union colleagues, to enable staff transfer on 1st April 2021.
- 1.6.8 Transitional consultation arrangements have been established in agreement with both WSHFT and BSUH Staff Side representatives. These arrangements include joint working to establish a change management strategy and process for any staff restructuring activity needed across both organisations before the merger date. Restructuring activities that happen after 1st April 2021 will follow similar principles but will be conducted under the new merged organisations Change Policy, which is being developed in partnership with Trade Union colleagues.
- 1.6.9 Reviews of terms and conditions and employment policies across the two existing Trusts have begun and no material significant issues have been identified. The Trusts will jointly agree the work that is required to be advanced prior to the 1st April 2021 transfer date, and that which can be undertaken by the new organisation post 1st April 2021.

1.7 Financial Strategy

- 1.7.1 The financial projections in the SOC were taken from the Medium Term Financial Plans (MTFP) developed by WSHFT and BSUH covering the period to 2023/24. These were based on the financial framework as it was at the time of the NHS Long Term Plan.
- 1.7.2 In order to ensure a consistent baseline from which to assess the incremental benefits of the merger and forecast projections for the Trusts, projections for the FBC are based on the financial framework and forecast assumptions as set out in the NHS Long Term Plan. The Trusts will undertake an impact assessment when the financial planning guidance for 2021/22 is available.
- 1.7.3 WSHFT has a stable financial position, delivering a recurrent surplus year on year over a number of years. The Trust has a sound relationship with commissioners and has maintained consistently low reference costs. The Trust received an ‘Outstanding’ rating for Use of Resources in 2019/20.

- 1.7.4 WSHFT has a track record of delivering financial performance and efficiency programmes at the scale and complexity that would be required if it was to continue to operate as a stand-alone Trust. The key financial challenge for the organisation is the emerging pressures from maintaining fragile services, and underlying workforce gaps. The Trust recognises sustained delivery of efficiencies above the national efficiency level will require increasing levels of transformational change to deliver the required level of reduction in the cost base.
- 1.7.5 BSUH has been on a journey of significant financial improvement for the past three years, exiting Financial Special Measures in 2018. The Trust had a medium financial proposition formally approved by NHSEI and has secured an agreement which delivers a recurrent break-even position from 2022/23.
- 1.7.6 With this agreement BSUH would be required to deliver efficiency of 3% in order to achieve a break-even position. This target is stretching but has been stress-tested by both the Trust and NHSEI and confirmed as deliverable.
- 1.7.7 The consolidated financial projection for WSHFT and BSUH as standalone organisations (counter-factual scenario) demonstrates the combined Trust financial performance to be a deficit of £3.6m in 2021/22 improving to a surplus of £2.5m by 2023/24.
- 1.7.8 The expected combined efficiency requirement between the two Trusts to deliver that position is £31m in 2021/22 increasing to £36m by 2025/26, the equivalent of approximately 2.6% efficiency per annum.
- 1.7.9 WSHFT has several years' experience of delivering recurrent quality-led efficiencies supported by a recognised best in class Programme Management Office.
- 1.7.10 This efficiency approach and process was implemented at BSUH in 2017 and has delivered over £70m of recurrent cost reduction over three years with continued concurrent delivery of successful programmes at WSHFT (totalling £50m over the same period). This robust and already aligned approach to quality led sustainable efficiency, is an important foundation for the financial sustainability of the new Trust and provides confidence that the merged organisation will be able to deliver the incremental benefits of the merger.
- 1.7.11 The existing efficiency requirement that exists in both Trusts over the next five financial years (2021/22 to 2025/26) is a combined baseline efficiency requirement of 2.37% to 2.85%. As part of the financial planning for the transaction both Trusts have been able to articulate appropriate efficiency opportunities over the next five years that are sufficient to deliver these efficiency requirements. These efficiencies have been risk-adjusted, and over-programming also provides headroom to mitigate any future project delivery challenges.
- 1.7.12 As a merged Trust there are significant benefits from ease and speed of implementation of quality led efficiencies, and an opportunity to go further and faster within existing opportunities. The work undertaken in preparation for the merger has also identified new potential opportunities created through the larger scale of the merged Trust.

1.7.13 Both Trusts have reviewed top level opportunities identified through the benefits workshops undertaken as part of the merger process, clinical strategy development, and internal discussions. This has identified the following key incremental benefits for the merger that could facilitate a range of financial opportunities as follows;

- Improved workforce resilience
- Increased repatriation of services
- Creation of low complexity high volume centres of excellence
- Corporate and back office opportunities
- IT and systems integration
- Medicines management, productivity and procurement gains.

1.7.14 The completion of the transaction and delivering the expected benefits is expected to incur a non-recurrent cost of £6.4m over three years and is based on resourcing plans for the merger and acquisition programme work streams. Of this £2.18m will be incurred in advance of the merger (before 1st April 2021) with £2.81m incurred in 2021/22 and £1.5m in 2022/23. The Trust is seeking financial support to cover the necessary contractual and organisational costs as well as a contribution towards the organisational and leadership development programme. The financial projections for the enlarged Trust assume external funding support is secured.

1.7.15 The incremental benefits of the merger will deliver recurrent financial benefits of £9.9m at 2025/26 pay and prices. Delivery of the incremental benefits increases the efficiency delivery of the enlarged Trust to 2.9% in 2021/22 and 3% in 2022/23 and 2023/24.

1.7.16 The counter-factual financial projections for both BSUH and WSHFT show a sustainable financial position. The merger and opportunities afforded from economies of scale and the resulting incremental financial benefits will give the new Trust the head-room to invest in developing more resilient services and improving patient experience and has been reflected in the financial model. Such investment would be aligned to the Clinical Strategy and be subject to separate business cases.

1.7.17 The forecast control total position for the merged organisation in 2021/22 is a small surplus of £0.1m. The £3.6m deficit forecast in the counterfactual has been mitigated through the delivery of £3.6m of incremental benefits.

1.7.18 As a result of delivering a balanced position in its first year, the public dividend capital (PDC) deficit support that would otherwise be required to offset the residual BSUH deficit is not required, which results in a reduction in the PDC dividend payable by the enlarged Trust.

1.7.19 Additional investment in resilience commences from the 2022/23 financial year and is contingent upon the delivery of incremental benefits. The surpluses in 2022/23 and 2023/24 are in line with the control total surplus trajectory set for WSHFT as part of the LTP.

1.7.20 The Trust has modelled a number of financial scenarios to test the impact of risks and the sensitivity of financial projections in response to these risks, and resulting variations in modelling assumptions. The following sensitivities were tested as part of that process;

- Security of income
- Workforce pressures
- Under-delivery of efficiencies
- Under-delivery of incremental benefits
- Excess transaction costs.

1.7.21 This is a residual level of risk that is reasonable to expect the merged Trust to manage as part of in-year financial management. A set of mitigations have been developed for each of the sensitivities.

1.8 Communication and Engagement

1.8.1 The planning and formation of the new merged Trust is supported by a comprehensive communications and engagement strategy and is underpinned by the following principles;

- Transparency
- Equality of opportunity as one organisation
- Patient First as the underpinning enabler
- Aligned engagement
- What does it mean for me?

1.8.2 The development of the benefits of the merger continues to inform the narrative during the period up to and after 1st April 2021. Key messages and a campaign strapline, 'Better for everyone' have been developed to help inform and engage audiences. A core set of materials has also been developed to underpin engagement activities.

1.8.3 Established communications channels are being used to engage with the widest possible audience to reassure, involve and excite staff, patients, partners and the public. Activities include engagement with partner universities, Staff side, Health and Social Care Committee (Brighton and Hove) and Health and Adult Social Care Committee (West Sussex) and local MPs.

1.8.4 During the development of the FBC activities have focused on seeking the views, via engagement events and an interactive large scale survey, of staff, patients and stakeholders. This has included gaining input on the naming of the new organisation, the development of the Clinical Strategy, the Vision and Values of the new

organisation, as well as hearing about the Trusts audiences' hopes and fears for the future in a merged organisation.

- 1.8.5 Nearly 4,000 people responded to the survey. The top values identified were communication, respect, teamwork, compassion, professionalism and inclusion and this feedback materially informed the Boards' confirmation of those for the new merged organisation.
- 1.8.6 The top responses to understanding and shaping the new Trust's vision, by strategic True North theme, were caring staff and feeling safe, developing a resilient workforce, innovation and greater use of technology, supportive colleagues and managers, professional development and education, clinical excellence and a learning culture, and collaborative working and sharing best practice.
- 1.8.7 Health and Social Care partners have been supportive of the proposal to merge along with MPs from across West Sussex and Brighton and Hove. They welcomed assurances provided on high profile services such as A&E and Maternity as part of the work on development of the clinical strategy, and the continued focus and investment in each of the main local hospitals. The Health and Social Care Committee (Brighton and Hove) and Health and Adult Social Care Committee (West Sussex) have been assured that the merger process and clinical strategy are being developed with appropriate engagement and involvement from staff, partners and the public.

1.9 Managing the Transaction and Integration

- 1.9.1 The preferred form of transaction is an acquisition under Section 56A of the NHS Act 2006 of BSUH by WSHFT into a single NHS Foundation Trust, which has University teaching hospital status with effect from 1st April 2021.
- 1.9.2 The creation of a new successful organisation by merger requires both significant planning and delivery resource. Alongside planning and implementation of the merger the Trusts recognise the current NHS wide challenges, and face a complex agenda including restoration of services in the context of challenging waiting times following the impact of the first wave of the Covid-19 pandemic, and the continuing of further COVID-19 outbreaks. Similarly, in addition to this and the BAU, the continued delivery of the 3Ts capital hospital build programme is a significant programme of work.
- 1.9.3 As previously outlined WSHFT and BSUH are already working together within a Management Contract arrangement which means a significant amount of partnership and integration required to form a new Trust has already occurred. This position provides the baseline for the approach and work needed to form and develop the new organisation.
- 1.9.4 WSHFT has extensive experience of deploying best practice end-to-end programme management methodologies to all major programmes of work. Both WSHFT and BSUH have well-established Programme Management Offices that share the same single points of Executive and Director level leadership through the Group Director of Efficiency and Delivery. The approach to the merger programme will continue to

follow established Trust practices, will learn from others, and will ensure Board assurance and programme oversight is in place throughout the lifetime of the programme.

- 1.9.5 The programme is overseen by the Merger & Acquisition (M&A) Steering Group chaired by the Chief Executive and reporting directly to both Trust Boards. The Senior Responsible Officer (SRO) for the programme is the Chief Delivery and Strategy Officer (Executive member of both WSHFT and BSUH Trust Boards).
- 1.9.6 The programme is designed to reflect the three stages of work needed to form and effectively run a merged organisation; transaction and approval, organisational readiness, and post transaction integration. The programme is managed via three Delivery Assurance Groups managing eight work streams.
- 1.9.7 The Trusts have established a joint M&A Programme Management Office (PMO) comprised of experienced staff seconded from within both Trusts PMOs. The programme has appointed subject matter experts where required (both internal and external) and this dedicated resource will be available over the duration of the merger programme. Operational and clinical teams are not impacted by resourcing of the programme and key corporate roles are backfilled. The PMO manage the transaction risk management process with an Executive owned risk register in place.
- 1.9.8 Through the progression of one integrated programme the M&A PMO will manage the transition from transaction approval and Day 1 readiness into Post Transaction Integration Plan delivery and over time into business as usual.
- 1.9.9 The role of the Post Transaction Integration Plan (PTIP) is to achieve the Target Operating Model (TOM) including both clinical and corporate operating models, and establish the new Trust's business as usual at the safest opportunity. The PTIP will set out the changes and planning, for processes and governance arrangements that will need to be developed and implemented to ensure the Trusts achieve robust integration. These will include plans for Day 1 readiness and integration after 1st April 2021.
- 1.9.10 The TOM will be fully developed during Q3 and Q4 2020/21, and it is planned that the required integration will be substantially completed within six months of go-live providing a firm base for delivery of the Trusts 2021/22 Operational Plan. The remaining embedding and alignment of integration will be achieved by the end of Q4 2021/22.
- 1.9.11 The Trusts have completed an Equality Impact Assessment (EIA) to assess whether the merger has an impact on any protected groups. The EIA has not identified any negative impact on groups with protected characteristics. Positive impacts have been identified for disability, age, sexual orientation and gender reassignment.
- 1.9.12 As part of the merger programme, the Trusts have considered whether there is a basis for referring the merger to the Competition and Market Authority (CMA) and have concluded that the proposed transaction will not lead to a substantial lessening of competition. The Trusts have not therefore referred the proposed transaction to the CMA as part of the overall process.

- 1.9.13 Heads of Terms for the Transaction Agreement will be agreed between both Trusts and the NHSEI at the point of FBC approval, ahead of commencing drafting the full Transaction Agreement.
- 1.9.14 In response to the Trusts' SOC, NHSEI agreed that, given the current nature of the management arrangements between WSHFT and BSUH and the confidence in the leadership team, they 'will not expect to review due diligence or risk management procedures' of the merger. Despite this, as good practice and to ensure good visibility and mitigation of any potential risks, the Trusts have completed a subsequent due diligence process in addition to the previous detailed work undertaken as part of the original Management Contract process. This has provided the Boards with further internal assurance in this context.
- 1.9.15 The subsequent due diligence process refreshed the previous detailed undertaking completed by KPMG in 2017, and the experience of joint working and shared leadership between the Trusts over the duration of the Management Contract. This process identified a small number of areas for internal follow-up but not formal review, and these recommendations are being taken forward. Ten areas were identified for further more detail internal review and assurance and internal subject matter experts have been assigned for this work.
- 1.9.16 The subsequent due diligence assessment for the merger also led to an external review being proposed for very specific areas around contracts and properties that could be viewed as potentially more material for the WSHFT Board in the context of an acquisition transaction. An external organisation has been commissioned and is in the process of reviewing these with no current indications of significant concerns identified.
- 1.9.17 WSHFT and BSUH have already established a common risk management approach and have developed a dynamic Board Assurance Framework (BAF). WSHFT and BSUH have a clearly defined risk appetite statement which is shared and consistent. These statements were developed in September 2018 and reviewed in March 2019, with an additional review of the clinical risk appetite statement in October 2020 as the two Trusts moved into the restoration phase following the first COVID-19 peak. The Board of the new merged Trust will periodically review its appetite to and attitude to risk, updating where appropriate.
- 1.9.18 To ensure all relevant risks related to the merger are identified the following have been reviewed;
- All BAF entries for both organisations
 - The M&A programme Risk Register
 - Risks identified within other merger business cases shared with the Trusts
 - Challenge sessions with key Executive Directors to collate the risk universe associated with the acquisition.
- 1.9.19 The work was supported by independent external facilitators KPMG, and the output of this work was evaluated by the Boards to consider the connectivity of risks

between the Patient First domains. This identified the high level of connectivity of the risks centred on the People domain, which has helped shape the Trusts' approach to integration planning, and the development of the new organisation's Leadership, Culture and Development programme.

1.9.20 It was confirmed through the process that a number of the current risks will not be significantly impacted by the merger and would remain under review under BAU process. Where it was determined that a risk could be impacted by the merger then this has been thoroughly reviewed to gauge both the impact at merger date and the impact during the first year of integration. There is confidence that mitigation plans will mean only two risks, after twelve months of integration, would remain elevated from the pre-merger scores. These two risks are as follows;

- Developing and sustaining the leadership and organisational capability and capacity
- Effecting cultural change to involve and engage staff in a way the leads to continuous improvements.

1.9.21 Following the merger, the new Board will continue to apply the sound risk management processes it has developed and embedded in both WHSFT and BSUH to monitor the BAF as a result of the merger and integration.

1.10 Programme Timeline

1.10.1 The Trusts have agreed a reduced timeline for merger with NHSEI to reflect the existing Management Contract arrangements, WSHFT's track record, and specifically the Well Led Outstanding rating. Subject to approvals the new Trust will come into operation on 1st April 2021.

1.10.2 In order to achieve continued safe and effective operation from Day 1 the Trusts have identified a number of statutory requirements and a small number of discretionary changes to be made before 1st April 2021. These have robust delivery plans in place and include and updated CQC and NHS Resolution registration, a revised Council of Governors and minimum membership achieved, a plan to TUPE BSUH staff to WSHFT, a new Board and Committee structure from 1st April 2021, and a new Executive structure in place in shadow form from Q4 2020/21.

1.10.3 In addition, financial system changes including the transition to a single financial ledger, the refresh and integration of the Trusts' quality and performance reporting processes, refreshed IT infrastructure enabling a level of day 1 interoperability, where appropriate rebranding of buildings and communications to patients, an integration of a complete command and control structure to ensure the effective Emergency Preparedness, Resilience and Response delivery for the new single Trust.

1.10.4 Planning is underway to enact the formal transfer of staff from BSUH to WSHFT as part of TUPE arrangements, to enable all staff to work under the new Trust as of 1st April 2021.

- 1.10.5 The Boards of WSHFT and BSUH have taken the joint decision to only change what has to be changed in advance of 1st April 2021 in order to mitigate the timing and operational risks over the winter period. This means that a significant amount of integration will be deferred into the first year of operation for the new Trust. This will be clearly set out in the PTIP.
- 1.10.6 The SOC and the FBC have been developed in accordance with the 2017 NHSI Transaction Guidance set out by NHSEI (2017)¹. The guidance sets out a three stage process as follows;
- **Stage 1:** Approval of the SOC by the Trusts' Boards in July 2020 and the subsequent approval of the case by NHSEI in September 2020 (Complete)
 - **Stage 2:** Formal submission of the FBC and supporting documentation in December 2020 for review by NHSEI, leading to release of a recommended transaction risk rating
 - **Stage 3:** Formal request and approval of the transaction in March 2021
- 1.10.7 The submission of this FBC initiates the Stage 2 review process. The process has been agreed with NSHEI and is tailored to this specific transaction. Following the submission of the FBC a 'kick off' meeting followed by more detailed work stream meetings will be held between NHSEI and Trust representatives. In January 2021 NHSEI will hold direct discussions with the ICS and local Clinical Commissioning Groups (CCGs), the Care Quality Commission (CQC), and the external Reporting Accountant for Financial Reporting Procedures.
- 1.10.8 In February 2021 a Board-to-Board meeting between the acquiring WSHFT Trust Board and the NHS Improvement Board will take place. Prior to this meeting WSHFT will complete a number of self-certifications, statements and memoranda. Following the Board-to-Board NHSEI will issue a transaction risk rating and the Trusts will proceed to Stage 3 with a risk rating of green or amber.
- 1.10.9 Stage 3 will start in March 2021 and complete in time for merger completion on 31st March 2021. Stage 3 includes a number of formal steps including WSHFT Board and Council of Governors approval, final application to the DHSC, letter of support from Secretary of State, NHSEI granting formal application, and receipt of Grant of Acquisition confirmed by WSHFT Board.

1.11 Conclusion and Recommendations

- 1.11.1 Following three years of formalised joint working enabled through a Management Contract, both BSUH and WSHFT have made significant improvements and are both stable well performing Trusts. This includes shared leadership at Board level and a well aligned single strategic methodology and framework for delivery and improvement through the Trusts' Patient First approach.
- 1.11.2 There is a strong national policy, and local Sussex context to support integration of services, only further increased by the ambitions of both the Trusts. Linked to this

¹ https://improvement.nhs.uk/documents/1983/Transactions_guidance_2017_Final.pdf

both Trusts continue to face the same sustainability pressures in the long term driven by fragile and sometimes fragmented services, workforce and financial constraints.

1.11.3 The Trusts need to take a new approach to meeting these challenges and the preferred approach is the merger of the two Trusts through the acquisition of BSUH by WSFHT to form a new NHS Foundation Trust.

1.11.4 This FBC has outlined the compelling case for change and demonstrates the assessment and planning required to ensure the merged organisation will build on the successes of both WSFHT and BSUH, and be set up to deliver a solid range of benefits that will advantage patients, staff and the Trusts as they come together as one new organisation for the future.

2 Introduction and Background

2.1 Purpose of the Full Business Case

- 2.1.1 The purpose of this Full Business Case (FBC) is to set out the context and rationale for the merger via acquisition of Brighton and Sussex University Hospital NHS Trust (BSUH) and Western Sussex Hospitals NHS Foundation Trust (WSHFT) into a single NHS Foundation Trust.
- 2.1.2 The FBC builds on the Strategic Outline Case (SOC) approved by both Boards in July 2020 and approved by NHSEI in September 2020.
- 2.1.3 The FBC has been developed in parallel with other work streams designed to assess and plan for the delivery of the changes required for a success merger of the organisations, and meet the formal Stage 2 requirements as stipulated by the Transaction approvals process.
- 2.1.4 This merger by acquisition differs from most other mergers of NHS organisations due to the significant close working relationship that already exists between WSHFT and BSUH over the last 3.5 years under a Management Contract. A shared leadership team including Chair, Chief Executive, most Board members, Executive Directors and Group Directors have been running both Trusts for this period, bringing a joint approach to governance, leadership and improvement during this time. This has translated into significant improvements at BSUH in the quality of care, the culture of the organisation and the financial position.
- 2.1.5 These strong foundations and the starting position of the relationship have informed the approach to all aspects of planning and implementing the transaction, and the content of this FBC. This has been recognised in the feedback given to the Trusts by NHSEI in their letter in response to the Trusts' SOC.

2.2 Background to the Acquisition

- 2.2.1 BSUH was in a significantly challenged position in 2017 having been placed in double special measures for quality and finance and with a culture significantly impacted by challenging race issues, frequent leadership change and failed turnaround regimes. In contrast, WSHFT had recently been rated by the CQC as 'Outstanding' and was on a trajectory to becoming a lean organisation, underpinned by Patient First, delivering consistently high performance against the Regulatory and Constitutional Standards.
- 2.2.2 At that point, the 'burning platform' drivers that often precipitate formal collaboration between organisations and some mergers were in evidence, but the conditions were not right for merger. Specifically, given the Board of WSHFT could not at that point be assured that there would not be an adverse impact as a result of BSUH's financial and quality issues, were the organisations to merge. Any formal process at that point would have also been distracting, and taken the focus off the improvements needed.
- 2.2.3 A formal due diligence exercise was undertaken by KMPG and WSHFT which provided a thorough assessment of the risk and improvement opportunity at BSUH.

As a result, and with NHSEI support, the Trusts entered into a Management Contract that set five specific objectives to be achieved over three years at BSUH (Exit Quality Special Measures, Exit Financial Special Measures, improve the culture of the organisation, improve A&E performance, and continue the delivery the 3Ts hospital build programme).

2.2.4 The Management Contract was designed as an interim arrangement for an initial period of three years and commenced on 1st April 2017. On this date the Chief Executive and Chair of WSHFT became the Chief Executive and Chair of BSUH and WSHFT took responsibility for the day-to-day operational management of BSUH. WSHFT and the BSUH established a shared leadership team and substantively shared Board membership, although retained separate Boards. As well as the commonality between the Boards during the period of the Management Contract the Trusts have also aligned a number of their governance, risk management and internal control processes, including a common recovery and restoration oversight group, common risk appetite statement, a consistent BAF, a set of common information governance processes and a common internal audit provider. In addition, over the last 3.5 years the Management Contract has enabled the following;

- Establishment of Group director functions across corporate areas;
 - Strategy & Planning
 - Efficiency and Programme Management
 - Performance and Information
 - Continuous Improvement
 - Capital Development & Property
 - IM&T
 - Communications
 - Company Secretariat
- Sharing of processes and capabilities including support to establish and implement the Patient First continuous improvement methodology
- Establishment of integrated group governance for key priority areas such as the Covid-19 incident response
- Increased operation with one voice at a system level to support the development of the Integrated Care System (ICS).

2.2.5 The utilisation of a Management Contract and the absence of the organisational upheaval that can be created by mergers allowed the WSHFT Board to immediately focus its leadership capability and capacity on quality-led sustainable improvement of safety, performance and culture at BSUH, whilst continuing to improve at WSHFT.

- 2.2.6 After three years both organisations are able, evidenced through their respective CQC ratings, to demonstrate improvement. The pace of cultural change and the quality and financial improvement at BSUH has exceeded expectations. The risk to WSHFT performance has not materialised and in 2019 the Trust became the first acute Trust in England to achieve a CQC rating of Outstanding across all domains.
- 2.2.7 The Management Contract was the right vehicle to deliver the specific objectives at the time but the Boards are clear that it does not offer a way of working on a sustainable basis for the future. It does not provide sufficient organisational certainty from which to plan and there are inherent challenges to the delivery of service integration in line with the ambition set in the NHS Long Term Plan and by the Sussex ICS.
- 2.2.8 Recognising the benefits of working together and the requirement to propose a sustainable arrangement for the two organisations moving forwards, the Management Contract was extended by a year to allow the Boards time to assess the options and develop the best organisational arrangement for the future. The Management Contract will end in March 2021.

2.3 WSHFT and BSUH Future Organisational Arrangements SOC

- 2.3.1 The Future Organisational Arrangements Strategic Outline Case (SOC) was developed in early 2020 and approved by WSHFT and BSUH Boards on 2nd July 2020.
- 2.3.2 The SOC set out the case for change in the context of the Trusts' current circumstances, strategic drivers and challenges. The process is described fully in the SOC but for the purpose of this FBC the process of assessing potential options for the future of the organisations began with the formulation of the following shared vision and common statement of purpose by the Boards;

"We will work together to put patients first, empowering our people to make improvements at a scale and pace not possible before. We will share expertise across the organisations and develop new roles and opportunities to retain and recruit the most talented people.

We will develop our Patient First capability to provide our people with the training, tools and freedom to work out what's possible and the skills and support to make change happen. Our collective expertise will enable sustainable improvements and support innovation, giving patients timely access to outstanding healthcare throughout their lives.

We take our wider responsibilities seriously and will work to become environmentally friendly and carbon neutral. We will also work with other parts of the local NHS, helping ensure patients move seamlessly between primary, community and secondary care."

- 2.3.3 The Boards then developed a set of strategic aims, shaped by the NHS Long Term Plan and aligned to Patient First.

Table 2.1 Strategic Aims of Integrated Working

Patient First Domain	Strategic Aims
Patient	Maximise the benefits of Patient First as a continuous improvement methodology and operating model by sharing best practice and improvement capability for the good of our patients
Sustainability	Use our collective resources more effectively by leveraging strategic opportunities (including those relating to capital and digitalisation) and optimising corporate support services to support sustainability and contribute to the management of risk
People	Work at scale to implement creative and flexible workforce models aligned to the transformation of services by developing our People Plan, leadership programmes and the development of innovative roles, recruitment and training, to retain staff.
Quality	Adopt best practice in the delivery of clinical / patient care by standardising clinical practice, optimising clinical support services, and realising the benefits of scale to transform service provision and the use of service capacity.
Systems & Partnerships	Act collectively to build strong system-wide partnerships through the ICS to support delivery of improvements in population health, delivery of Acute care, and the development of our organisations.

2.3.4 The Strategic Case identified the following four high level organisational options.

- **Management Contract** – creating a new management contract agreement continuing with different Boards managing each statutory organisation with a number of shared leadership roles
- **Separate Organisations** – conclusion of the Management Contract and reverting to different Boards managing each statutory organisation
- **Group Model** – Boards in Common (Group model but retaining separate statutory organisations with shared Group functions)
- **Single Organisation (Merger & Acquisition)** – creating a single Board managing a single organisation formed through a significant transaction process.

2.3.5 Ten criteria were used to test the ability of each option to deliver the Trusts' strategy and opportunities for patient benefit, and were informed by best practice considerations as well as local assessment.

2.3.6 The individual criteria assessments identified the preference for a Single Organisation (Merger & Acquisition) as the option most able to deliver the benefits of the strategic aims, but deliverable against the agreed implementation criteria. The output summary of the options assessment is shown below and demonstrates the Single Organisation (Merger & Acquisition) as the preferred option.

Table 2.2 Option Assessment Criteria and Output

Test	Theme	Specific Question in Relation to Collaborative Opportunities	Separate Organisations	Management Contract	Group Model	M&A
Our Shared True North Strategic Aims	Patient	Maximises Patient First to ensure best standardised improvement and management systems that benefits our patients	1.0	1.5	2.5	3.0
	Sustainability	Using our collective resources more effectively, leveraging strategic opportunities and optimising corporate support	1.0	1.0	2.0	3.0
	People	Creative and Flexible Workforce Models at scale aligned to the transformation of delivery of services	1.0	2.0	2.0	2.5
	Quality	Optimises clinical practice, realising benefits of scale to transform services, and support capacity and pt outcomes	1.0	1.0	2.0	3.0
	Systems & Partnerships	Builds strong system-wide partnerships, including ICS and ICP, supporting delivery of population health & Acute care	1.0	1.5	2.5	2.5
	Averaged Score (Strategic Aims)			1.0	1.4	2.2
Implementation Tests	Is it allowed?	Allowable according to the NHS Act 2006, Foundation CoC, and meets the Model Core Constitution	Pass	Pass	Pass	Pass
	Exhibits desirable characteristics?	Fit and Influence, Long Term Plan, Scalability and Flexibility, Strategic and Local Delivery	1.0	1.0	2.5	3.0
	Makes governance leaner and easier?	Removes the complexity / challenges of multiple sub-committee and management arrangements, with clear lines of accountability	3.0	2.0	1.0	3.0
	Transaction costs	Relative costs of options including implementation costs and recurrent costs	2.0	3.0	2.0	1.0
	Implementation difficulty	Relative implementation complexity, effort and timelines for successful move towards identified organisational form and model	2.0	3.0	1.0	2.0
	Averaged Score (Implementation Tests)			2.0	2.3	1.6
Overall Score			1.5	1.8	1.9	2.5

2.3.7 Clear qualitative themes were also identified throughout the options assessment in terms of improved future certainty, strategic coherence, breaking down barriers, access to opportunities and benefits of scale, integrated education and single clinical audit and research strategy. These themes in turn provided a clear rationale for Merger & Acquisition (M&A) as the preferred option overall.

2.3.8 Furthermore, the SOC detailed that although the Management Contract has been extended to March 2021 the Boards had agreed not seek a further extension, and in the absence of an alternative model (Do Nothing), the cessation of the Management Contract means the partnership between the two Trusts will end. Each Trust would then be required to establish governance in a more conventional way and would no longer share Executive or Non-Executive membership.

2.3.9 In summary the options analysis demonstrated a single organisation formed through a transaction process as a clear preferred option.

2.4 Feedback from NHSEI on the Strategic Case

2.4.1 Formal feedback on the Strategic Case was received from NHSEI in September 2020 (Appendix A). The feedback notes the strengths of the Strategic Case including the following key areas of assurance;

- The strategic rationale is considered clear and well supported by stakeholders and the local system
- WSHFT has strong track record on quality and financial delivery within a well embedded quality improvement approach and well regarded leadership team

- Major improvements have been delivered at BSUH under the Management Contact over the last three and half years
- WSHFT's own track record, the history of shared leadership, and existing close working between the Trusts, including the successful delivery of improvement at BSUH provides sufficient assurance that NSHEI can significantly reduce the scope of their Full Business Case review.

2.4.2 Alongside these positives NHSEI identified the following key considerations to be addressed further as part of the development of this FBC;

- **Capacity and competing priorities:** Articulation of how implementation is planned to deliver the strategic aims of the transaction while minimising potential disruption to competing strategic priorities, specifically post Covid-19 restoration and recovery; management of potential further spikes in Covid-19 admissions, renegotiation and delivery of 3Ts capital programme, and the potential transaction with Queen Victoria Hospital Foundation Trust
- **Clinical strategy and patient benefits:** Ensuring primary focus for patient benefits in the FBC is on the detailed planning to support initial priority changes, to be identified within a broader review of the clinical framework, progress on the clinical strategy and the planned steps to identify and deliver further patient benefits.
- **Transaction funding and financial uncertainty:** Confirmation that the transaction funding arrangements will be finalised prior to a final risk rating at the FBC Stage 2 of the approvals process.
- **Queen Victoria Hospital Foundation Trust:** Consideration that any future transaction with QVHFT is clearly separate to this case and transaction, on the understanding that any potential acquisition is not planned to take place before 1st October 2021.

2.4.3 As a result of the strengths of the proposal and considerations, a significantly reduced scope of works was proposed by NHSEI and agreed by the Trusts.

2.4.4 Despite some items of assurance not being formally required as part of this reduced approvals scope, the Trusts have agreed to progress some where it was considered beneficial. Examples include completion of a due diligence review, Long-Term Financial Model and review of Quality Governance.

2.4.5 This FBC has therefore been developed in alignment with the NHSEI feedback and the agreed reduced scope of works.

2.5 Relationship with Queen Victoria Hospital NHS Foundation Trust

2.5.1 The SOC considered the position of QVHFT as potentially part of the scope of any transaction. At the time discussions regarding the future relationship were

progressing between WSHFT and BSUH, a due diligence process for QVHFT was being undertaken as part of a potential formal management contract with WSHFT.

2.5.2 Based on external assurance undertaken by KPMG, the outcome of the due diligence process was that a management contract between WSHFT and QVHFT was not considered the preferred arrangement.

2.5.3 As a result, the future relationship with QVHFT is now separate to the future organisational arrangements between WSHFT and BSUH, and is not part of this business case for the proposed new single organisation. A separate process regarding QVHFT will be progressed, and this is not expected to result in any changes before October 2021 at the earliest.

2.6 Development of the Full Business Case

2.6.1 This FBC has been developed at pace since the approval of the Strategic Case by the Trusts Boards in July 2020.

2.6.2 The merger and acquisition programme is overseen by the Merger & Acquisition Steering Group. The purpose of the Steering Group is to assure planning and delivery of the process, and provide steering on strategic issues for M&A transactions including the development of the FBC.

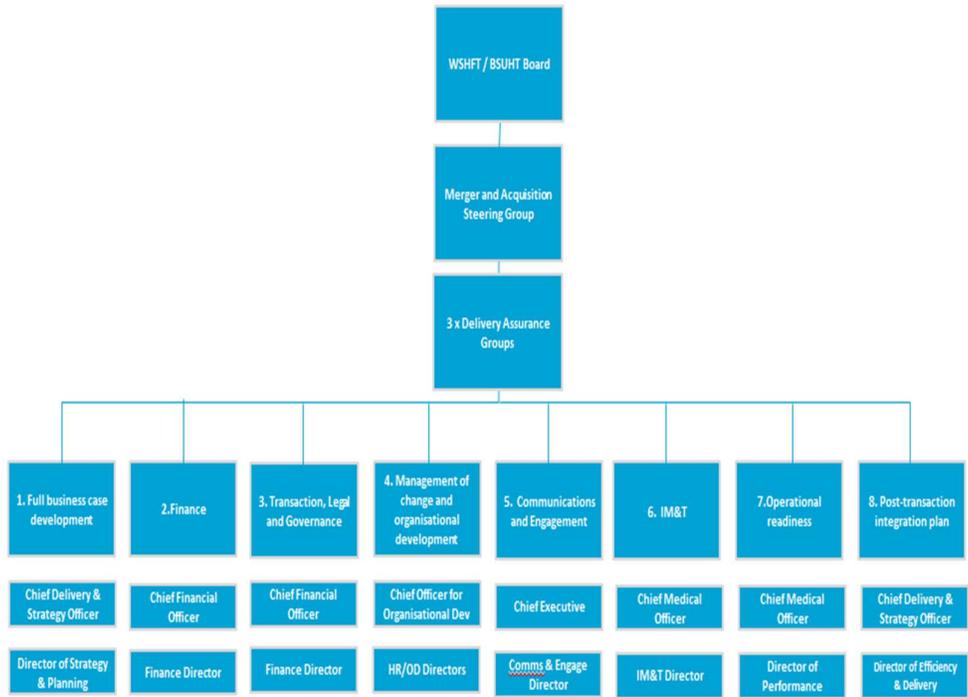
2.6.3 The programme has been designed around three Delivery Assurance Groups (DAGs), reporting to the M&A Steering Group, overseeing eight individual work streams and the interdependencies between them. The three DAGs are as follows;

- Transaction and Approvals Delivery Assurance
- Organisational Readiness Delivery Assurance
- Post transaction Integration Delivery Assurance.

2.6.4 The development of the FBC is within the Transactions and Approvals delivery group. The programme governance structure is shown below and shows the eight work streams along with the Executive lead and the respective Senior Responsible Officer (SRO).

2.6.5 The Executive Director responsible for the Full Business Case is the Chief Delivery and Strategy Officer, and the SRO is the Group Director of Strategy and Planning.

Figure 2.1 Mergers and Acquisition Programme Governance Framework



3 National and Local Context

3.1 Introduction

- 3.1.1 WSHFT and BSUH are Sussex Acute Trusts working together within a Management Contract arrangement. Between them they operate five acute hospitals and deliver multiple services in other locations, and together employ over 16,000 staff (wte). Along with other Sussex Trusts they operate within the Sussex Integrated Care System and work closely with partner health and social care organisations.
- 3.1.2 The long-term vision of the NHS nationally and locally is dependent on NHS organisations working collaboratively to deliver service transformation and create sustainable services.
- 3.1.3 The Covid-19 pandemic and the impact on services will have a lasting impact that will require careful future navigation and will continue to impact service delivery for the foreseeable future.
- 3.1.4 This section of the FBC sets out the following context in relation to the proposed merger;
- National Policy and Context
 - Sussex Regional Context
 - Organisational Context – WSHFT
 - Organisational Context – BSUH
 - Patient First strategy and True North – WSHFT and BSUH.

3.2 National Policy and Context

- 3.2.1 The NHS Long Term Plan sets out a national path for transformation across health systems in England. It describes the breaking down of traditional barriers between care and institutions to support improved services for patients. The plan states;
- “As we move to an NHS which is deeply interconnected, leaders in all parts of the NHS will be encouraged to support one another across and beyond their organisations. This will be especially the case for thriving, successful organisations which will increasingly be asked to support their neighbours develop capabilities and build resilience.”²*
- 3.2.2 The NHS Long Term Plan was a response to the fragmented and potentially unsustainable nature of current health and social care provision in England, with significant variation in outcomes, quality, and patient experience across localities and regions. This is in the context of significant increases in service demand, significantly constrained finances, workforce shortages, and population health need inequalities.

² NHSI/E (2019) *NHS Long Term Plan*, <https://www.longtermplan.nhs.uk/wp-content/uploads/2019/08/nhs-long-term-plan-version-1.2.pdf>, para 7.10

3.2.3 Enshrined within the NHS Long Term Plan is the development of ICSs (Integrated Care Systems) with the aim for these to be established covering the whole of England by April 2021. The underpinning principle is that ICSs will make shared decisions about how to use resources, design services and improve population health through driving increased collaboration between constituent provider and commissioner partners. To support this a proactive approach to supporting collaborative approaches between Trusts nationally was advocated³.

3.3 Sussex Regional Context

3.3.1 In Sussex, the Sussex Health and Care Partnership Strategic Delivery Plan: Response to the NHS Long Term Plan (the Delivery Plan), has translated this national intent to the Sussex system context. In April 2020, the Sussex Health and Care Partnership transitioned into an authorised ICS, with the intent to develop the Delivery Plan into the 'on the ground' delivery of services which enable new ways for working across organisations that best suit the needs of the populations in a sustainable way⁴.

3.3.2 The Delivery Plan identifies the formation of the Sussex Acute Collaborative Network (SACN), chaired by the WSHFT/BSUH Chief Executive Officer, as one of the key programmes to facilitate system-wide collaboration and transformation across Sussex. The aims of the SACN are as follows;

- Develop and strengthen the strategic partnership between acute provider organisations
- Ensure ongoing collaborative working in the development and delivery of sustainable models of care
- Oversee, coordinate and help a programme of work that requires input from across the system and aligns with the strategic priorities of the ICS

3.3.3 Through the SACN it has been clear there are a number of unsustainable services across providers in Sussex, with the initial priority areas agreed including Ear, Nose and Throat (ENT), Dermatology, and Adult Burns services. Further work streams will be identified where collaboration between acute providers within Sussex could deliver improvements in services for the Sussex population, support providers' individual clinical and financial sustainability and that of the ICS.

3.3.4 Nationally, regionally, and locally the impact of the Covid-19 pandemic has fundamentally increased the delivery and sustainability challenges facing all NHS organisations and providers. The response required significant collaboration, and cross organisational service planning, particularly highlighting the need for joined up service reconfiguration and mutual support. Restoration and Recovery of activity to

³ NHSI/E (2019) *NHS Long Term Plan*, <https://www.longtermplan.nhs.uk/wp-content/uploads/2019/08/nhs-long-term-plan-version-1.2.pdf>, para 1.53

⁴ Sussex Health and Care Partnership (2019) *Strategic Delivery Plan: Response to the NHS Long Term Plan*, <https://www.seshealthandcare.org.uk/wp-content/uploads/2019/10/191028-DRAFT-Sussex-Strategy-Delivery-plan-v17.pdf>

reduce the significant waiting lists as a result of the pandemic will only be successful through a fundamental shift in joint working and delivery of acute and other services across the Sussex region.

3.4 WSHFT - Organisational Context

- 3.4.1 WSHFT serves a population of around 450,000 people across a catchment area covering most of West Sussex. The Trust runs three hospitals; St. Richard’s Hospital in Chichester, Southlands Hospital in Shoreham-by-Sea, and Worthing Hospital in the centre of Worthing.
- 3.4.2 The Trust became an NHS Foundation Trust on 1 July 2013, just over four years after the organisation was created by a merger of the Royal West Sussex and Worthing and Southlands Hospitals NHS Trusts.
- 3.4.3 The Trust provides a full range of district general hospital services on the two acute sites at Worthing and Chichester. St Richard’s and Worthing hospitals provide 24-hour A&E, acute medical care, maternity and children’s services, while Southlands specialises in day-case procedures, diagnostics, outpatient appointments and a comprehensive ophthalmology service.
- 3.4.4 In addition to the main three hospitals, the Trust provides a range of services in other community settings, including Bognor War Memorial Hospital, Crawley Hospital, community health centres, GP surgeries, and sexual health clinics.
- 3.4.5 In 2019/20, the Trust delivered the following high level activity;

Figure 3.1 WSHFT Activity

In 2019/20



- 3.4.6 WSHFT employs nearly 7,000 staff (wte) in a range of different roles across the organisation. Each and every member of staff works to ensure patients receive excellent quality care.

Table 3.1 WSHFT Average Number of Employees (WTE)

	Permanent Number	Other* Number	2019/20 Total Number
Medical and dental	775		775
Ambulance staff			
Administration and estates	1,732		1,732
Healthcare assistants and other supporting staff	810		810
Nursing, midwifery and health visiting staff	1,731		1,731
Scientific, therapeutic and technical staff	983		983
Healthcare and science staff			
Agency and contract staff		106	106
Bank staff		501	501
Total Average Numbers	6,029	607	6,636

Source: WSHFT Annual Reports Accounts 2019/20

* Internal staff bank

- 3.4.7 As an NHS Foundation Trust the Trust benefits from a membership of more than 14,000 staff, patients and members of the community, who are able to help guide future plans and priorities through a range of channels including the Council of Governors.
- 3.4.8 In 2016 WSHFT was rated as 'Outstanding' by the Care Quality Commission (CQC). At the time it was one of only three acute Trusts in the country to receive the health watchdog's highest rating by the Care Quality Commission.
- 3.4.9 Over the last four years WSHFT has continued to perform strongly in all domains, and in 2019 WSHFT was re-inspected by the CQC, becoming the first NHS non-specialist acute Trust to achieve an Outstanding CQC rating in all domains including 'Well Led' and 'Use of Resources'⁵. The current CQC rating for WSHFT is provided in the table below.

Figure 3.2 WSHFT CQC Rating

Overall trust quality rating	Outstanding ☆
Are services safe?	Outstanding ☆
Are services effective?	Outstanding ☆
Are services caring?	Outstanding ☆
Are services responsive?	Outstanding ☆
Are services well-led?	Outstanding ☆
Are resources used productively?	Outstanding ☆
Combined quality and resource rating	Outstanding ☆

3.5 BSUH - Organisational Context

⁵ CQC (2019) <https://www.cqc.org.uk/provider/RYR>

- 3.5.1 BSUH is an acute teaching hospital working across two main sites the Royal Sussex County Hospital in Brighton and the Princess Royal Hospital in Haywards Heath. The Brighton campus includes the Royal Alexandra Children’s Hospital and the Sussex Eye Hospital and is also the Major Trauma Centre and Cancer Centre for the region.
- 3.5.2 The Trust provides district general hospital services to the local populations in and around Brighton and Hove, Mid Sussex and the western part of East Sussex and more specialised and tertiary services for patients across Sussex and the wider South East region of England.
- 3.5.3 Both hospitals provide many of the same acute services for their local populations. In addition, the Princess Royal Hospital is the centre for elective surgery and the Royal Sussex County Hospital is the centre for emergency and tertiary care. The specialised and tertiary services include neurosciences, arterial vascular surgery, neonatology, paediatrics, cardiac, cancer, renal, infectious diseases and HIV medicine. In addition to the two main hospitals sites services are provided at Brighton General Hospital, Hove Polyclinic, Lewes Victoria Hospital, the Park Centre for Breast Care, and renal dialysis satellite services in Bexhill, Eastbourne, Worthing and Crawley.
- 3.5.4 Central to the Trusts ambition is its role as an academic centre, a provider of high quality teaching, and a host hospital for cutting edge research and innovation. The Trust works with partner organisations, Brighton and Sussex Medical School (BSMS) and the Kent, Surrey and Sussex Postgraduate Deanery, and local universities.
- 3.5.5 In 2019/20, the Trust delivered the following high level activity;

Figure 3.3 BSUH Activity

In 2019/20



- 3.5.6 BSUH is the employer of over 8,000 staff (wte). Each and every one enables the Trust to provide high quality care to the people of Brighton and Hove and East and West Sussex.

Table 3.2 BSUH Average Number of Employees (WTE)

	Permanent Number	Other* Number	2019/20 Total Number
Medical and dental	1,233	18	1,251
Ambulance staff	17		17
Administration and estates	2,061	120	2,181
Healthcare assistants and other supporting staff	415	14	429
Nursing, midwifery and health visiting staff	3,112	483	3,595
Scientific, therapeutic and technical staff	446	8	454
Healthcare and science staff	287	4	291
Other	2		2
Total Average Numbers	7,573	647	8,220

Source: BSUH Annual Reports Accounts 2019/20
 * Internal staff bank

3.5.7 As outlined previously, in April 2017 a Management Contract was agreed for three years between WSHFT, BSUH and NHSEI.

3.5.8 In last three years, significant progress has been made at BSUH including;

- BSUH moving from an 'inadequate' to a 'good' CQC rating and exiting Quality Special Measures⁶
- BSUH exiting Financial Special Measures and agreeing a Medium Term Financial Plan (MTFP) to achieve recurrent break even over the next 5 years
- Staff engagement & culture significantly improved as demonstrated by BSUH's CQC rating of Outstanding for Care and significantly improved National Staff Survey engagement results.

3.5.9 The current CQC rating (2019) for BSUH is shown below;

Figure 3.4 BSUH CQC Rating

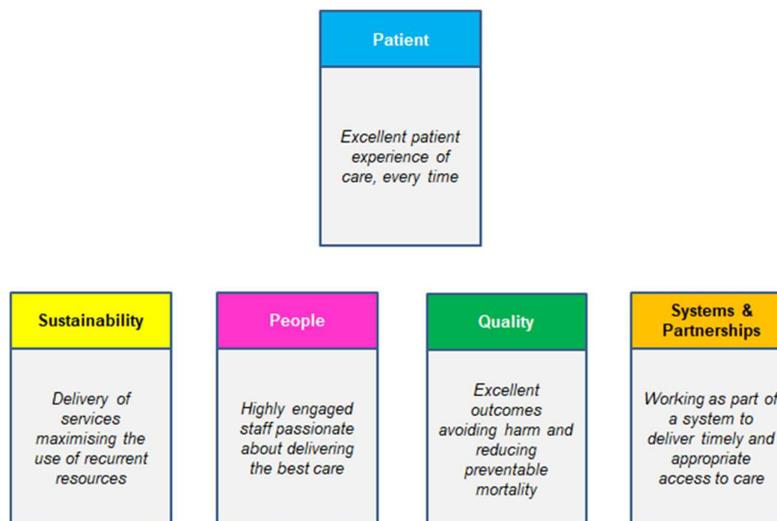
Overall rating for this trust	Good ●
Are services safe?	Good ●
Are services effective?	Good ●
Are services caring?	Outstanding ☆
Are services responsive?	Requires improvement ●
Are services well-led?	Good ●
Are resources used productively?	Requires improvement ●
Combined quality and resource rating	Good ●

⁶ CQC (2019) <https://www.cqc.org.uk/provider/RXH>

3.6 Patient First strategy and True North - WSHFT and BSUH

- 3.6.1 Patient First laid the foundation for WSHFT's success. The integrated framework and model for improvement and delivery defines the organisation's vision, strategy and goals. It embeds improvement methodology in operational delivery, and establishes an integrated performance management and assurance system. Most significantly it helped accelerate changing the organisational culture, encapsulating everything the organisation does in a philosophy for aligning, leading and delivering excellence embedded at every level of the organisation.
- 3.6.2 Through Patient First a strong connection between front line services and Board leadership and strategy has been developed so the drive to continuously improve all aspects of the delivery of services underpins decision-making. A culture and capability has been developed across the organisation to empower staff with improvement tools and techniques, enabling them to solve problems and share practice.
- 3.6.3 The Patient First Strategy Deployment framework focusses on the achievement of long term organisational unifying objectives (True North). These are achieved through Breakthrough Objectives and Corporate Projects that are delivered in the next 12 – 18 months, alongside longer term Strategic Initiatives to enable transformation and successful delivery of quality, patient focussed services.
- 3.6.4 Patient First is built around five unifying 'True North' Domains – defined exactly the same for both WSHFT and BSUH and encapsulating the core aims of the organisations.

Figure 3.5 Patient First True North Domains (current)

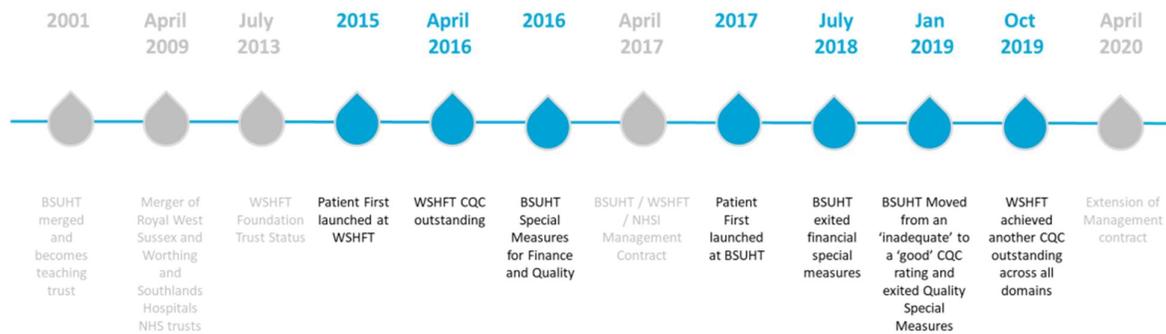


- 3.6.5 This standard methodology for improvement and delivery framework have enabled the development of clear annual and more medium-term objectives, strongly cascaded and prioritised throughout the organisations and services. The strategy and methodology create a clear single unifying vision across the organisations, whilst

enabling local priorities to be developed that reflect site, service, and front line drivers. This is described in more detail within this FBC for the new merged organisation in Section 6.3.

3.6.6 Both WSHFT and BSUH have adopted this same approach and the framework is in place with clear unifying synergies between the two organisations. The relationship between Patient First and the sustainable improvement of safety and quality, performance and culture that has been achieved at both Trusts can be demonstrated in the following timeline.

Figure 3.6 Patient First and Improvement Milestones Timeline



3.6.7 One of the key deliverables from the current Management Contract with BSUH has been an ongoing significant programme of Leadership, Workforce and Cultural change. Embedded within this has been the implementation of Patient First to BSUH as its strategic vision, improvement methodology, and performance and management system.

4 Case for Change

4.1 Introduction

- 4.1.1 Unlike a number of mergers, there is no 'rescue' or 'burning platform' which is driving the two organisations towards merger – both organisations are in a relatively stable position across finance, quality and performance, although not without challenges. Despite improved delivery in BSUH and continued high performance in WSHFT, in common with the rest of the NHS, both Trusts have challenges in the sustainable delivery of services, linked to increasing demand, fragility of workforce, financial challenge, and an increasing need for mutual service support to ensure resilience.
- 4.1.2 The WSHFT leadership team took a risk prioritised and structured approach to improvement at BSUH, which is now in a much more stable position. Under the Management Contract, there has been increasingly close working across the two Trusts' services but modest progress with plans to transform clinical services at scale for the benefit of the local population. As part of the merger of the two organisations, aligned to the work of the SACN and wider ICS, there is a need to develop a joint clinical strategy that accelerates the rate of change, promotes excellence, reduces clinical risk in fragile services and drives productivity and standardisation, whilst improving patient outcomes and experience across pathways.
- 4.1.3 The SOC identified the primary drivers for change and the FBC includes these and a further two that have been identified. Collectively they demonstrate why the continuation of the current arrangement is not clinically or financially optimal and is not an option.
- 4.1.4 This section of the FBC sets out the primary drivers for change as follows;
- Opportunities to improve clinical models of care
 - Challenges with complexity of governance
 - Increasing collaboration and system leadership
 - Fragility of workforce
 - Financial opportunities
 - COVID-19 and restoring services

4.2 Clinical Models of Care

- 4.2.1 Both Trusts are committed to maximising the benefits to patients. The underlying priority of Patient First is to place the Patient First and Foremost. The first phase of joint working under the Management Contract was necessarily focused on stabilising BSUH for the benefit of its local population but also improving care for the wider Sussex population as the provider of tertiary services for the region. In this first phase of working together, the Trusts can point to examples of closer working between

clinical services, shared learning and mutual aid, but this has not been achieved in a systematic and structured way or at scale.

- 4.2.2 The Quality domain of True North for the Trusts aims to achieve clinical excellence, avoid harm and reduce preventable mortality. At the same time the NHS Long Term Plan is seeking to break down organisational barriers to plan for population health and tackle variation in outcomes for patients. The Sussex ICS will promote collaboration across partner organisations to develop and deliver sustainable models of care. These aims at a national, system and Trust level need to be coalesced into a coherent clinical strategy for services.
- 4.2.3 Across Sussex there remain a number of fragile clinical services, which cannot continue to be provided in their current configuration. Work is already underway under the auspices of the SACN to address these issues, however the multiple organisations responsible for the provision of these services does make collaboration more complex and time-consuming.
- 4.2.4 The development of a strategic framework for clinical services and a coherent clinical strategy across the two separate organisations to address these challenges in the localities served by the Trusts is much more difficult to achieve than aligning strategic intent within one integrated organisation.

4.3 Complexity of Governance

- 4.3.1 The Trusts had originally believed the complexity of governance arrangements of a group collaborative model between organisations would be easier to manage and transition to than more formal changes to organisational form such as a merger. However, over the last three years, the experience of the Management Contract and more latterly through Covid-19 has shown that the duplication, delay and inherent inefficiency of delivering a single strategy through two statutory organisations and using a traditional governance model can distract from the delivery of key organisational delivery objectives.
- 4.3.2 Engagement with other acute provider groups as part of the Association of Groups also showed there was no standard 'blueprint' to resolve some of these challenges, with the experience of multiple NHS Trusts reflecting local differences.
- 4.3.3 The Boards and wider NHS system (ICS and other partners) recognised the benefits that a single strategic approach, Board, and shared decision making have brought to both organisations. As a result, in June 2019 the Boards set the strategic direction to explore the options for a continued organisational relationship between WSHFT and BSUH and established a Future Organisational Arrangements programme of work involving both organisations to do this.
- 4.3.4 Over the last six months the Trusts have had the real experience of testing ways of working even more collaboratively across organisations during the Covid-19 response. The need and benefits for balance between local autonomy and central control has been clear, particularly in the context of governance, aligned decision making, the best use of strategic resources, but also with local leadership and flexibility.

4.3.5 Issues identified around clarity of accountability and decision making have been manifest during surge and resilience planning, with a balance being needed between agile and tailored decision-making, sharing and use of expertise, and consistent sharing of learning and best-practice. Delivering these over this period has required significant effort and process to reliably achieve.

4.4 System Leadership

4.4.1 One of the identified strategic aims of the organisational strategies is to build strong system-wide partnerships through the ICS. The response to Covid-19 reinforced the need to engage and influence the system, and ensure appropriate engagement with changes in ways providers are assured. WSHFT and BSUH lines of accountability to NHSEI have moved to being more predominately held through the ICS and the importance and potential primacy of the ICS is likely to continue.

4.4.2 The Sussex system is now regarded as a 'Maturing ICS'⁷ from April 2020, and the Trusts' experience is that increasingly significant input and more development and influence from the constituent organisations is required. The ICS's development and CCGs' emergence out of formal commissioning regulatory action means there is an opportunity and requirement for strong, aligned, acute service provider representation to add to decision-making and processes.

4.4.3 Sussex already benefits from significant organisational alignment of commissioners and providers, as the previous seven Clinical Commissioning Groups (CCGs) have merged. Similarly, Mental Health and Community NHS provision are both delivered by Sussex-wide provider Trusts. There are three Local Authorities coterminous with the three defined 'place' localities in the region.

4.4.4 The continued development of the ICS has reinforced and strengthened the existing design principle the Boards have previously agreed, i.e. that future organisational arrangements need to enable acute organisations to effectively influence at a system level.

4.4.5 Covid-19 and Restoration and Recovery have reconfirmed the practical need for cross-provider working. The collaboration opportunities are now more pronounced and relevant. Prior to the Covid-19 pandemic, the move towards system wide planning and operating was signalled through NHS operational planning and contracting guidance 2020/21⁸.

4.4.6 Continued safe restoration and recovery of services for both BSUH and WSHFT will require far greater interaction, joint service and resource sharing, innovation and leveraging best practice than the scope and scale of the previous ambitions, with Covid-19 further exacerbating system-wide capacity constraints and fragile services.

⁷ NHS (2019) Designing integrated care systems (ICSs) in England,
<https://www.england.nhs.uk/publication/designing-integrated-care-systems-icss-in-england/>

⁸ <https://www.england.nhs.uk/wp-content/uploads/2020/01/2020-21-NHS-Operational-Planning-Contracting-Guidance.pdf>

4.5 Workforce

4.5.1 WSHFT and BSUH, in common with most of the NHS, share a number of workforce challenges. Both Trusts experience shortages of staff in key groups and specific services, and have different opportunities for resolving them. The national challenge with workforce supply, in nursing generally and in particular some medical and Allied Health Professionals specialities are mirrored locally. Working on a larger scale, and benefiting from experience and expertise in each organisation means that potentially these could be addressed more successfully.

4.5.2 The aspiration for both organisations is to be the top Acute Trust for staff engagement – with the Boards believing that this has a direct impact on the quality of the service provided and on sustainability. The current organisational form restricts both Trusts ability to significantly address these challenges further. These challenges relate to the building and sharing of capacity and capability, in utilising specialist resources and skills, in providing an enhanced employment offer through scale of opportunity and experience, and in working with partners to coordinate joint aims.

4.5.3 The main workforce challenges facing the organisations are outlined below;

- **Recruitment** - The organisations have different profiles and recruitment pools. WSHFT has had considerable success in international recruitment whereas BSUH does not have a regular international recruitment programme. BSUH has been successful in recruiting, engaging and deploying its junior doctor workforce in a way that can be extended. Whilst sharing of systems and learning has happened between the Trusts, offering those solutions as one employer will enhance the robustness of employment offers. Individually the Trusts are not always able to compete with the 'pull' of careers to London and elsewhere for those seeking ongoing experience and development.
- **Retention** - WSHFT's stability rate is one of the highest in the NHS while BSUH is below the national average. Both Trusts have done extensive work in each organisation to understand what staff value and how retention can be improved so the organisations benefit from growing their staffs experience and skills and don't suffer the churn of turnover. However, there remains further work to be done with specific workforce groups that could improve retention further.
- **New roles and flexible working** - Recruiting and retaining against current plans is important but the Trusts need to work in different ways to meet the needs of patients and services. They also need to support people to establish a sustainable work/life balance that may change throughout their careers. Both organisations have experience of developing new roles – sharing experiences and resources would provide a better and more robust platform and range of opportunities to more staff. The Trusts have also, specifically through the pandemic, been able to share staff through mutual aid arrangements. Whilst in extremis, this identified many ways in which being able to manage staff in a planned way across one single employer would allow greater flexibility for both services and for staff, improving organisational resilience.

- **Reducing workforce costs** - Gaps in substantive staffing remain a driver for higher pay costs – both agency usage and enhanced payments to substantive staff. WSHFT has made reductions in the use of nurse agency staff, but the high premium cost of medical agency staff in particular remains a concern in both organisations.
- **Leadership and Culture** - Over the period of the Management Contract, BSUH has demonstrated a marked improvement in the NHS Staff survey staff engagement scores, although there is opportunity to improve further. The Patient First programme, stability and consistency of leadership and the establishment of some cultural development programmes, particularly in Equality and Inclusion, led to these improvements. Cultural change takes committed and experienced leadership and the application of skilled, professional interventions. Both organisations have expertise but refining and improving the employment offer will support both Trusts to meet future challenges.

4.6 Financial Opportunities

- 4.6.1 The key financial challenges for the future in both Trusts are the emerging pressures from fragile services and workforce gaps including the premium cost of the medical workforce to maintain these in an unsustainable way.
- 4.6.2 Both Trusts recognise that sustained delivery above the national efficiency requirement will require increasing levels of system and transformational change to mitigate workforce challenges and closer working with partners to be able to deliver the required reduction in the cost base.
- 4.6.3 For both organisations, experience of collaboration during the Management Contract has demonstrated that while it is possible to achieve some financial benefits through collaboration and closer working, the legally separate nature of the organisations and the distinct clinical strategies means that opportunities can be limited.
- 4.6.4 From a financial perspective a larger, single organisation operating with a common strategic purpose and single legal framework would be able to exploit opportunities for collaboration more readily, be more agile in responding to opportunities and as a result have a higher ambition for and confidence in delivery of benefits.

4.7 Summary

- 4.7.1 The Management Contract under which WSHFT leadership has been managing BSUH for the past 3.5 years has led to significant improvements in the performance of BSUH and means there is no burning platform which will need to be addressed as part of the merger. However, there are a number of areas where it is difficult to improve further due to the current structure and size of the organisations.
- 4.7.2 The Trusts need to take a new approach to meeting current and future challenges and the preferred approach is the merger of the two Trusts.
- 4.7.3 The form of transaction is a merger via acquisition, under Section 56A of the NHS Act 2006, of BSUH by WSHFT into a single NHS Foundation Trust which has

University Teaching Hospital status. The new merged Trust should be established with effect from 1st April 2021.

- 4.7.4 This FBC has taken forward the development of this recommendation and has been developed in accordance with the NHSI Transaction guidance (2017).

5 Benefits of the Merger

5.1 Introduction

- 5.1.1 The new organisation created through the merger of WSHFT and BSUH will create a Trust running five hospitals employing over 16,000 staff (wte) and will provide an opportunity to deliver benefits that would not otherwise be possible were the two organisations to remain separate statutory bodies.
- 5.1.2 In developing the SOC, the two Trusts identified a range of desirable benefits for any future organisational form, which were then used as one of the criteria to assess the options available to the Trusts. These included potential benefits to the Trusts' patients, staff, and to the sustainability of the Trusts and NHS locally. These have been further developed for the FBC.
- 5.1.3 The benefits identified below address the key issues from the case for change including; clinical models of care, complexity of governance, system leadership, workforce issues and financial opportunities.
- 5.1.4 This section of the FBC sets out the benefits of the merger as follows;
- Approach to Benefits Development
 - Patient, People, Sustainability, Quality and Systems and Partnership Benefits
 - The Benefits Realisation Process

5.2 Approach to Benefits Development

- 5.2.1 As described later in the FBC in Section 6.3 and Section 6.4, a unified vision, values and strategy for the new Trust has been developed building on the Trusts' respective existing Patient First frameworks. Patient First identifies the key priorities and focus for the organisation. The Trusts have used this unified approach to help engage and structure the identification and prioritisation of the potential benefits of the merger. The Patient First True North domains used for this work are as follows;
- Patient
 - People
 - Sustainability
 - Quality
 - Systems and Partnerships
- 5.2.2 It is important to remember that as outlined previously there have already been significant benefits achieved across these areas as part of the Management Contract over the past 3.5 years which include the following;

- Stabilising and improving BSUH's financial position and exiting from financial special measures
- Improvements in the quality of care provided at BSUH, removing the Trust from Quality special measures
- Creating the right leadership and culture to move BSUH from 'Requires Improvement' to 'Good' overall in the latest CQC assessment, and specifically achieving 'Outstanding' for Care
- Continuing improvements in WSHFT with the Trust becoming the first non-specialist Acute Trust in England to achieve a CQC rating of 'Outstanding' across all domains
- Significant improvements at BSUH in staff recommending the Trust as a place to work and receive treatment, and in the overall Trust National Staff Survey results
- Coordinating the response across the two Trusts both to the COVID-19 pandemic and to the Elective Restoration and Recovery programme

5.2.3 The potential benefits to working closer together that were identified at the Strategic Case stage are summarised below;

Table 5.1 Strategic Case Benefits

	Collaboration Opportunity	Value Statement
1	Implementing standardised clinical practice	Creating cross organisational clinical services and standardised clinical models to provide high quality care and deliver constitutional standards
2	Optimising clinical support services	Creating cross organisational clinical support services with a common operating model and standardised practice that are able to share expertise, capacity and learning to improve patient flow and efficiency
3	Optimising corporate support services	Creating cross organisational corporate functions to improve efficiency and exercising collective purchasing power to improve value for money from procurement
4	Making best use of the workforce, developing future leaders	Creating a creative and flexible approach to workforce development improving the talent pool, developing cross organisational capability and capacity, testing and scaling innovation and pooling knowledge
5	Creating innovative partnerships	Creating an cross organisational approach to partnering with the academic, voluntary and private sectors, embedding innovation, ensuring focus on strategic priorities and enabling benefits of scale to attract investment and co-produce innovative solutions to clinical and management challenges

	Collaboration Opportunity	Value Statement
6	Supporting integrated health and care systems	Acting as a strategic partner in the ICS to develop and support the delivery of realistic plans for cross system sustainability, ensuring approaches to sustainability maximise the benefits of providers working at scale and in collaboration
7	Optimising clinical services/ capacity	Creating a cross organisational approach to capacity management , flexing and configuring capacity across the group in a way which makes best use of capability and assets of member organisations and matches service demand
8	Standardising Improvement and Delivery Method	Delivering continuous improvement by developing and supporting the delivery of Patient First as a common methodology across the group and sharing best practice and improvement capability
9	Strategic use of resources	Developing and leveraging strategic approaches to capital investment and management, asset management, cash management to support sustainability and make best use of resources

5.2.4 Benefits have been identified from a wide range of sources, including the refresh of the Trust's Strategy (Section 6.4), through the update of the Clinical Strategy (Section 6.5) and through ongoing wider consultation with staff (Section 9.4).

5.2.5 In addition to these specific areas the Trusts have held Executive-led workshop sessions centred on each of the Patient First True North domains. These were attended by a wide cross section of senior staff, clinical and non-clinical, from across both organisations, and generated more than 200 individual ideas. These further develop the Strategic Case benefits which are set out in Table 5.1 above and have been synthesised into a series of key themes.

5.2.6 In October 2020 the Trusts Boards reviewed and agreed the benefits along with the framework for benefits realisation. The benefits identified form a key element of the Trusts' engagement plans going forward and have been consolidated into the following key messages for the purposes of wider communication as follows;

By merging the new Trust will;

- Deliver outstanding, compassionate care locally and increase the opportunities for specialised services to flourish in Sussex
- Grow our clinical expertise and make Sussex a leader in health excellence
- Bring together the very best of both organisations to innovate and improve the health of our communities
- Continue to equip and empower our people to improve services for patients through Patient First
- Make the best use of our shared resources.

5.3 Key Patient Benefits

5.3.1 Under the Trusts' Patient First strategy the overarching focus is on ensuring the best possible care for patients and many of the benefits identified under other themes also benefit patients. However, this section draws out the specific ones as a result of the merger.

5.3.2 The True North Patient domain focuses on excellent care, every time and providing compassionate care to patients, so patients have a positive experience of the care they receive. The benefits identified which contribute to this domain are as follows;

- The merger will enable a wider range of acute services to be provided within Sussex, improving access for patients, as the new Trust will be of sufficient size and scale to provide these services. This range of acute services may include more tertiary provision closer to home. This will also lead to better continuity of care, as patients' pathways will not need to be broken through referral from one provider to another for their treatment
- The Trusts will fully integrate their existing Patient First Improvement Programmes as a result of the merger. The Programme has helped drive WSHFT to its current CQC Outstanding rating, and has helped significantly improve BSUH, including its rating of 'Outstanding' for caring. By bringing these programmes together, the Trusts will be able to strengthen the improvement pace for the benefit of patients led and supported by front line staff
- The merged Trust will be able to improve its use of available capacity (both physical and workforce) across all of its hospitals, which will help improve access to services for the local population of the new organisation. Improved patient choice and local access will also be able to be supported through a networked approach for clinical services across the merged Trust.

5.4 Key People Benefits

5.4.1 The People True North domain aims for the Trusts to be the employer of choice within the NHS and achieve the best staff engagement score in the country. The following benefits enabled by the merger will further help the Trusts achieve this. They also address a number of areas of workforce challenge raised in the case for change. The benefits identified are as follows;

- A merger of the two Trusts will have a positive effect on recruitment. The new Trust will be a University Trust, linked closely with the Brighton & Sussex Medical School and other Universities in Sussex, and providing a wide range of services, including specialist services. A Trust of this scale and scope will provide a wider range of career opportunities than are available to the two separate Trusts, and will therefore find it easier to recruit high calibre staff
- Improved retention of staff should also be a benefit of merger. The merger provides a stable future for both Trusts which will encourage staff to stay. The

more diverse and specialist roles across a bigger organisation will also provide staff with greater opportunities for career progression from within the same organisation, rather than having to look to other organisations in order to develop

- The single merged Trust will be able to explore greater opportunities to flexibly deploy staff and will as a result mitigate the impact of both short term and longer term vacancies. Whilst taking account of people's travel preferences, greater resilience across the new Trust could be added to teams through this flexibility
- As a much larger organisation, the merged Trust will have more opportunity to 'grow its own' talent, offering more training and development tailored to its own specific needs and learning from what each existing Trust is already good at
- The Trusts have a shared ambition to become the best possible employer they can be and this ambition is carried forward and set out in the proposed Trust People Plan. Both Trusts have made great strides in this area already, but will be stronger together working at scale, building corporate Workforce and Human Resources specialist skills and joining experience and expertise from across the two Trusts.

5.5 Key Sustainability Benefits

5.5.1 The Sustainability True North domain aims to ensure the Trust lives within its means and provides high quality services to patients through optimising use of resources. The specific financial incremental benefits to the merger are set out in more detail in Section 8.8. This section identifies the broader sustainability themes which will accrue from merger as follows;

- As a result of the size and scale of the new merged organisation there will be opportunity for a range of productivity gains through economies of scale including increased purchasing power
- There are a number of functions that both BSUH and WSHFT undertake which are broadly similar and duplicated in nature. These can be integrated and streamlined which will result in efficiency gains
- The merger will mean the single Trust offers a greater range of services within Sussex due to the increased size ensuring that services, especially specialist services, are more sustainable both clinically and financially
- The merged Trust will streamline its leadership and decision making processes through one Board and one set of Committees. This will speed up decision making, reduce duplication, and improve timeliness supporting opportunities for productivity.

5.6 Key Quality Benefits

5.6.1 The Quality True North domain aims to ensure no patient suffers from harm whilst in hospital and for no patient to die in hospital who should not have. The merger will support these aims by helping to deliver a broader range of quality benefits,

strengthening clinical services and improving care for patients. Key quality benefits as a result of the merger are as follows;

- Through the development of the single Clinical Strategy (Section 6.5) the merged organisation will aim to improve clinical pathways across the whole new Trust, and ensure a smoother patient journey across secondary and tertiary services.
- The Trust will be better able to support services which are currently considered fragile, as they may not currently have the critical mass to flourish. This will be addressed by sharing resources and integrating services across the merged Trust.
- Through merger, the Trust will provide improved specialist input to services across the whole new Trust, ensuring patients get access to the highest quality of care over a wider area. Innovative ideas will be able to be shared more effectively across the Trust, improving the quality of care.
- As a large University Hospitals Trust, providing a range of specialist services, the Trust will be able to build further on its already excellent research and education functions. More patients will be involved in coordinated research trials, and there is potential for more joint academic/clinical posts in conjunction with Brighton and Sussex Medical School.

5.7 Key Systems and Partnership Benefits

5.7.1 The Systems and Partnership True North domain aims to deliver timely access to acute care as part of a wider integrated care system. As a larger organisation the Trust will be able to better tackle the current challenges in achieving this through the potential benefits of merger as follows;

- The merged Trust will have increased influence with local partners, and will have a strong voice in the local ICS. The Trust will provide more than two thirds of the acute services within the ICS and this will enable improved coordination of service provision.
- The potential of greater flexibility to use capacity to meet demand across the wider Trust footprint will result in improved access times for both elective and non-elective care, with increased ability to match varying demand and capacity.
- The IM&T function is already managed jointly across the two Trusts as part of the Management Contract. Following merger, there will be a significant programme of integration of systems, which will allow for improved flow of information and more integrated services benefiting both the organisation and patients.
- As a large multi-site organisation the Trust will be able to make improved use of its Capital and Estates, pooling its resources to make investments where they are most needed across a wider area.
- There will be greater opportunity to share best practice across the Trust, both in corporate and in clinical areas. Improvements in quality, efficiency and innovation

will be enabled through the integration of Trust services and wider access to learning and innovation.

5.8 Benefits Realisation Process

- 5.8.1 Benefits will continue to be identified as the Trusts prepare for merger, in particular through the development of the Clinical Strategy as service specific changes are identified and prioritised, and through the ongoing wider engagement with Trust staff.
- 5.8.2 It is not the intention of the new organisation to set up a separate Benefits Realisation programme for the merger; the Trusts have a well-developed approach to Strategy deployment (Strategy Deployment Review) which will allow the realisation of benefits to be embedded into the new Trust's business as usual planning and delivery of services where appropriate. Strategy Deployment is further described in Section 6.4.
- 5.8.3 The M&A Programme will work with benefit owners to agree the extent they can be quantified in financial and/or non-financial terms. Work will also be undertaken to assess the timescales for these benefits to be delivered, and the ease of implementation.

5.9 Summary

- 5.9.1 The new merged organisation will provide the scale and alignment opportunities to realise incremental benefits greater than either WSHFT or BSUH could achieve in isolation.
- 5.9.2 The opportunities have been identified through both analysis and engagement with a wide range of staff through the development of the FBC. The Trusts have used their existing Patient First True North themes to develop the benefits, and have focused on both the challenges identified in the Case for Change, and the incremental benefits enabled by the merger. This alignment enables the benefits to be integrated into the business as usual of the organisation, and tracked and enabled through the ongoing M&A programme.

6 The New Organisation

6.1 Introduction

- 6.1.1 The new organisation created through the merger of WSHFT and BSUH will create a new Trust running five hospitals and multiple services in satellite and community settings, with an overall catchment area of 3,800km².
- 6.1.2 As outlined previously, WSHFT and BSUH are already working together within a Management Contract arrangement which means a significant amount of partnership and alignment/integration required to form a new Trust has already occurred. This position provides the baseline for the approach and work needed to form and develop the new organisation.
- 6.1.3 The new organisation will be responsible for all district general acute services for Brighton and Hove, West and Mid Sussex and parts of East Sussex. It will also be responsible for specialised and tertiary services across Sussex and areas of the wider South East region including major trauma, neurosciences, arterial vascular surgery, neonatology, paediatrics, cardiac, cancer, renal, infectious diseases and HIV medicine services.

Figure 6.1 Catchment Areas for the New Organisation



- 6.1.4 The new organisation will be responsible for the delivery of care combined from across both organisations and combined this activity will be as follows;

Figure 6.2 New Organisation Activities



- 6.1.5 The new merged organisation will retain the positive aspects of both predecessors but will also seek to forge a new identity and presence in both Sussex and nationally. The very nature of bringing together over 16,000 staff (wte) across five acute hospital sites means refreshed organisational arrangements will be necessary. These new organisational arrangements will help develop the identity of the new Trust, make it fit for purpose in its new form and ensure the delivery of continuing 'Outstanding' care and realise the expected merger benefits.
- 6.1.6 This section of the FBC sets out the arrangements for the merged organisation as follows;
- Organisation Name
 - Vision and Values
 - Single Strategy and Integrated Framework for Deployment
 - Clinical Strategy
 - Governance Arrangements
 - Board Leadership
 - Committee Structures
 - Clinical Operating Model
 - Corporate Operating Model

6.2 Organisation Name

- 6.2.1 There is an established process for naming an NHS Trust. NHSEI sets out a number of principles and an approval process which must be followed when naming a Trust. This guidance limits the naming options for a new Trust and covers both engagement work and the approval process. The naming process for the new merged WSHFT and BSUH organisation followed this process and adhered to the established principles.
- 6.2.2 The process for agreeing a name included the Executive team and wider Board taking part in targeted engagement to agree a range of options, which were then tested more extensively with staff and stakeholders, whilst giving the opportunity for more suggestions. The final decision was then taken by the Board.
- 6.2.3 To achieve engagement with staff and public an interactive survey was used, hosted on the websites of both existing Trusts and shared with all staff via internal communications channels. In addition to this, proactive media work was undertaken to increase awareness including social media and YouTube. This provided an opportunity to build the merger narrative, the ambition for the new Trust and the benefits for staff, patients, communities and stakeholders. The survey was open to all

patients and the public and was also sent to key partners and wider local stakeholders.

6.2.4 The following table outlines the steps that have been followed to date for the process of naming the new organisation, with the future steps and dates also included.

Table 6.1 New Organisation Naming Timeline

Phase	Timescales	Actions
Target engagement	August / September 2020	Test assumptions and key stakeholder support for range of options. Includes discussion with other NHS organisations, NHSEI, HOSC, MPs.
Survey	September / October 2020	As described above.
Engagement	October 2020	Reviewed by Board and decision on preferred name taken.
Board decision on name	October 2020	Letters of support from key partners sought.
NHS England agreement	December 2020	Agreement sought from NHS South East that name does not conflict with other NHS organisations in the area and follows NHS naming principles.
WSHFT Council of Governors	December 2020	WSHFT Council of Governors to discuss preferred option, in accordance with NHS naming process for Foundation Trusts.
Engagement	December 2020	Preferred new name communicated to key stakeholders.
Extraordinary WSHFT Council of Governors	March 2020	WSHFT Council of Governors to ratify revised constitution for Foundation Trust, to include organisation's new name.

6.2.5 The new name agreed by the Board is 'University Hospitals Sussex NHS Foundation Trust'.

6.3 Vision and Values

6.3.1 Patient First encompasses both Trusts' vision and values. Developed at WSHFT, and introduced to BSUH under the Management Contract, Patient First provides an integrated model which defines organisations' vision, strategy, and goals. It embeds an improvement methodology in operational delivery, and has established an

integrated performance management and assurance system. It defines the values to which both organisations operate by.

6.3.2 The Patient First Triangle is a Trust's 'Plan on a Page', summarising the purpose, values, mission, strategic themes and foundations for success. The WSHFT and BSUH triangles are already closely aligned.

Figure 6.3 WSHFT Patient First Triangle

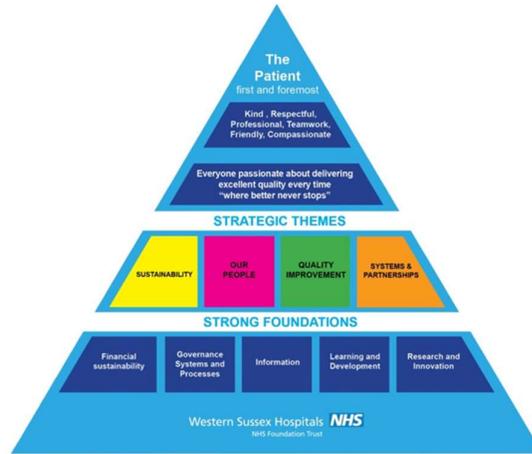
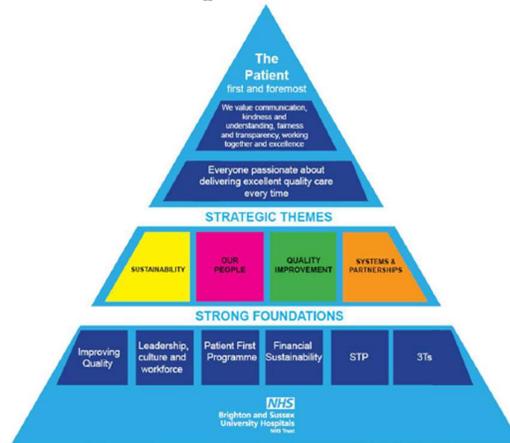


Figure 6.4 BSUH Patient First Triangle



6.3.3 As part of the communication and engagement strategy, BSUH and WSHFT have jointly developed a new vision and set of values for the new organisation. There has been extensive engagement with staff at both BSUH and WSHFT, and with the public via the interactive survey, to understand what vision and values they would like the new organisation to have. Over 3,000 staff from the two organisations responded, together with 750 members of the public. A more detailed analysis of the results of this survey is given part of the Communications and Engagement chapter (Section 9).

6.3.4 The survey actively engaged staff and stakeholders in the development of the values for the new organisation, starting from the work on values that both organisations had

previously undertaken as part of the Patient First approach. The survey identified the most consistently popular set of values from staff and public, constructed from the existing combined values of both organisations.

6.3.5 The values chosen as a result of this process are

- Communication
- Respect
- Teamwork
- Compassion
- Professionalism

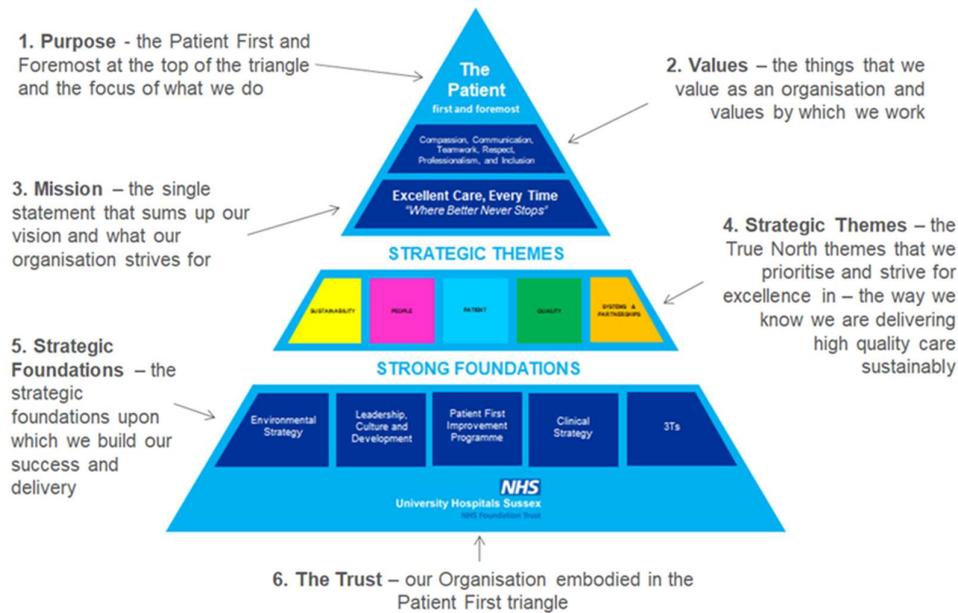
6.3.6 In addition to these five unifying values, there was a very strong additional value identified by staff and stakeholders that was not previously part of either organisation's value statement: Inclusion. This recognises the work that both Trusts have done over the past 3 years on the wider inclusion agenda, but also the importance placed and challenges remaining. Inclusion has therefore been added to the new organisation's values statement as a sixth value.

6.3.7 The survey also asked staff and stakeholders for their feedback on the new Trust's mission statement and vision. This confirmed support for the statement "Excellent Care, Every Time – Where Better Never Stops". This represents the new Trust's continued ambition for excellence and the underpinning continuous improvement philosophy for which both existing Trusts are well known.

6.3.8 As part of the Patient First approach, the Trusts developed long term unifying organisational objectives – True North. These cover the Trusts' five key strategic theme domains – Patient, Sustainability, People, Quality, and Systems and Partnerships. As part of the survey with staff and stakeholders these were tested, asking participants to think about what the themes mean for them and to prioritise different elements under each theme in terms of meaning and importance. True North and the wider Patient First framework is described fully in Section 3.6 for the current organisations, and Section 6.4 below sets out the integrated Patient First strategy for the new, merged organisation.

6.3.9 From each of these elements the Trusts have developed a new Patient First triangle for the new organisation, which will act as the 'Plan on a Page' for the new University Hospitals Sussex NHS Foundation Trust.

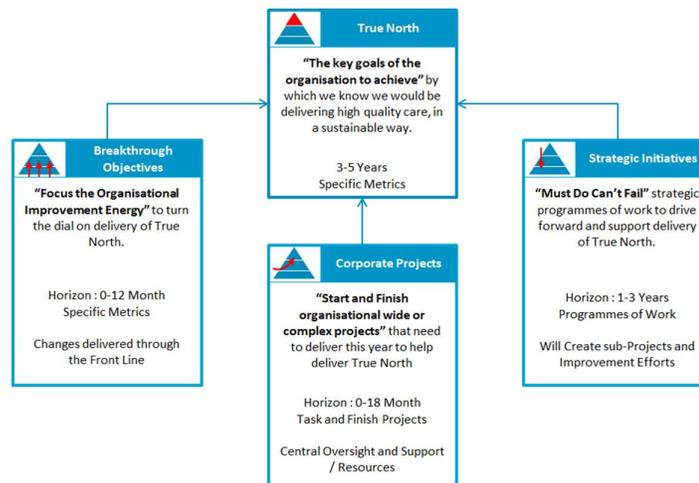
Figure 6.5 New Merged Organisation Patient First Triangle



6.4 Strategy Deployment

- 6.4.1 Section 6.3 describes the Trust's approach to the development of its vision, values and long term organisational objectives – True North. Aligned to this is the Trust's approach to Strategy Deployment; the methodology both organisations use for implementing their True North.
- 6.4.2 Strategy Deployment takes the five strategic themes identified in the Patient First triangle – Patient, Quality, Sustainability, People, Systems & Partnerships – and identifies for each of these the True North key goals, with supporting Breakthrough Objectives, Strategic Initiatives and Corporate Projects. The definition of each of these elements and their interrelationship is shown in the figure below.

Figure 6.6 Strategy Deployment Framework



- 6.4.3 The Strategy Deployment elements are normally refreshed as part of both Trusts' annual business planning process, to ensure the Trusts and their Divisional Business Plans are aligned with the individual Trusts' overall objectives.
- 6.4.4 Given both the COVID-19 pandemic and the proposed merger of WSHFT and BSUH, it was agreed that a much more fundamental review of all elements of Strategy Deployment was necessary to provide the new Trust with a unified set of objectives and single strategy. The process undertaken has looked at the following;
- Reconfirmation of the merged Trust's Mission
 - Articulation and Engagement on the Vision
 - Describing the type of organisation, the new organisation will be
 - Focussing on an 'inch wide and mile deep' prioritisation
 - Aligning and cascading priorities across both organisations
 - Embedding the new strategy and priorities across one merged Trust
- 6.4.5 The new True North strategy deployment was developed through a robust process with the Executive Team providing oversight, direction and decision making. The process included standard WSHFT and BSUH practices of using the Patient First 'A3' structured problem solving methodology to achieve the following;
- Support data driven decision making
 - Inform areas of focus for improvement
 - Set True North goals and targets, Breakthrough Objectives and Strategic Initiatives
- 6.4.6 The process also drew on a range of clinical and corporate expertise and used an updated strategic filter workflow to determine the Corporate Projects for the merged organisation, taking into account existing corporate projects across both organisations that have not yet been completed, and the bottom up priorities identified by the Clinical and Corporate Divisions through the planning process.
- 6.4.7 The strategic aims of the merger, developed by the Boards at SOC stage and used to identify the preferred option, were also utilised to support development of the True North Strategy Deployment.

Table 6.2 Strategic Aims of the Merger

Patient First Domain	Strategic Aims
Patient	Maximise the benefits of Patient First as a continuous improvement methodology and operating model by sharing best practice and improvement capability for the good of our patients
Sustainability	Use our collective resources more effectively by leveraging strategic opportunities (including those relating to capital and digitalisation) and optimising corporate support services to support sustainability and contribute to the management of risk
People	Work at scale to implement creative and flexible workforce models aligned to the transformation of services by developing our People Plan, leadership programmes and the development of innovative roles, recruitment and training, to retain staff.
Quality	Adopt best practice in the delivery of clinical / patient care by standardising clinical practice, optimising clinical support services, and realising the benefits of scale to transform service provision and the use of service capacity.
Systems & Partnerships	Act collectively to build strong system-wide partnerships through the ICS to support delivery of improvements in population health, delivery of Acute care, and the development of our organisations.

6.4.8 As a result of this process the Patient First True North strategic themes and vision statements for the new organisation are as outlined in Figure 6.7 below.

Figure 6.7 New Patient First True North



6.4.9 True North goals and targets are ‘the key goals of the organisation to achieve by which we know we would be delivering high quality care, in sustainable way, consistent with our stated ambition and vision’. The updated True North goals and targets for the new organisation are given in the table below.

Table 6.3 New True North Goals and Targets

True North	Goal	Metric/Target
Patient	To ensure that all our patients have a positive experience of the care they receive	Patient Experience: To have 95% or more of patients rating FFT surveys as Very Good or Good
Sustainability	To ensure that the Trust sustainably achieves 'Break Even' financially	Financial Sustainability: To deliver the Trust's financial plan
People	To be the top acute Trust for staff engagement	Staff Engagement: To be within the top quartile of acute Trusts for the National staff engagement score
Quality	To have zero harm occurring to our patients when in our care and to achieve the lowest crude mortality within our peer group	Harm: To achieve a 10% reduction in the levels of DATIX reported harm to patients Mortality: To achieve a 10% reduction in the crude mortality rate
Systems & Partnerships	To sustainably achieve the national constitutional targets for planned and emergency care	Planned Care: To have no patients waiting in excess of 40 weeks on an RTT pathway to be seen and treated Emergency Care: To achieve 95% of patients being treated within 4 hours in Emergency Care services

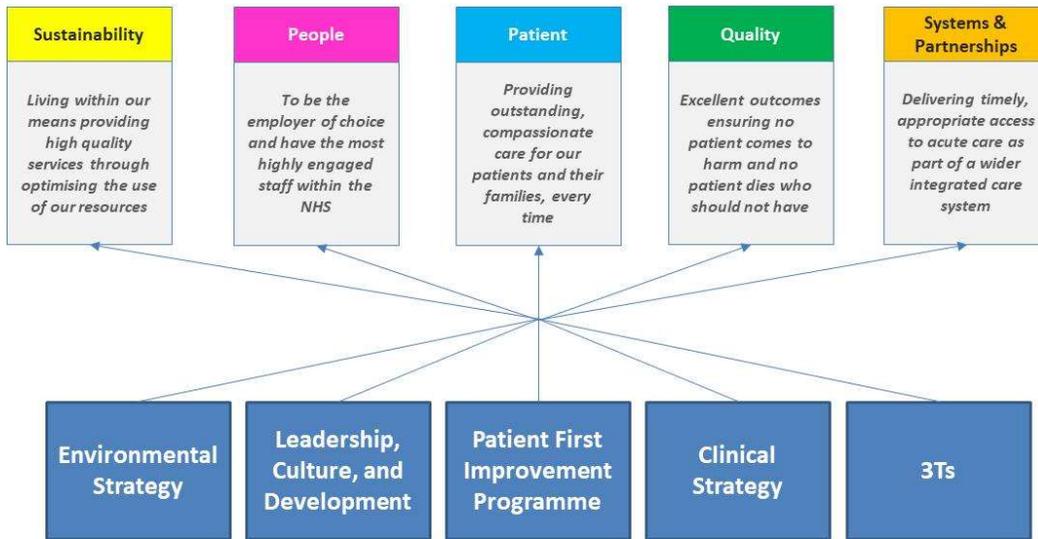
6.4.10 Breakthrough Objectives 'focus the organisational improvement energy to turn the dial on delivery of True North'. The updated Breakthrough Objectives for the new organisation are given in the table below.

Table 6.4 New Breakthrough Objectives

True North Domain	Breakthrough Objective
Patient	Patient Experience: An increase in the numbers of patients reporting a high quality discharge experience
Sustainability	Financial Sustainability: A reduction in the premium spend levels on our pay bill
People	Staff Engagement: An increase in the number of staff who would recommend the organisation as a place to work
Quality	Harm: A reduction in low to moderate harms reported in key areas Mortality: A reduction in the 5 top contributors to mortality rates
Systems & Partnerships	Planned Care: An elimination of patients waiting over 52 weeks for treatment for RTT Emergency Care: To sustainably achieve 92% inpatient bed occupancy

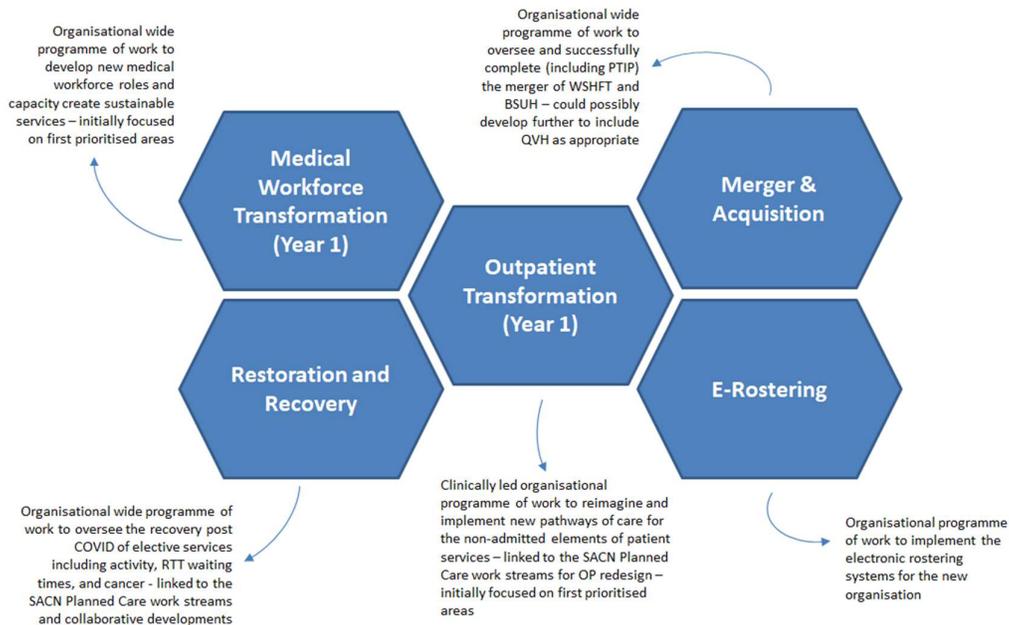
6.4.11 Strategic Initiatives are the 'must do can't fail initiatives to drive forward and support delivery of True North' providing the Strong Foundations upon which the success of the new organisation will be built. The updated Strategic Initiatives for the new organisation are shown.

Figure 6.8 New Strategic Initiatives



6.4.12 Corporate Projects are ‘start and finish organisational wide or complex projects that need to deliver this year to help deliver True North’. The agreed updated Corporate Projects for the new organisation are given in the table below.

Figure 6.9 New Corporate Projects



6.4.13 The two Trusts have an agreed methodology to ensure the delivery of these priorities is embedded within the organisation. Divisional leadership and clinical service teams

are training and coaching in lean improvement skills, and data is used through agreed scorecards are created to capture these aligned priorities, with assurance of and support for delivery through regular Strategy Deployment Reviews between the Executive Team and the Divisions. Following development of the new Strategic objectives, the process of cascading these objectives through the organisations is already underway.

6.5 The Sussex ICS Acute Services Review

6.5.1 The SOC identified the need to develop more collaborative and coherent clinical strategies across organisational boundaries and the creation of the new organisation will facilitate this.

6.5.2 The Sussex ICS is currently undertaking an Acute Services Review led through the SACN with the aim of outlining collaboration opportunities for acute providers across Sussex and the current pressures on the system with possible solutions to address them. The review will also identify potential incremental benefits that can be delivered through increased collaboration and improvement.

6.5.3 The work to date has focused on identifying areas identifying priorities for acute collaboration with an assessment of impact, roadmaps and deliverables expected to be available by the end of the year. The key system observations are as follows;

- Specialist care is sometimes being delivered in low volumes, in services that don't meet extant specifications
- There is potential for planning of high volume, low complexity surgery on highly efficient cold/warms and complex activity on fewer sites
- There is significant scope to build on innovative workforce models to deliver patient care as a mixed team and reduce overreliance on the limited Consultant workforce
- A significant reduction in diagnostics capacity as a result of COVID-19 is a particular bottleneck for core services
- There are opportunities to improve variation in access and reduce very long waiters through shared PTL governance and digital clinical workflow
- Digital by default, with access for those patients that need or prefer an alternative, remains a significant opportunity
- There is scope to bring forward simple diagnostics and decision making in high volume pathways

6.5.4 The emerging opportunities from this work have been synthesised into the following themes;

- Joint system level PTLs - achieving improved and equity of access through shared PTLs

- Bringing forward in the pathway simple diagnostics and decision-making in high volume, challenged services
- Optimal planning of acute activity across hot and cold sites
- Delivering as a mixed team – diversifying the workforce and deploying innovative roles

6.5.5 WSHFT and BSUH, and the new Trust in the future, are participating in this work. The development of the new Clinical Strategy for the merged Trust is happening in parallel and will be aligned and build on the opportunities identified through the ICS review utilising the data analysis undertaken.

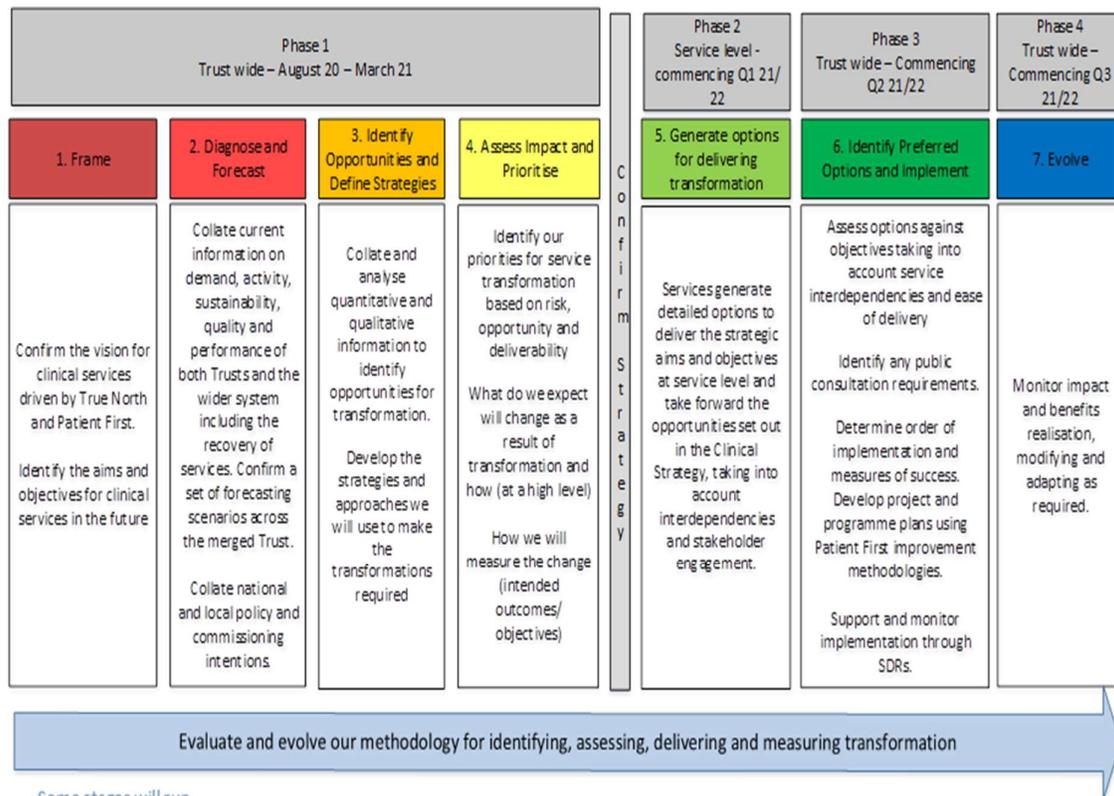
6.6 The New Clinical Strategy

6.6.1 The new Clinical Strategy is being developed in the context of, and aligned with, the ICS Acute Services Review outlined above.

6.6.2 The methodology for developing the Clinical Strategy will take a phased approach, and is set out below, to ensure plans are fit for purpose, and will be based on evidence and insight. The key steps within the development process are as follows;

- Collation of existing stakeholder feedback
- Data collation, analysis and forecasting to identify opportunities for improvement
- Assessing where the Trusts are now compared to aspirations
- Developing and assessment of improvement methodologies
- Understanding interdependencies and critical mass vs local requirements
- Prioritising action and developing plans at service level
- Agreeing measures of success and measuring impact

Figure 6.10 Clinical Strategy Process



6.6.3 This approach to the development of a Clinical Strategy for the new organisation will ensure clinical services are configured to realise the full advantage of working as a merged Trust, allowing the new Trust to best meet local need and optimise both the quality and sustainability of service provision. Specifically, it will seek to achieve the following;

- Set out the vision, aspirations and objectives for clinical services
- Embed clinical excellence and innovation at the heart of the new organisation
- Ensure the new Trust is able to deliver the services patients need in line with the Integrated Care System objectives and the NHS Long Term Plan
- Guide the future improvement and expansion of existing patient services, as well as the introduction of new ones

6.6.4 BSUH and WSHFT have convened a joint Clinical Strategy Programme Board to oversee the development of the five-year clinical strategy. Chaired by the Chief Medical Officer, this is a multi-disciplinary group with representation from each of the Trust's clinical divisions and from the clinical professions. Development and implementation of the Clinical Strategy has been agreed as one of the merged organisations Strategic Initiatives.

6.6.5 The Clinical Strategy will set out the mission, vision and aspirations for clinical services and will be developed within a set of principles as follows;

- Maximising Patient First
- Clinically led
- Effective engagement
- Making best use of innovation and technology
- Supporting service recovery

6.6.6 It will provide the framework for the development of service plans within a set of non-negotiable strategic boundaries that establish the principle that the new trust will continue to provide, enhance and strengthen as follows;

- Access to emergency medical care and A&E services 24 hours a day, 7 days a week on the Princess Royal Hospital, Royal Sussex County Hospital, St. Richard's Hospital and Worthing Hospital sites
- Maternity services at the Princess Royal Hospital, Royal Sussex County Hospital, St. Richard's Hospital and Worthing Hospital sites
- A teaching hospital in conjunction with Brighton & Sussex Medical School
- Outpatient, day case and rapid diagnostic services across the Trust including on non-acute sites
- Tertiary service provision as part of a network of tertiary care providers across the region and nationally
- Trauma services as part of a Trauma network that includes a Major Trauma Centre on the Royal Sussex County Hospital site along with all the supporting services this requires
- A wide range of cancer services across Sussex including the Sussex Cancer Centre on the Royal Sussex County Hospital site
- A specialist centre for paediatric care, combined with a neonatal intensive care service and paediatric cancer services from the Royal Alexandra Children's Hospital
- Hyper-acute stroke units and other stroke services as part of a Sussex wide stroke provision
- Specialist renal care, including dialysis and other services across East and West Sussex
- The system wide benefits of the 3Ts development in line with Sussex Integrated Care System Long Term Plan

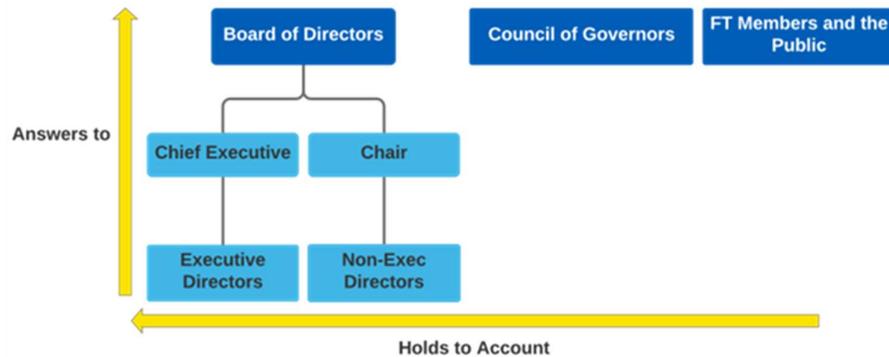
- 6.6.7 The Clinical Strategy will identify opportunities to deliver benefits from the merger and tackle long-standing problems and issues that historically have proved too challenging or complex for either trust to overcome individually.
- 6.6.8 The Clinical Strategy will define the potential approaches and opportunities for service improvement and transformation. These are likely to include the following;
- Vertical integration; taking a place based approach to the delivery of localised services through the development of ICPs as part of the ICS plan delivery
 - Horizontal integration and networked solutions to optimise service delivery, share clinical leadership and build resilience by utilising scarce resources effectively
 - Reduction in variation through the development of common pathways and protocols
 - Improvement in recruitment and retention through increasing opportunities for skills development and learning and developing expertise within Sussex
 - Improvement in sustainability
 - Repatriation and retention of tertiary, specialist and low volume high complexity acute activity and further integration between tertiary provision and DGH services
 - Sub-specialty development and delivery across a broader geography making better use of capacity and scarce skills and enhancing clinical safety and effectiveness
 - Delivery at scale developing expertise and dedicated capacity for higher volume, lower risk procedures
 - Strengthening engagement with clinical networks and building on University Status to make an active contribution to research and development
- 6.6.9 It is anticipated that as a merged organisation the new Trust will be able to increase the benefit realisation of clinical service improvement and transformation. This is because of the increased scope, scale and integrated leadership of services, and the removal of historic cultural and contractual boundaries. As a result, implementation is expected to be;
- Easier and more streamlined
 - Lower risk
 - Quicker
 - At an increased scale or scope
- 6.6.10 As outlined above the approach to development is aligned to the Sussex Acute Services Review and structured into four phases. Phase 1 has commenced and will conclude in March 2021. This will identify the priorities for service transformation and

will result in the new Clinical Strategy. Phases 2-4 will focus on delivering the agreed transformations at service and Trust wide level.

6.7 Foundation Trust Governance Structure

- 6.7.1 As an NHS Foundation Trust (FT), the new organisation will be regulated under arrangements described in the Health and Social Care (Community Health and Standards) Act 2006, as amended, by NHS Improvement. The FT has an agreed licence, and conditions therein, and will be supervised by NHS Improvement, as described in the Single Oversight Framework (SOF)⁹.
- 6.7.2 The FT governance structure model balances the responsibility of the Board for the overall strategic, operational leadership and performance delivery of the Trust with local accountability to the Council of Governors and, through the governors, to the membership and wider local population. This model is shown in Figure 6.11 below.

Figure 6.11 Foundation Trust Governance Accountability Model



6.8 Foundation Trust Constitution

- 6.8.1 The Trust's Constitution shows how the organisation will be accountable to the local population through its membership. The Constitution provides the governance framework within which the Trust will operate, supported by a number of corporate governance documents including the standing orders, standing financial instructions, the register of matters reserved to the Board, and the scheme of delegation.
- 6.8.2 The existing WSHFT Council of Governors and Constitution will continue but given the nature of the transaction has been significantly amended in respect of its elected constituencies to reflect the expanded geographic footprint of the new Trust.
- 6.8.3 The proposed constitution for the new organisation (Appendix B) follows the model Foundation Trust constitution. The revisions to the constitution were supported by active governor engagement through an established reference group made up of publicly elected, staff and appointed governors. An external review of the revised constitution was undertaken by Capsticks who have not identified any issues with its

⁹ Single Oversight Framework, NHS Improvement, November 2017

compliance with the 2006 Act. The revised constitution will be put to both the Trust Boards and WSHFT Full Council for approval.

- 6.8.4 A summary of changes between the former WSHFT Constitution and the new Trusts Constitution is included as Appendix C.

6.9 Foundation Trust Membership

- 6.9.1 The FT membership includes staff and public constituencies which are defined in the constitution.
- 6.9.2 The staff constituency includes all members of staff directly employed by the FT. In the new organisation the public constituencies have been extended to include any person whose normal place of residence is within the Brighton and Sussex University Hospitals NHS Trust (BSUH) catchment areas along with those within Western Sussex Hospitals NHS Foundation Trust (WSHFT) area. The Council approved the extended constituencies at its meeting on the 16 October 2020 to enable a membership recruitment campaign to commence. Any person living within these areas is eligible to apply to join the public constituency.
- 6.9.3 Utilising the latest office for national statistics data (2018) on UK population the new Trust will have minimum membership level set to match those set for WSHFT when it was authorised. This minimum level is 0.2% of the adult population (those 18 years old and above).
- 6.9.4 Since the submission of the SOC and using the Governor Reference Group the recruitment campaign for the extended membership base has been designed and has commenced. The new members are registered as shadow members under WSHFT until the new organisation is formed. This allows the sometimes lengthy process of running membership recruitment to take place during the preparatory phase of the transaction rather than adding to the post integration plan. This approach means there will be an extended membership reflecting the wider population served by the new Trust from the date the transaction is completed.
- 6.9.5 Working with the Governor Reference Group and the Trusts' inclusion groups the previous membership strategy has been developed to include reference to specific channels to reach out to those sections of the community WSHFT has had challenges reaching. Within the membership strategy a series of measures have been devised to attract a more representative and diverse membership across the whole enlarged Trust.
- 6.9.6 The staff of BSUH will be informed of their automatic membership of the enlarged Foundation Trust and given the option to opt out of this membership. This process will give the Council the ability to recruit to the two new staff positions covering the BSUH sites of Royal Sussex County Hospital and Princess Royal Hospital.
- 6.9.7 The timeline for recruitment to the new membership is outlined below.

Table 6.5 Timeline for New Membership

Action	Date
Recruitment campaign started	November 2020
Shadow member process in place	November 2020 to 1 st April 2021
BSUH staff written to letting them know they are to become members of the enlarged FT and offering them option of opting out	February 2021
WSHFT public and staff members written to informing them they are to become members of the enlarged FT and offering them the option to opt out	February 2021
New, extended membership in place	1 st April 2021
Ongoing membership recruitment	Post 1 st April 2021

6.10 The Council of Governors

- 6.10.1 The Council of Governors is responsible for holding the non-executive directors, individually and collectively, to account for the performance of the Board.
- 6.10.2 The new Trust will have established council positions for the extended membership constituencies. To balance the increased constituencies with the need for an effective Council, the number of WSHFT elected members will be proportionally reduced. This approach was supported by the Governor Reference Group and is scheduled to be agreed with the Council of Governors at its meeting in December 2020. The intention is to run elections for the newly created positions within the first three months of merger (April 2021 to June 2021).
- 6.10.3 In designing the new Council, the basis of the appointed governor cohort has been considered fully. It is agreed to reduce the representation from the district and borough local authorities in favour of including appointed governors from the upper tier local authorities of Brighton and Hove City Council and East Sussex County Council. The Governor Reference Group also valued the inclusion of an appointed governor from the Trusts' inclusion networks covering BAME, LGBTQ+ and Disability. The Council has agreed to an appointed governor from an inclusion network to enhance the ability of the Governors drive to support the new Trusts equality and diversity agenda.
- 6.10.4 The opportunity has also been taken to review and adjust the staff constituencies to link the staff members to the enlarged Trusts key delivery sites, including a constituency for staff providing services in the community. The Governor Reference Group supports this change rather than drawing staff governors from the more traditional professional groups. This change is also scheduled to be agreed with the Council of Governors at its meeting in December 2020 as the shape and size of the Council is incorporated into the revised constitution.
- 6.10.5 The new Council's composition is shown in Table 6.6.

Table 6.6 Council of Governors

	Total positions	In place	Vacant
Public Governors			
Adur	1	1	
Arun	1	1	
Brighton and Hove	2		2
Chichester	2	2	
Horsham	1	1	
Mid Sussex	2		2
Worthing	1	1	
Rest of England	1	1	
Sub Total	11	7	4
Staff Governors			
Peripatetic	1	1	
Princess Royal Hospital	1		1
Royal Sussex County Hospital	1		1
Southlands & Worthing Hospital	1	1	
St Richards Hospital	1	1	
Sub Total	5	3	2
Appointed Governors			
Brighton & Sussex Medical School	1	1	
Brighton and Hove City Council	1		1*
West Sussex County Council	1	1	
Voluntary Sector	1		1*
The Trust's inclusion networks (BAME, LGBT+, Disability)	1		1*
Sub Total	5	2	3
Total	21	12**	9

* These bodies are being approached and it is not anticipated there will be an issue in having an appointed governor for the 1 April 2021.

** With the appointed governors this will mean that by 1 April 2021 15 of the 21 governors in place.

6.10.6 The timeline for the new Council is outlined below.

Table 6.7 Timeline for Council of Governors

Action	Date
Agree new constituencies at WSHFT Council	October 2020
Receive confirmation from the appointed bodies of their appointed member	January – February 2021
Implement agreed reductions in current WSHFT Council	31 st March 2021
Elections for new Council positions	April 2021 to June 2021

- 6.10.7 The Council and Board recognise the revised constitution reduces the overall size of the Council but this decision allows the Council to more effectively focus on delivery of its key duties of shaping the Trust's strategy and holding the NEDs to account. This also allows the Council to develop a deeper understanding of the Trust by having dedicated members of the Council's reporting groups bringing a depth to their engagement through their increased knowledge.
- 6.10.8 The existing WSHFT Council has a good working relationship with the Chair, the NEDs and Directors. This has been enabled through regular presentations from the NEDs on their respective roles as Committee Chairs; regular meetings with the Chair and CEO and NEDs, and workshops with the Board and Governors dealing with a range of pertinent matters, for example Restoration and Recovery or Clinical Strategy development.
- 6.10.9 WSHFT has a comprehensive induction programme for new Governors which is complemented during the year with a series of information sessions. This enables the Governors to engage in a challenging and constructive dialogue with the Board of Directors in the Council meetings and also outside those meetings during the wider meetings. The governors take part in many of the Trust's improvement projects not only offering valuable insight but also allowing the governors to see the Patient First methodology in practice.
- 6.10.10 In recognition of the need to support the new governors to make an effective contribution to the Council, WSHFT's retiring deputy lead governor (previously lead governor) will provide coaching and support to the governor induction programme. This will complement the Trust's established induction programme co-ordinated by the Company Secretary.
- 6.10.11 WSHFT Staff Governors are supporting the engagement with BSUH staff to explain the role of staff governors, the value they bring to the Council and to encourage them to stand for election.
- 6.10.12 WSHFT Public Governors are supporting with the engagement with the public members to encourage them to stand for election within the first three months of the newly formed Trust.
- 6.10.13 The WSHFT Council Meetings are scheduled to take place after the Trust's Board meetings. This allows the Governors to shape the Council agendas to include a deeper review of specific Board items, along with the standing items which including an update from the Chief Executive and Chair. Board meetings and Council meetings are well attended by the Governors.
- 6.10.14 The WSHFT Council has three reporting Groups; Nomination and Remuneration, Membership, and Patient Experience and Engagement. These have proved valuable for the Governors to secure greater insight into patient experience and engagement activities and offer a structured forum for the governors to shape and take an active role with the recruitment and engagement with the Trust's membership. These reporting Groups are planned to be retained within the new Trust.

6.10.15 In consultation with current governors the induction and workshop seminar programme has been reviewed and refined to ensure new governors will be well supported as they join the Council. The intention is to maintain the rhythm of Council meetings following the Trust Board meetings and to continue with the regular meetings with the Chief Executive, Chair and NEDs. The Trust will undertake a review of these arrangements after the first nine months (Dec 2021) to allow the organisation to refine these and make adjustments as necessary for 2022/23.

6.11 Governance Assurance

6.11.1 There is confidence in the proposed governance arrangements for the new organisation. The governance for the Trusts as two separate organisations has been externally assured and has identified no governance weakness at either organisation.

6.11.2 Neither WSHFT nor BSUH are in special measures and neither of them have any regulatory action against them by the CQC. Both Boards have made positive Board self-certifications for their ability to comply with their provider licences.

6.11.3 In 2016 WSHFT received a CQC rating of 'Outstanding' and in 2019 a repeat inspection resulted in a CQC rating of 'Outstanding' across all domains. In May 2019, prior to the CQC Well Led inspection, WSHST commissioned Deloitte to review the Trust's self-assessment against the CQC Well Led framework. In its report, Deloitte noted the following "strong, cohesive and largely stable board with a broad range of skills and experience and a clear sense of values and purpose."

6.11.4 At BSUH, at the commencement of the Management Contract in 2017, the Board commissioned an external review of the Trust's corporate governance. The Good Governance Institute (GGI) undertook a comprehensive assessment and made 31 recommendations. GGI recommended a specific focus on the quality governance structures, capability and capacity and were subsequently engaged to develop and deliver new quality governance arrangements in the Trust. This work completed in 2018, with all aspects showing good levels of maturity when assessed against the GGI maturity matrix. Consequently, the Trust exited Quality Special Measures in January 2019.

6.11.5 In 2018 NHSI undertook a thorough review of BSUH's financial governance as part of the process to exit from Financial Special Measures (FSM) and in July 2018 the Trust exited FSM. In 2019 the CQC awarded the Trust 'Good' for Well Led and 'Outstanding' for Care.

6.11.6 NHSI within the revised letter of undertaking for BSUH also confirmed that governance arrangements had been improved during the early stages of the Management Contract and therefore had been able to remove the specific governance undertakings.

6.11.7 The new merged organisation will build on the work undertaken at BSUH and consolidate that learning into the merged Trust along with the WSHFT hallmarks of outstanding governance identified by the CQC and Deloitte in the Board Well Led review. The work to develop the revised Board Committee structures (Section 6.15)

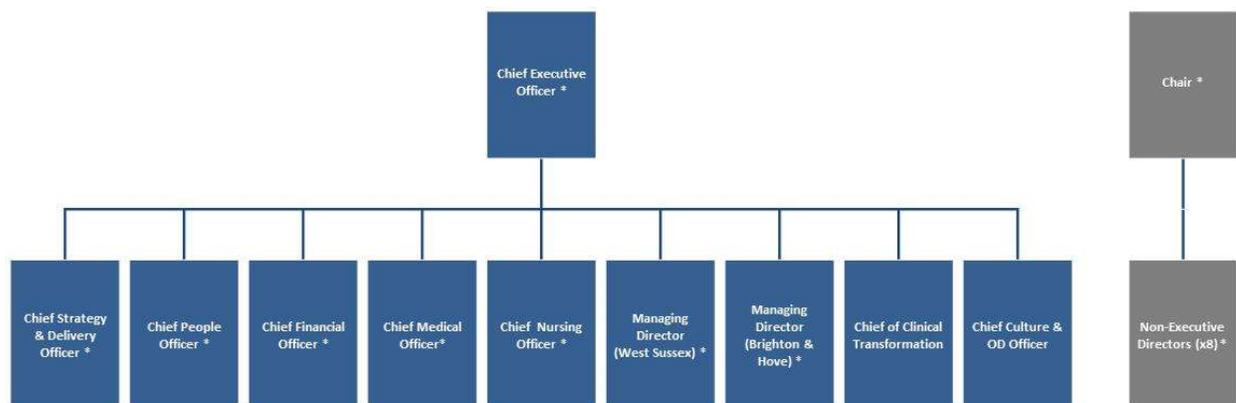
has been supported by KPMG and the underpinning quality governance design framework for the enlarged Trust is being supported by the Good Governance Institute and supports the Chief Medical Officer's board memorandum.

6.11.8 The Good Governance Institute has been commissioned to support the development of Quality and Clinical Governance framework in the new organisation. The outcome of this work will be aligned with the target operating model development (Clinical and Corporate Operating Models, Sections 6.16 and 6.17) and will also ensure the good practice already developed in both Trusts is retained.

6.12 Board of Directors

6.12.1 The Board of Directors is responsible for the strategic leadership and direction of the Trust. Under the current Management Contract there is significant commonality within the composition of the Boards of both WSHFT and BSUH which will support the retention of corporate memory within the new merged Trust Board.

Figure 6.12 Composition of the New Trust Board



* Voting member of the Board

6.12.2 The Executive leadership of the merged organisation will be through a single **Chief Executive Officer**.

6.12.3 The Executive structure and portfolios have been developed to reflect and support the integration to a merged organisation. The proposed new structure requires some changes to the roles and responsibilities of all existing Executive posts, and creates three new Executive level roles.

6.12.4 In addition to the existing responsibilities of the current shared Executive roles, amendments to proposed portfolios are as follows;

- The **Chief Strategy and Delivery Officer** will lead the development and delivery of the merged organisation's strategy, aligning the benefits of the merger with the system-wide ambitions of the Sussex Health and Care Partnership (ICS).
- The **Chief People Officer** will lead the development and implementation of the new Workforce Strategy and People Plan for the merged organisation. They will

support the Chief Culture and OD Officer with the delivery of the comprehensive organisational development programme to support the successful integration of the organisations as part of the merger programme.

- The **Chief Financial Officer** will be responsible for the new trust's single Capital function, including the executive oversight of the 3Ts capital build, as part of the wider 3Ts delivery programme.
- The **Chief Medical Officer** will be responsible for realising the service transformation plans and delivery of the benefits from the 3Ts hospital build, and service changes as a result.
- The **Chief Nursing Officer** role will provide the executive leadership for charity operations, the integrated organisations' risk management services (clinical and non-clinical), and the Estates and Facilities services. Given the scope and scale of the existing professional portfolios in leading the nursing and AHP workforce across the new Trust, the Patient safety agenda, and the need to retain focus on patient experience and satisfaction, the Executive structure will include two wte shared delivery of the CNO portfolio. Work has already commenced on designing the optimal split and alignment of the responsibilities within the role.

6.12.5 As part of the Sussex ICS, the merged organisation will be the primary acute provider for services in both the West Sussex, and the Brighton and Hove 'Places'. These are coterminous with the corresponding local authorities, and mirror the operational locality arrangements of both the Community and Mental Health providers for Sussex.

6.12.6 The proposed Executive leadership structure for the new organisation has recognised this through the establishment of two new Managing Director (MD) posts, each responsible for the leadership of operational services aligned to both Place and organisational wide levels as follows;

- The two **Managing Directors** will be accountable to the CEO and will be aligned to hospitals at Place level, responsible for the operational delivery of services. Services will be aligned to each MD on the basis of the designed Clinical Operating Model, and this will be developed further as we develop the Clinical Operating model.

6.12.7 In addition to the Executive Director roles, and to ensure the capacity and capability at Board level to ensure the success of the merger process, it is proposed to create two additional Board level Director roles to lead on the delivery of the clinical service transformation and the organisational development agenda as follows;

- The new role of **Chief of Clinical Transformation** will be created to support the merged organisation's service transformation ambitions by increasing clinical leadership at Board level, and expanding the Executive team's capacity to lead service change.
- The new role **Chief Culture and OD Officer** is a fixed term post that will support the development agenda of the new organisation for an 18-month period. They

will have responsibility for organisational and leadership development and the development of an Integrated Education strategy and supporting functions.

- 6.12.8 Both Trusts currently have seven Non-Executives (NEDs) between them, excluding the Chair. The intention is to retain each of these in accordance with their current terms of office. In addition, WSHFT already has an Associate NED who has been in post for the last 12 months, and in line with the original recruitment decision will be appointed as the eighth voting Non-Executive Director on the new organisation's Board of Directors, in line with the revised Constitution.
- 6.12.9 One Non-Executive will be retiring in January 2020. WSHFT has commenced the recruitment process, supported by the Governors, with the agreement of a person specification focusing on replacing the clinical background of the retiring Non Executive. The Trust is planning to utilise the support of a recruitment agency given the specialist background desired. It is planned to have this position recruited to by the end of March 2021.
- 6.12.10 There are a small number of NEDs who will be at the maximum period for their terms of office in 2022 and 2023. The Trust will build on its already successful associate non-executive development approach over the last 12 months and will actively seek to recruit through this route for their replacements. The Trust will use NHS NExT Director Scheme to support recruitment, particularly given the experience this national programme has in extended non-executive diversity.

6.13 Board Experience

- 6.13.1 Robust annual assessments of individual Board member performance are undertaken. Each board member has an annual appraisal that includes 360 degree feedback and Executive appraisals are reported to the Board Appointment and Remunerations Committee for both Trusts. For Non-Executive Directors at WSHFT, 360 degree feedback includes Governors and these appraisals are reported to the Council of Governors Remuneration and Nomination Committee. At BSUH, these appraisals are shared with NHSEI.
- 6.13.2 In 2016, WSHFT received a CQC rating of 'Outstanding' and in 2019 a repeat inspection resulted in a CQC rating of 'Outstanding' across all domains, making WSHFT the first acute provider to do so. In May 2019, prior to the CQC Well Led inspection, WSHST commissioned Deloitte to review the Trust's self-assessment against the CQC Well Led framework. In its report, Deloitte noted the following "strong, cohesive and largely stable board with a broad range of skills and experience and a clear sense of values and purpose".
- 6.13.3 The WSHFT and BSUH Boards have a substantively shared Board membership. Non-Executive Directors on the Boards have a range of public sector and commercial background relevant to leading a successful transaction including in accountancy, finance and managing complex public sector change.
- 6.13.4 The Executive Directors have the experience to drive the success of the transaction and subsequent delivery of the new organisation's strategy. The Chief Executive has been the Accountable Officer for 11 years and in this time, working alongside the

current Chief Culture and Organisational Development Officer, has merged two previous organisations to form Western Sussex Hospitals NHS Trust (2009), led the cultural alignment to achieve Foundation Trust status in 2013 and provided leadership to BSUH under a tripartite Management Contract with NHSI since 2017.

- 6.13.5 A core of the current Executive Team was part of the WSHFT Executive Team that established Patient First in 2015 and has led the Management Contract with BSUH from 2017. This has provided material continuity of leadership that has enabled the continuous improvement of both organisations. A number of newer Executives have augmented the Executive Team over the last few years and strengthened the local operational leadership of each Trust. All of the current Executives have extensive experience in the NHS and several have worked in major Teaching Trusts of significant scale and / or have experience of delivering performance improvement in challenged organisations.
- 6.13.6 A summary of merger and acquisition experience and major organisational and transformational change experience by Board member is in Appendix D.

6.14 Skills Gap Analysis of the Board

- 6.14.1 The Board has the benefit of significant continuity and experience. Most of the members of the current Board have been part of that Board prior to, and throughout, the period of the Management Contract.
- 6.14.2 A number of Non-Executive Director (NED) tenures have, with the agreement of the Council of Governors, been extended to maintain continuity over the coming year. The clinically qualified NED, and Chair of the Quality Assurance Committee at BSUH, retires in February 2020. The Trust has already started the recruitment to secure a replacement with acute senior clinical experience.
- 6.14.3 It is anticipated that there will be a further 2-3 NED vacancies in the second half of 2021/22. This turnover will provide an opportunity for the merged organisation to expand the diversity of the Board plus, specifically, supplement skills in relation to financial management (Chair of Audit Committee) and local/third sector/community service experience /connection, strengthening further the Board's wide experience, depth, and succession plans.
- 6.14.4 It is expected that the majority of posts in the new Executive structure will be filled by existing experienced post holders already successfully holding matching posts.
- 6.14.5 As detailed in Section 6.12, the new structure does have three posts that are substantially new as follows;
- Managing Directors x 2
 - Chief of Clinical Transformation
- 6.14.6 These posts are not expected to be filled internally and external recruitment will commence by January 2021 following agreement by the Remuneration Committee in December 2020.

- 6.14.7 The Board Structure also includes the Chief People Officer. There are no internal candidates for this post following the retirement of the substantive post holder earlier in the year. External recruitment has already commenced with a selection process scheduled for February 2021.
- 6.14.8 The process of developing appropriate substructures in corporate functions has begun. This is being supported by KPMG in order to add external challenge and experience of other organisations, and alignment with the development of the revised corporate governance structure.
- 6.14.9 Due to the existing Group Director structure implemented through the Management Contract for key corporate functions, it is anticipated that most posts will be filled by current, experienced post holders. The Trusts have assessed potential gaps, and plans to manage potential risks are being developed and will be managed through the PTIP.
- 6.14.10 It is anticipated that the senior level structures will be in place by 1st April with interim arrangements for delivering corporate functions developed; with further refinement as the Clinical Operating Model is developed and confirmed. The approach and timescales for this are detailed in section 6.17 below.

6.15 Shadow Board Arrangements

- 6.15.1 Given the current Management Contract and the number of common board appointments including a common Chief Executive, Chief Medical Officer, Chief Financial Officer, Chief Delivery Officer, Chief Culture and Organisational Development Officer, Trust Chair and four Non Executives it is not proposed to implement any shadow board arrangements. The table below demonstrates this current level of commonality between the two organisations.

Table 6.8 WSHFT and BSUH Board Composition

Board member	WSHFT Role	BSUH role
Alan McCarthy MBE	Chair	Chair
Mr Mike Rymer	NED – Deputy Chair	NED - Quality Assurance Committee Chair
Joanna Crane	NED – Senior Independent Director - Quality Assurance Committee Chair, Charitable Funds Committee Chair	NED – Senior Independent Director
Patrick Boyle	NED	NED - Deputy Chair, Finance and Performance Chair
Lizzie Peers	NED – Finance and Performance Chair	NED – Charitable Funds Committee Chair

Board member	WSHFT Role	BSUH role
Jon Furmston	NED – Audit Committee Chair	
Kirstin Baker	Associate NED (non-voting)	NED – Audit Committee Chair
Jackie Cassell		University appointed NED
Lillian Philip	Associate NED (non-voting)	
Dame Marianne Griffiths	Chief Executive	Chief Executive
Dr George Findlay	Chief Medical Officer, Deputy Chief Executive	Chief Medical Officer, Deputy Chief Executive
Karen Geoghegan	Chief Financial Officer	Chief Financial Officer
Pete Landstrom	Chief Delivery and Strategy Officer	Chief Delivery and Strategy Officer
Denise Farmer	Chief Organisational Development Director	Chief Organisational Development Director
Dr Maggie Davies	Chief Nurse	
Gethin Hughes	Interim Chief Operating Officer	
Carolyn Morrice		Chief Nurse
Jayne Black		Chief Operating Officer

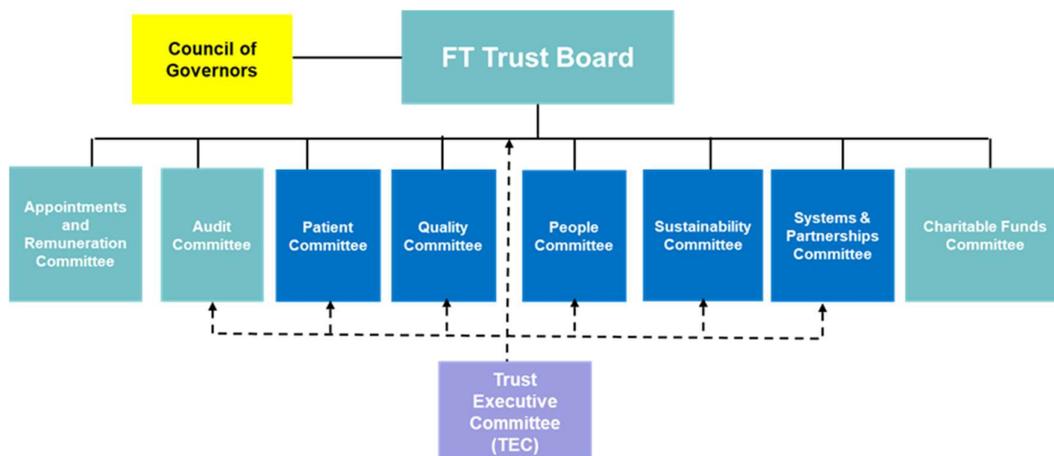
6.15.2 In addition to the commonality between the Boards during the period of the Management Contract, the Trusts have aligned a number of their governance, risk management and internal control processes including a common oversight and

steering groups, a common risk appetite statement, a consistent BAF, a set of common information governance processes, and a common internal audit provider.

6.16 Board Committees

- 6.16.1 The new Board and committee structure for the merged Trust will build on the successful structures adopted by both WSHFT and BSUH. The Board will have the two statutory committees required by the NHS Act 2006 and the Foundation Trust Constitution: The Directors Remuneration, Nominations and Appointments Committee, and the Audit Committee. Both committees will discharge the duties set out in the Foundation Trust Constitution and their Terms of Reference.
- 6.16.2 The new Trust, as corporate Trustees for its Charities, will continue to have a Charitable Funds Committee.
- 6.16.3 In considering the merger, a decision was taken to further strengthen and align the Board Committee to the strategic True North Domains and to establish five specific committees to focus on Patient, Quality, People, Sustainability and Systems and Partnerships. This proposed Committee structure represents a development from the current operation of Board Committees and has been arrived at through a series of facilitated discussions and workshops with Board members including external facilitation and advice from KPMG. These facilitated discussions and workshops will continue to ensure the Committee assurance functions and management reporting functions are aligned, work together seamlessly and are fully effective from 1st April 2021.

Figure 6.13 Board Committees



- 6.16.4 The inter-relationship between the respective Board Committees is supported by having shared NEDs as respective members of each Committee and the Audit Committee membership is made up of the Committee Chairs thus strengthening the link to the debate and scrutiny of assurance providers including Internal Audit. Each Committee has allocated oversight for specific strategic risks and through their review at each meeting of the Board Assurance Framework, are able to support the Board's overall review and scrutiny of the delivery of the new Trust's risk appetite.

The Board Assurance Framework will incorporate the identified significant transaction risks and their planned assurances. Further information on Risk is in Section 8.11.

6.16.5 As the Committees will become responsible for the single merged Trust there will be an effective hand over mechanism established to ensure no matters where Committee review is required are lost. The membership of each Committee will retain members from the current separate Trust committees which will also aid the transfer of activity to the new Committees.

6.16.6 Each Board Committee will have detailed terms of reference and a cycle of business. The principal purpose of each of the Committees of the newly merged organisations Board of Directors is as follows.

Table 6.9 Committee Overview

Committee	Purpose
Remuneration, Nominations and Appointments Committee	The purpose of the Directors' Remuneration, Nominations and Appointments Committee is to conduct the formal appointment to, and removal from office, of Executive Directors of the Trust, other than the Chief Executive (who is appointed or removed by the Non-Executive Directors subject to approval by the Council of Governors). The Committee also gives consideration to succession planning for Executive Directors, taking into account the challenges and opportunities facing the Trust, and the skills and expertise that will be needed on the Board of Directors in the future.
Audit Committee	The primary purpose of the Audit Committee is to provide oversight and scrutiny of the Trust's governance, risk management, internal control (financial and none financial) processes, including those related to quality and performance. These controls underpin the Trust's Board Assurance Framework so as to ensure its overall adequacy, robustness and effectiveness. This addresses risks and controls that affect all aspects of the Trust's day to day activity and reporting. The Committee reviews and scrutinises the Trust's annual report, annual governance statement, quality account and financial statements prior to their formal approval by the Board. The Membership of the Committee will be six Non Executives. One will be the Chair of the Committee and the remaining five being the Chairs of the respective Patient, Quality, People, Sustainability and Systems and Partnership Committees.
Charitable Funds Committee	The primary purpose of the Charitable Funds Committee is to ensure there is effective stewardship of the donated funds and that their use is in accordance with the donors' wishes and the Trustees comply with the requirements of charity regulations. This Committee will be chaired by one of the Non Executives.
Patient Committee	The Patient Committee brings both an avenue for the patient voice and a focus to the oversight of the Trust's established systems for ensuring high quality patient care is maintained. The Committee reviews at each meeting the element of the Trust's Board Assurance Framework for which it has designated lead oversight responsibility. The Committee also receives information and provides oversight and assurance on

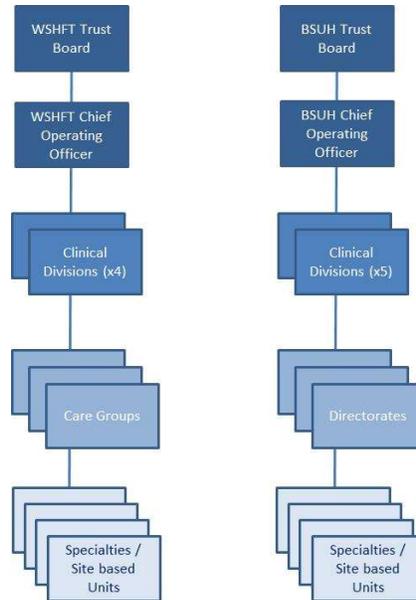
Committee	Purpose
	the Trust's delivery against the Trust's patient True North, Breakthrough and Strategic Initiative along with patient satisfaction and feedback surveys. The Committee will be attended by three Non-Executive Directors, one of whom is the Chair and the executive lead for the Committee the Chief Nurse.
Quality Committee	The Quality Committee is established by the Board of Directors to support the Board in discharging its responsibilities for monitoring the quality and safety of the Trust's services. The Committee reviews at each meeting the element of the Trust's Board Assurance Framework for which it has designated lead oversight responsibility. The Committee receives information and provides oversight and assurance on the Trust's delivery against the Quality True North, Breakthrough and Strategic Initiatives. The Committee also receives information and provides oversight and assurance on the Trust's delivery against the fundamental standards of care (as determined by Care Quality Commission), national quality and safety targets and indicators, incident and learning reports. The Committee will be attended by three Non-Executive Directors, one of whom is the Chair and the executive lead for the Committee the Chief Medical Officer.
People Committee	The key responsibilities of the People Committee include ensuring the strategic workforce needs of the Trust are understood and plans are in place to deliver these, providing oversight of workforce performance, understanding the risks to the workforce and seeking assurance that mitigating actions are in place and supporting development of enabling strategies including the Education Strategy. As with the other Committees this Committee will review at each meeting the element of the Trust's Board Assurance Framework for which it has designated lead oversight responsibility. The Committee receives information and provides oversight and assurance on the Trust's delivery against the People True North, Breakthrough and Strategic Initiatives. The Committee will be attended by three Non-Executive Directors, one of whom is the Chair, and by the Chief Executive and the executive lead for the Committee the Chief People Officer.
Sustainability Committee	The Sustainability Committee has delegated authority from the Board of Directors, subject to any limitations imposed by the Schedule of Matters Reserved to the Board, to approve business cases. The Committee reviews at each meeting the element of the Trust's Board Assurance Framework for which it has designated lead oversight responsibility. The Committee receives information and provides oversight and assurance on the Trust's delivery against the Sustainability True North, Breakthrough and Strategic Initiatives. The Committee also receives information and provides oversight and assurance in respect of the Trust's reported operational and financial performance. The Committee also provides oversight of the Trust's transformation and efficiency programme, the annual financial plan , and capital programme. The Committee also oversees development of the Trust's Environmental Strategy, IM&T Strategy and Estate Strategy. The Committee will be attended by three Non-Executive Directors, one of whom is the

Committee	Purpose
	Chair and the executive lead for the Committee the Chief Financial Officer.
Systems and Partnerships Committee	The Systems and Partnerships Committee brings a focus to the oversight of the Trust's established systems for ensuring the Trust is playing an active role within the ICS. The Committee reviews at each meeting the element of the Trust's Board Assurance Framework for which it has designated lead oversight responsibility. The Committee receives information and provides oversight and assurance on the Trust's delivery against the Quality True North, Breakthrough and Strategic Initiatives. The Committee also receives information and provides oversight and assurance on the Trust's delivery against the Trust's patient True North, Breakthrough and Strategic Initiatives along with reports from the work of the ICS Collaborative(s). The Committee will be attended by three Non-Executive Directors, one of whom is the Chair and the executive lead for the Committee the Chief Delivery Officer.

6.17 Clinical Operating Model

- 6.17.1 At the commencement of the management contract in 2017 WSHFT and BSUH had distinctly different service leadership and clinical operating models.
- 6.17.2 WSHFT continues to have a Triumvirate led (Chief of Service, Director of Operations, and Head of Nursing) Divisional structure, with clinical services arranged into Care Groups covering the Worthing, Southlands, and St Richard's hospital sites.
- 6.17.3 BSUH was more fragmented, with 13 Directorates of significantly varying sizes and scope led by a Clinical Director and Directorate manager, with some core clinical services such as Outpatients and Critical Care not recognised as distinct clinical operating units. Similar to WSHFT the Clinical Directorates were responsible for delivery of services across all hospital locations.
- 6.17.4 Under the management contract in BSUH and as part of the Leadership, Culture and Workforce programme, over the last 3.5 years the Trust's services have been consolidated and organised into a complementary service hierarchy and leadership model similar to WSHFT as follows;

Figure 6.14 Current Clinical Operating Models (WSHFT and BSUH)



6.17.5 The service arrangement of the two Trusts broadly mirror each other, with specific differences primarily as the result of the additional tertiary nature of some services at BSUH (the Trust has a fifth clinical Specialised Services Division). The resulting structures are now well established and provide a strong foundation from which to transition to a more nuanced Clinical Operating Model, designed to build on the strengths of the existing services, but create the right environment for the delivery of improvements to maximise the opportunities and address the key challenges for services in the future.

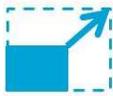
6.17.6 Although not a clinical division, it should be noted that both organisations have also recognised the importance of Estates and Facilities Management services in the provision of clinical care, and the key role those services play in the multi-disciplinary team in front line care services. These services are considered an additional Division within both organisations, and the same Patient First Strategy Deployment Reviews and processes are applied. In the last year, the E&F Divisions have established a single point of leadership across both organisations through the Group Director of Estates and Facilities. In the merged organisation the E&F function will report to the Chief Nurse as part of that executive portfolio.

6.17.7 The size and geographic scope of the new merged organisation means that simple merger of the different clinical operating levels, Divisions and Directorates, into a similar (but bigger) structure will not provide optimal arrangements for leadership, and will risk losing the local focus at a hospital and place / locality level that has been identified as a key objective and aspiration for the new Trust.

6.17.8 In October 2020 as part of the merger development programme the Executive of both WSHFT and BSUH reviewed options and approach for the future design of the new merged organisation's Clinical Operating Model.

6.17.9 The underpinning high level design principles had been previously agreed by the Boards as part of the future organisational work and development of the SOC. These high level principles were as follows;

Figure 6.15 High Level Design Principles



Scalability and Flexibility – to enable changes and local / other organisation links

- (a) Collaboration with community partners, links with QVH, and SACN / ESHT
- (b) Within a merged organisation where appropriate doing things at scale, once
- (c) Within a merged organisation having place based local ownership and identity



Fit and Influence – with Long Term Plan and ICS and ICP system development

- (a) Mirroring and influencing ICS structures – ICS, SACN, Place
- (b) Responding and influencing / leading place development and agenda
- (c) Responding and aligned to National approach and an integrated system/place view



Local Delivery – to further strengthen, develop, and embed success

- (a) Able to make decisions (and be accountable) for them at the right level
- (b) Reflect staff association with hospital and site as well as wider single organisation

6.17.10 There is a strong locality and hospital identity for both staff and patients, which is mirrored by the maturing nature of the Sussex ICS and the ongoing establishment of distinct Place based planning and delivery of services. This means there is an incentive to ensure that the new integrated Clinical Operating Model reflects and maximises input into this developing Place arrangement. The merged organisation will be the primary acute provider for services in both the West Sussex Place, and the Brighton and Hove Place. These are coterminous with the corresponding local authorities, and mirror the locality arrangements of both the Community and Mental Health providers for Sussex.

6.17.11 The Executive Leadership structure for the new organisation has recognised this through the establishment of two new Managing Director (MD) Executive posts, each responsible for the leadership of operational services and centred around a distinct Place within the ICS (West Sussex and Brighton and Hove). Clinical Divisions and the services within the merged Trust will be aligned to the relevant MD taking account of the primary hospital and locality based alignment, the opportunities for service transformation and integration, and the centring of tertiary services at the RSCH site.

6.17.12 As a result, the approach to the integration of clinical services for the merged organisation has agreed objectives as follows;

- Ensuring, where possible and appropriate, emergency and secondary care services are arranged and led at a local hospital level to continue to build on the existing already strong local identity of the five main hospital sites, but recognising the opportunity to transform some currently duplicated or fragile services

- Recognising and aligning Tertiary services, leveraging the opportunities enabled by the 3Ts Hospital building programme, and centring them at the Royal Sussex County Hospital (RSCH) in Brighton. Although based at the RSCH as the Major Trauma, Tertiary and Cancer centre, many of the services will continue delivering care in multiple locations across the merged Trust
- Taking the opportunity to integrate currently duplicated services across WSHFT and BSUH where there are issues of critical mass, sustainability, or fragility (either capacity or workforce), to create more sustainable single services that are better placed to redesign and transform care pathways and maximise use of resources
- Ensuring that the increasingly collaborative and virtual nature of very high volume support services, particularly diagnostic services, needs to be arranged in a way that maximises the benefits, interoperability, and transformation enabled by the scale of the new organisation.

6.17.13 The benefits of this approach to integration are that it will ensure clear lines of identity, accountability and responsibility, with appropriate services aligned to Place, and at a level of operational scale that is both large enough to deliver benefits of integration, but still small enough to reflect and respond to local needs. Where existing services are fragile they will be integrated into larger single service lines responsible for delivery across multiple sites, Places, or the whole organisation.

6.17.14 The Boards have agreed a set of design principles through which the design of the future clinical service operating model will be undertaken as follows;

- Design will be inclusive and done through engagement and consultation with the existing clinical and managerial leads for the Divisions and specialties across both WSHFT and BSUH
- Design will take account of emerging themes from, and will not be finally confirmed until the outputs of, the Clinical Strategy in March 2021; ensuring that the form of the clinical operating model will support and complement the priority service changes identified
- Design will organise services on the principle of bottom up, arranging the specialties and clinical support services/units into a series of service provision levels, which will enable mapping into appropriately scaled Directorate and Divisional structures
- Leadership of all clinical operating model resulting structures will follow the existing established principles underpinning the Trusts' triumvirate leadership model with a medical, nursing or AHP, and managerial leadership team.
- Design will reorganise services but adhere to the well-recognised and effective Divisional, Directorate, and Specialty level structural framework and units of leadership.

- Clinical Operational services are the ‘spine’ of the organisation, and corporate support services will orientate around these, where relevant providing a Business Partner support arrangement to supplement the triumvirate leadership.

6.17.15 The Trusts have commissioned KPMG to support the process for developing the operating model design. Whilst this work is initially focused on the corporate services, as part of the work over December 2020 – January 2021 it will also provide support to create a clinical engagement process for the refinement of the Clinical Operating Model. The engagement and design process will run from March 2021 through to June 2021, ahead of any formal consultation and changes.

6.17.16 The alignment of services will be based on the below model of service alignment which will be tested through the clinical engagement process.

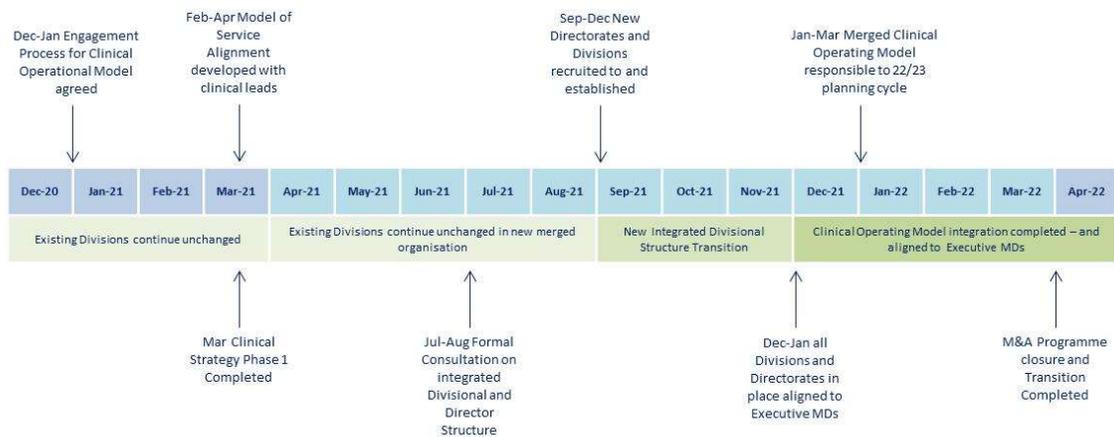
Figure 6.16 Clinical Service Alignment Model



6.17.17 As outlined previously there is not an intention to change any of the existing Trusts' clinical operating models before the formal merger of the organisations on the 1st April 2021. This minimises the risks of change over the operationally busy winter period, and concurrent with the Covid-19 and Restoration and Recovery priorities of the organisations.

6.17.18 The following figure outlines the timetable and steps to complete design and integration of the clinical operating model, with the changes and integration fully complete by April 2022.

Figure 6.17 Timeline for Clinical Operating Model Integration



6.18 Corporate Operating Model

6.18.1 Over the past 3.5 years WSHFT and BSUH Trusts have already aligned and integrated some of the corporate functions through single points of leadership and shared Subject Matter Experts (SMEs). These functions are generally where there has been a benefit to ensure aligned and integrated capacity, shared processes, and best practice.

6.18.2 The remaining corporate services, although under single points of Executive leadership, are led at an existing Trust level.

6.18.3 It will be important to align the benefits of the scale of the new organisation with the agility and ownership needed at a local hospital or service level. As detailed in section 6.17 above, the spine of the new organisation will be the Clinical Operating Model with services integrated, and led at the appropriate Divisional level.

6.18.4 Building on these starting points, the Boards have agreed principles for the development of corporate functions and substructures for the new merged organisation.

6.18.5 Executive portfolios have been refined and the development of the Corporate Operating Models and substructures in each portfolio is underway. This is being done in line with the following agreed principles;

- Clear alignment to the delivery of priorities for the new organisation
- Clear outcomes for each corporate portfolio and the level at which that should be delivered and reported
- The business processes and policies through which the portfolio will be delivered and how the substructures align to support them
- Integration of the corporate services overall should be on a cost neutral basis
- Design should be cogent across portfolios and support cross functional working

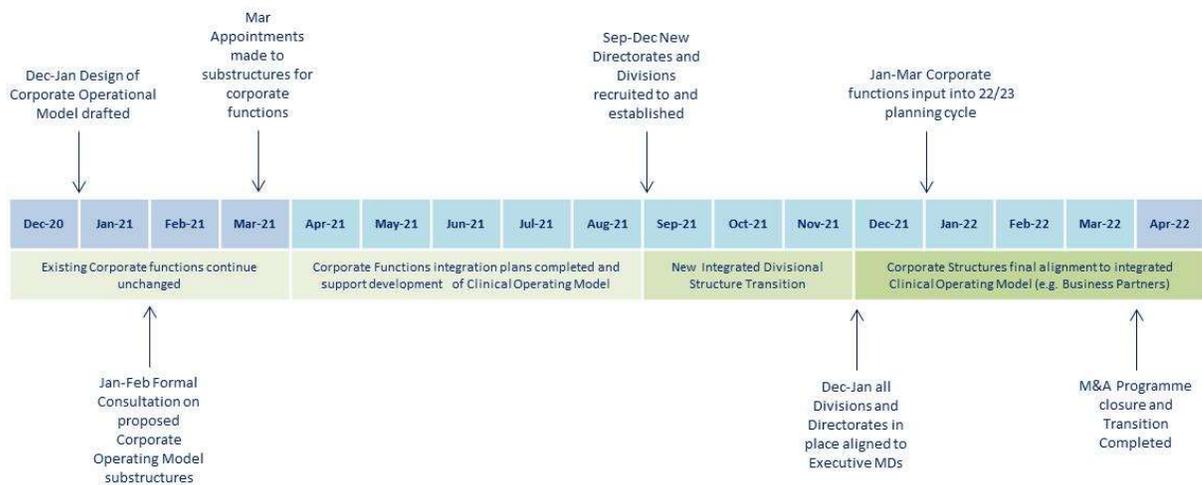
- Where appropriate Business Partner arrangements from key supporting functions will be developed to support the new Divisions, which will be confirmed alongside the development and transition to the Clinical Operating Model

6.18.6 KPMG have been engaged to support the development of substructures. In particular, this will ensure alignment between structures and to bring challenge, benchmarking, and experience from other organisations.

6.18.7 Senior structures for all corporate functions are expected to be available for consultation in mid-January 2021 with appointments made for 1st April 2021. This will allow senior post holders to support Q1 and Q2 delivery and the development of remaining Clinical and Corporate operating structures.

6.18.8 The following figure outlines the timetable and steps to complete the design and integration of the corporate operating model, with the changes fully completed by April 2022.

Figure 6.18 Timeline for Corporate Operating Model Integration



7 People and Organisational Development

7.1 Introduction

- 7.1.1 Engaging the workforce is essential to ensuring both a positive transition to the new organisation and to set the scene for future success. In addition, it is important to celebrate the past achievements of each of the Trusts and build on them.
- 7.1.2 It is recognised that a period of organisational change can be distracting, and potentially worrying, for the workforce and therefore staff will be kept informed of progress, have an opportunity to express their views and have access to appropriate support. Both Trusts have well established arrangements for working with Trades Unions and will fully engage and consult with trade unions as required (Section 7.5).
- 7.1.3 Both organisations also have well established and flourishing staff networks which will continue to be used as focus and reference groups to inform and strengthen development plans.
- 7.1.4 As the Trusts have been working together under the Management Contract for the past 3.5 years they already have considerable commonality, relationships and understanding that provides a robust and substantial base for organisational development in the new organisation.

7.2 Current People Context (WSHFT and BSUH)

- 7.2.1 Both Trusts have an ongoing commitment to people at the heart of their organisation recognising they are central to the delivery of excellent care. This is demonstrated in both organisations with People as one of the Patient First domains.
- 7.2.2 Since the Trusts have been working together under the Management Contract there have been a number of People successes as follows;
- WSHFT rated 'Outstanding' for Well Led (2019)
 - BSUH most improved Trust (2018) in the NHS Staff survey
 - BSUH CQC report stated focus on people underpinned the improvements seen with a 'paradigm shift in culture'
- 7.2.3 The Trusts have shared approaches to organisational development led by the common Executive and current structured programmes include an Interim People Plan at WSHFT, Leadership, Culture and Workforce programme (LCW) at BSUH, and integrated Efficiency and Workforce Meetings at both Trusts.
- 7.2.4 Joint working between the two Trusts over the past 3.5 years has already been strengthened though the following;
- Single approach to workforce issues during the management of COVID-19 national incident

- Combined approach to developing and delivering key elements of workforce plan supporting Restoration and Recovery
- Establishment of single People Steering Group
- Strengthened links with ICS and regional workforce arrangements through COVID-19
- Joint contribution to the development of the ICS People Plan
- Recovery and Restoration Workforce Plan and establishment of single People Steering Group
- Strengthened links with ICS and regional workforce arrangements through COVID-19
- Contributed to the development of the ICS People Plan

7.3 Aspiration for the New Organisation

7.3.1 The aspiration for the new organisation is defined as the People True North (Section 6.4) which is to be the top Acute Trust for staff engagement and employer of choice, and the corresponding breakthrough objective which is ‘an increase in the number of staff who would recommend the organisation as a place to work’.

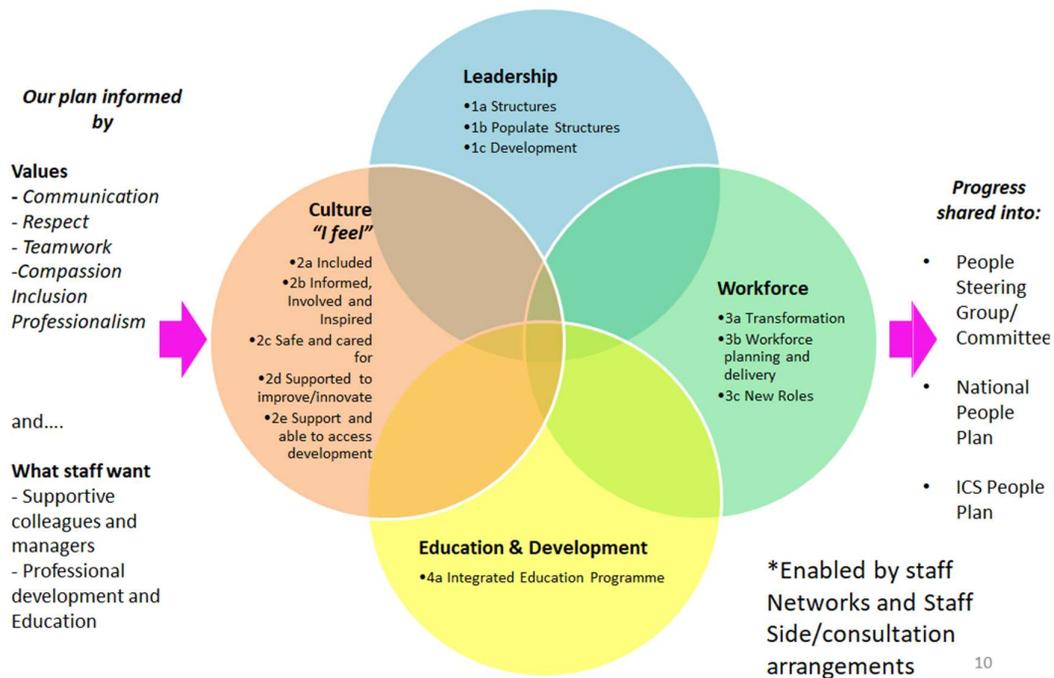
7.3.2 As part of the preparation for merger the Trusts have extensively consulted with staff to understand their hopes, fears and aspirations for the new organisation (Section 6.3 and Section 8.6). The outcome of this work are the six values for the new organisation; communication, respect, teamwork, compassion, professionalism and inclusion.

7.3.3 In order to address the aspirations and align Trust values a People Plan for the new organisation is being developed. The key priorities of that plan will be managed as a Strategic Initiative for the new organisation as part of the Leadership, Culture and Development programme (Section 6.4).

7.4 Developing the People Plan

7.4.1 The People Plan will be developed under four themes. Figure 7.1 below shows the overview of the new People Plan including inputs and enablers.

Figure 7.1 People Plan Overview



7.4.2 The People Plan will be developed with the following underpinning principles;

- Respond to aspirations of staff and be fully aligned with core values
- Clarity of goals and outcomes
- Adoption of continuous improvement principles (Patient First)
- Robust and regular use of data, evidence and information
- Track delivery of outputs and realisation of benefits
- Map national and ICS People Plan requirements
- Supported by ongoing staff engagement and consultation through channels such as our staff networks, staff representatives, and Pulse surveys

7.4.3 Achievement against the People Plan will be tracked against the People True North metric and target, and the corresponding breakthrough objective with trajectories developed for each key area of work. These will continue to be fundamental to planning and providing assurance against delivery.

7.4.4 The table below outlines the details of the four themes of the new People Plan.

Table 7.1 People Plan Themes

Theme	Description
Theme 1 - Leadership	<p>This theme seeks to ensure that we are able to confirm our leadership and management structures across the new organisation (capacity) and ensure that pre and post-merger that leadership has access to development to support them in the delivery of their roles and responsibilities (capability). This will be a funded programme of work to ensure all leaders have access to continuously develop in alignment with both the Trust values and the aspirations of our people</p>
Theme 2 – Culture “I feel”	<p>This theme in our People Plan seeks to understand and respond to the “I feel”/ “Feeling” across the organisation. Through detailed scoping and development of workstreams we will build on existing activities already underway, for example the responsive support provided during the Covid19 pandemic. We will follow an evidence and fact based approach to ensuring the workforce are and most importantly feel supported in the areas listed and this becomes embedded with our culture</p>
Theme 3 - Workforce	<p>This theme seeks to ensure that we maximise our most valuable resource, our People. The workstreams will ensure that we have a clear clinically driven understanding of our workforce requirements in terms of both volume and capability. We plan to ensure that technologies such as rostering are fully utilised to manage our workforce well and that they consider changing requirements of the workforce e.g. flexible working, changing careers etc. We will work with stakeholders including our teaching partners to identify opportunities relating to new roles and transformation. The adoption of workforce innovation aligns to Patient First and will improve the way we treat and care for our patients, whilst ensuring we maximise the effectiveness of the workforce we have available.</p>
Theme 4 – Education and Development	<p>This theme seeks to ensure that we have the resources and capacity to develop and progress our ambition for Integrated Education whilst harnessing the benefits of University Teaching Hospital status. We recognise the importance of progressing this work and plan to enhance capacity around Education leadership and management for the following:</p> <ul style="list-style-type: none"> • Understand our current provision across WHSFT and BSUH – SWOTs • Commit to reducing and breaking down traditional silos and focus on innovation with regards to Education and Knowledge to ensure benefits to both patients and our people. • Maximise benefits through the use of new technologies and extending access to services e.g. SIM to ensure that all who need and/or require access to education and knowledge have the right access. <p>Develop a Fully Integrated Education and Knowledge strategy, to inform developing a case for change and plans for resourcing to meet our ambition</p>

7.5 Technical and Legal Workforce Changes

7.5.1 In order to achieve a continued and safe and effective operation from Day 1 the Trusts have identified a number of statutory priorities and a small number of discretionary changes it wishes to have in place for 1st April 2021. From a workforce perspective these changes include the following;

- Electronic Staff Record updated with new Trust name
- Plan for the Transfer of Undertakings (Protection of Employment) TUPE of BSUH staff to WSHFT
- Clinical and corporate operating models agreed (not implemented)
- A new Executive structure in operation during Q4 2020/21

7.5.2 The Trusts are seeking to minimise organisational change in the lead up to 1st April 2021 to ensure clinical and operational services are supported, and remain focused, on delivery of restoration and recovery plans. Staff will have been involved in the development of the Clinical Operating Model but will not begin formal consultation or transition toward it until after 1st April 2021.

7.5.3 The timelines for expected changes are outlined in Clinical and Corporate Operating Models, sections 6.16 and 6.17 respectively.

7.6 Terms and Conditions

7.6.1 With the exception of medical staff and very senior managers, both Trusts employ their substantive staff on standard terms and conditions as set out in Agenda for Change. Medical staff are employed on the nationally agreed terms and conditions of employment for Doctors and Dentists.

7.6.2 A high level review has been completed to determine and distinguish whether there are any local differences in the employment terms and conditions for staff employed at both organisations. Some local variations have been identified and whilst more detailed work is being carried out to fully understand these differences, no significant material issues have been identified.

7.6.3 The Trusts will agree which of the differences it is desirable to align in advance of the 1st April 2021 transfer date, and which differences will be addressed by measures to be undertaken by the new organisation post 1st April 2021.

7.7 Employment Policies

7.7.1 A similar review exercise has been completed for employment policies in place in both organisations. Employment policies have been collated and variations in the operation of these policies exists have been identified.

7.7.2 Terms of reference are being agreed with trade union colleagues at both BSUH & WSHFT on the most appropriate way to deliver a set of single employment policies for 1st April 2021.

7.7.3 The terms of reference will include agreement on the method by which the employment policies will be delivered in partnership and the governance for agreeing a single new suite of employment policies. The terms of reference will also include an approach to agree which employment policies are critical and therefore need to be prioritised and completed before the 1st April 2021.

7.8 Transfer of Undertakings (Protection of Employment) - TUPE

7.8.1 As this is a merger by acquisition all staff employed by BSUH at the date of merger will be transferred under the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 to WSHFT under their terms and conditions of employment.

7.8.2 A plan for the TUPE transfer has been developed and will be confirmed in partnership with trade union colleagues with the requirement to give staff due notice of transfer of employment on 1 April 2021.

7.8.3 The TUPE plan includes providing the following information to staff representatives:

- The fact the legal transfer is taking place, approximately when and why
- Any social, legal or economic implications of the transfer for staff members such as a change in location or risk of redundancies.
- Details of any measures or actions that are expected to be taken, which will affect any members of staff (even if this is nothing). From this the 'measures' that will be consulted on with staff side representatives will include full details (or confirmation of none confirmed) relating to any;
 - Planned redundancies
 - Workplace relocation details
 - Changes to staff pay dates
 - Different working patterns

7.8.4 The TUPE plan also includes the following steps;

- The drafting and finalising of a formal consultation paper which will go to staff and representatives to launch the consultation
- The scheduling and communicating of consultation meetings
- Developing an Information Pack for managers with guidance on process and documents to support their staff.
- The formal notification to staff representatives of the intention to transfer and any identified measures.

- The compilation and receipt of full employee liability information
- The drafting and sharing of collective responses to staff consultation on the TUPE arrangements
- The creation and publication of a set a frequently asked questions and responses to be shared with all staff

7.8.5 The timeline below outlines the key steps in preparation for 1st April 2021 and is aligned with the overall programme.

Table 7.2 Key TUPE Dates

Action	Date
Consultation launched	January 2021
First set of measures shared with trade unions	1 st February 2021
Final set of measures shared with trade unions	28 th February 2021
Confirm final staff list	1 st March 2021
BSUH staff transfer to WSHFT	1 st April 2021

7.9 Transitional Consultation Arrangements

- 7.9.1 Transitional consultation arrangements have been established in agreement with both WSHFT and BSUH Staff Side Representatives. These arrangements include joint working to establish a change management strategy and process for any staff restructuring activity needed across both organisations before the merger date.
- 7.9.2 As outlined above it is anticipated in the months before the merger takes place, there will be a need for some restructuring activity which will span both organisations. Whilst this will not be extensive, there are areas particularly at a senior level and in some corporate services where it will be sensible and practical to do this ahead of the merger taking place.
- 7.9.3 In order to agree a single approach to this restructuring activity a set of change management principles and some best practice guidance has been drafted and is being agreed with Staff Side representatives in both organisations.
- 7.9.4 The change management principles that have been agreed with Staff Side include the following change principles;
- Fair treatment of staff is central to the culture of the organisation
 - Every person will be treated as an individual in respect of their career aspirations
 - All efforts will be made to avoid compulsory redundancies
 - The nature of the change will be clearly explained
 - Feedback will be actively sought on any proposals

7.9.5 Best practice guidance has been developed with Staff Side representatives in order to build upon the change management principles and to ensure all restructuring activity is undertaken in the correct spirit. This best practice guidance covers the methods and mechanics of delivering any necessary restructuring activity and gives detailed information on the following areas;

- Consultation document
- Timescales for consultation
- Trade union accompaniment
- Job Descriptions
- Job Grading
- Job Matching
- Appointing to new posts

7.9.6 Restructuring activities that happen after 1st April 2021 will follow the principles outlined above but will be conducted under a new organisational change policy, under the new Trust, which is being developed in partnership with trade unions.

8 Financial Strategy

8.1 Introduction

- 8.1.1 WSHFT has a stable financial position, delivering a recurrent surplus year on year over a period of time. The Trust has a sound relationship with commissioners and has maintained low reference costs. The Trust received an 'Outstanding' rating for Use of Resources in 2019/20.
- 8.1.2 BSUH has been on a journey of significant financial improvement for the past three years, exiting Financial Special Measures in 2018. The Trust has a medium term financial proposition formally approved by NHSEI and has secured an agreement which delivers a recurrent break-even position.
- 8.1.3 Although both Trusts have the capacity to deliver the financial requirements laid out in the NHS Long Term Plan (LTP), the efficiency and productivity requirements alongside better value may be better achieved at scale and pace as a single organisation.
- 8.1.4 This section of the FBC sets out the financial modelling and assessment undertaken to support the merger and transaction as follows;
- The financial context of both Trusts
 - The consolidated financial performance of both Trusts as separate entities (the counter-factual)
 - An analysis of the incremental financial benefits associated with M&A
 - A sensitivity analysis of the enlarged Trust's financial projections.

8.2 Basis for Financial Modelling

- 8.2.1 The financial projections in the Strategic Case were taken from the Medium Term Financial Plans developed by BSUH and WSHFT covering the period to 2023/24. The assumptions were based upon the financial framework as it was at the time of the LTP.
- 8.2.2 As a result of changes introduced during the Covid-19 pandemic an interim financial framework has been in operation during 2020/21. This has been updated during the year to reflect the restoration of activity. Forecasts based on the Phase 3 financial framework have been prepared during October 2020, this timeline being concurrent with the preparation of the merger FBC.
- 8.2.3 Linked to the 2020/21 Financial Framework it is anticipated there may be further payment reforms from April 2021. The publication of these reforms and the Phase 4 financial framework is not expected prior to December 2020 (the date of completion of the FBC).
- 8.2.4 In order to ensure a consistent baseline from which to assess the incremental benefits of the merger the out-turn and forecast projections for the Trusts, whether as

standalone organisations or as a merged entity, have used the financial framework and forecast assumptions as set out in the NHS Long Term Plan.

- 8.2.5 Once details of the financial framework have been published the Trust will undertake an impact assessment of the financial planning guidance for 2021/22.
- 8.2.6 The Long Term Plan and the medium term financial plans of both Trusts covered the period to 2023/24. For the FBC, the financial projections have been extended to 2025/26. Control total trajectories are not available beyond 2023/24 financial year. It has been assumed in the financial model that that BSUH will be required to deliver a break-even position consistent with the terms and spirit of the medium term financial plan agreed with NHSEI in 2019 (Section 8.4) and that WSHFT will also deliver a break-even position.
- 8.2.7 The BSUH medium term financial proposition was agreed in August 2019 and updated in October 2019. In developing the FBC, this plan has been updated to reflect national changes agreed in the 2020/21 planning round.

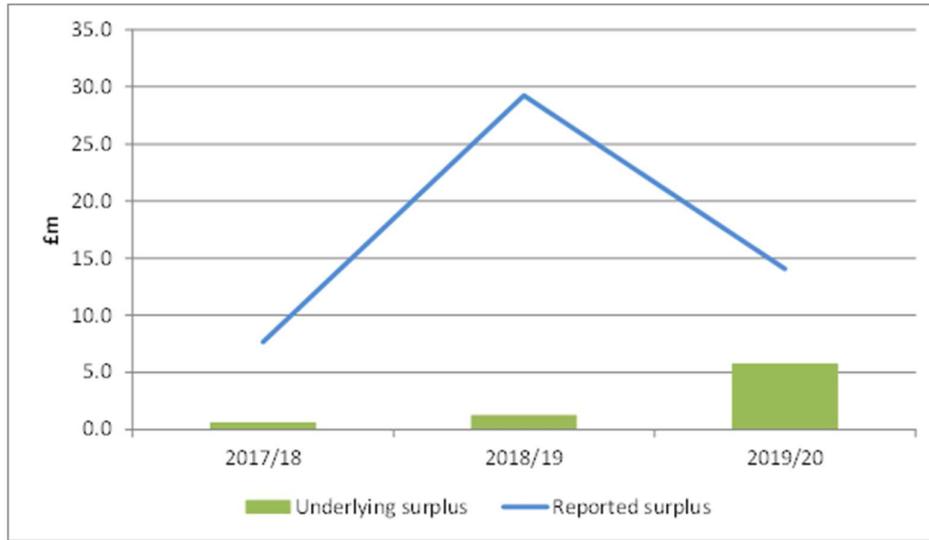
8.3 WSHFT Financial Context

- 8.3.1 WSHFT has a stable financial foundation with a history of surplus delivery. Delivering a recurrent underlying surplus and meeting its control total has allowed WSHFT to maximise additional earnings from the Provider Sustainability Fund. Table 8.1 and Figure 8.1 below show the historic financial performance of WSHFT in the three years prior to the transaction.

Table 8.1 WSHFT Historic Financial Performance

Item	2017/18	2018/19	2019/20
	£m	£m	£m
Reported adjusted surplus	7.7	29.2	14.1
less: PSF Achieved	9.9	28.0	8.3
less: Prior period income adjustment	(2.9)		
Underlying Surplus	0.6	1.2	5.7

Figure 8.1 WSHFT Surplus Trend 2017/18 to 2019/20



8.3.2 The underlying financial performance of WSHFT has shown an improving surplus position over the last three years. As a result of this strong financial performance, the Trust has earned £46.3m of Provider Sustainability Fund (PSF) income. This has improved the Trust’s liquidity position and allowed it to make some significant capital investment in recent years and create a strategic capital reserve.

8.3.3 The Trust Reference Cost Index has been significantly below 100 for each year since it was formed; Table 8.2 shows the last five years of performance. Model Hospital reports the Trust’s Weighted Activity Unit cost in the lowest quartile for non-specialist acute Trusts despite the delivery of services across two acute sites. The Trust has reported a Finance and Use of Resources Risk Rating of ‘1’ during 2019/20.

Table 8.2 WSHFT Reference Cost Performance

	2014/15	2015/16	2016/17	2017/18	2018/19
RCI (MFF-Adjusted)	94	90	93	93	93

8.3.4 The Trust has a strong track record of recurrent CIP delivery, having delivered efficiency programmes of over £15m per annum (in excess of 4% of cost base) from 2014/15 onwards. The efficiency requirement for 2019/20 dropped to £11.7m reflecting improvements in the underlying position. Figure 8.2 illustrates the track record of CIP delivery.

Figure 8.2 WSHFT CIP delivery 2014/15 to 2019/20



8.3.5 The Trust has an embedded Programme Management Office that aligns efficiency and transformation schemes. Efficiency programmes are developed with strong clinical and operational input, with reference to benchmarking such as Model Hospital and GIRFT and underpinned by the Trust’s Patient First methodology.

8.3.6 The sustained financial performance is a result of a strong governance and control environment and a financial performance framework which supports the Patient First methodology. This was recognised at the Use of Resources assessment in June 2019 where the Trust was rated as ‘Outstanding’.

8.3.7 WSHFT has developed a Medium Term Financial Plan for the period to 2023/24, aligned to the long-term plan of the ICS. The Medium Term Financial Plan evaluates a range of scenarios, including the following two key scenarios;

- **“Do Nothing”** scenario: this applied the impact of tariff changes, activity growth, inflation and other cost pressures to the adjusted surplus/deficit trajectory over the forecast period. It assumed no improvement initiatives, efficiencies or economies of scale thereby making the totality of the efficiency requirement visible
- **“Do Something”** scenario: this described the annual efficiency requirement to deliver the surplus trajectory as per the ICS long-term plan.

8.3.8 For WSHFT, the “Do Nothing” scenario identified two key issues that would need to be addressed in order to deliver the control total trajectory issued by NHSEI;

- The national efficiency assumption that is built into tariff
- The estimated impact of the rebasing of Market Forces Factor by the National Tariff Pricing Service. To mitigate any financial volatility arising from the rebasing there is a five-year transition that commenced in 2019/20.

8.3.9 The inherent efficiency assumption in national tariff and the rebasing of market forces factor are outside of the direct influence of the Trust but will clearly require action by the Trust. If the Trust were to only deliver the national efficiency assumption of 1.1%

then there would still remain a gap to the control total trajectory as this would not address the income reduction resulting from a reduced Market Forces Factor. The average annual implied efficiency challenge to align the 2025/26 adjusted surplus with the issued control total is 2.0%, which is an average of c£11m per year. This is illustrated in Figure 8.3 and Table 8.3 below.

Figure 8.3 Impact of Efficiency Scenarios on Delivery of Control Total Surplus Trajectory

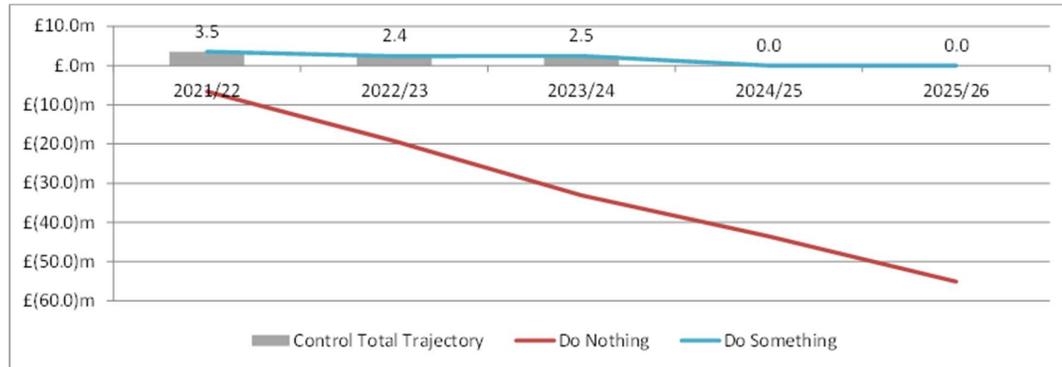


Table 8.3 WSHFT Control Trajectory in MTFP Scenarios

Adjusted Surplus/(Deficit) £m	2021/22	2022/23	2023/24	2024/25	2025/26
Control Total Trajectory	3.5	2.4	2.5	0.0	0.0
Do Nothing	(6.6)	(19.3)	(33.1)	(43.5)	(55.1)
Do Something	3.5	2.4	2.5	(0.0)	0.0
Efficiency in Do Something	10.2	11.5	13.9	8.0	11.6
% of operating cost base	2.0%	2.2%	2.6%	1.4%	2.0%

8.3.10 The Trust has a track record of delivering efficiency programmes in excess of this scale and complexity. The medium-term financial planning for WSHFT demonstrates that the Trust had a sustainable financial position over the planning horizon. The key financial challenge going forward for the Trust is the emerging pressure from fragile services and workforce gaps and the Trust recognises sustained delivery of efficiency above the national efficiency requirement will require increasing levels of transformational change to mitigate workforce challenges and closer system and partner working to be able to deliver the required level of reduction in the cost base.

8.4 BSUH Financial Context

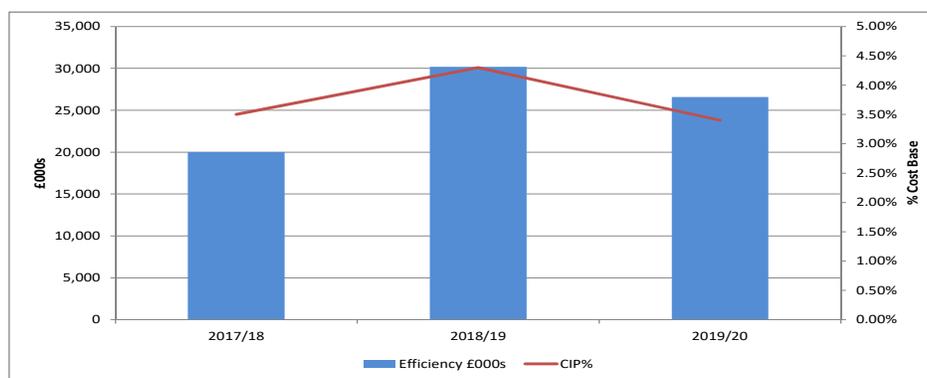
8.4.1 In the three years prior to the commencement of the Management Contract financial performance at BSUH, excluding technical accounting for impairments and donated assets, deteriorated sharply and significantly from a deficit of £0.5m in 2014/15 to a reported deficit of £68.5m (10% of turnover) in 2016/17. The Trust was placed in Financial Special Measures in October 2016. Table 8.4 shows the underlying financial performance of BSUH below.

Table 8.4 BSUH Historic Financial Performance

Item	2014/15 £m	2015/16 £m	2016/17 £m
Reported adjusted deficit	(0.5)	(44.8)	(68.5)
Prior period adjustment for CCG arbitration	0.0	(9.5)	9.5
Underlying Deficit	(0.5)	(54.3)	(59.0)

- 8.4.2 One of the objectives of the Management Contract with WSHFT was to stabilise the financial position at BSUH and to support the Trust to exit from Financial Special Measures.
- 8.4.3 Having strengthened financial governance and the control environment, financial performance stabilised from 2017/18 onwards. The Trust reported a deficit of £63.8m in 2017/18 and £65.2m in 2018/19 and an improved position of £51.1m deficit in 2019/20. Including Provider Sustainability Fund (PSF) and Financial Recovery Fund (FRF) income earned in 2019/20 the Trust reported a significantly improved deficit of £25.7m.
- 8.4.4 Stabilisation has only been achieved through delivery of £77m of efficiencies across a three-year period. As shown in Figure 8.4, this delivery has been at least 3.4% and up to 4.3% in 2018/19. Efficiency delivery in 2017/18 and 2018/19 significantly exceeded the cap of 2% per annum efficiency delivery agreed as part of the Management Contract.

Figure 8.4 BSUH CIP delivery 2017/18 to 2019/20



- 8.4.5 In each year, financial performance has been in line with control total. The Trust exited Financial Special Measures in July 2018.
- 8.4.6 BSUH developed a Medium Term Financial Plan in 2018/19 in partnership with NHSEI in order to enable a financial agreement that would provide some longer term financial stability for the Trust up to the completion of the 3Ts new hospital build in 2023/24.
- 8.4.7 Securing the agreement of a deliverable Medium Term Financial Plan for BSUH was also a critical component of the decision by the WSHFT Board regarding the future leadership of BSUH beyond the end of the initial term of the initial Management Contract in March 2020.

- 8.4.8 An assessment of identified efficiency opportunities and stress-testing of deliverability demonstrated that it was possible, albeit stretching, for BSUH to achieve 3% year on year financial improvements to fully mitigate the operational drivers of the deficit by 2023/24, and partially mitigate the structural drivers but would leave a residual structural deficit.
- 8.4.9 On this basis, the Trust therefore sought a financial settlement from NHSEI to provide a secure financial future for the medium term. This was confirmed in August 2019 and updated in October 2019, and will deliver a break-even position from 2022/23.
- 8.4.10 There have also been a number of changes to the national financial regime that will impact on the financial plan figures as follows;
- Change to the Provider Sustainability and Financial Recovery Funds to support break-even delivery in all providers
 - Reduction in NHS Specialised Commissioning CQUIN
 - Debt to equity swap
- 8.4.11 Phase 4 financial framework guidance that will describe the financial framework for 2021/22 is expected to be published later in the year and may have a further impact on the financial settlement. However, the principles of the financial settlement agreed between BSUH and NHSEI are expected to be maintained.
- 8.4.12 With this level of financial settlement BSUH would still be required to deliver an efficiency of 3% in order to achieve a break-even position as shown in Figure 8.5 and Table 8.5 below.

Figure 8.5 Impact of Efficiency Scenarios on Delivery of BSUH Control Total Trajectory

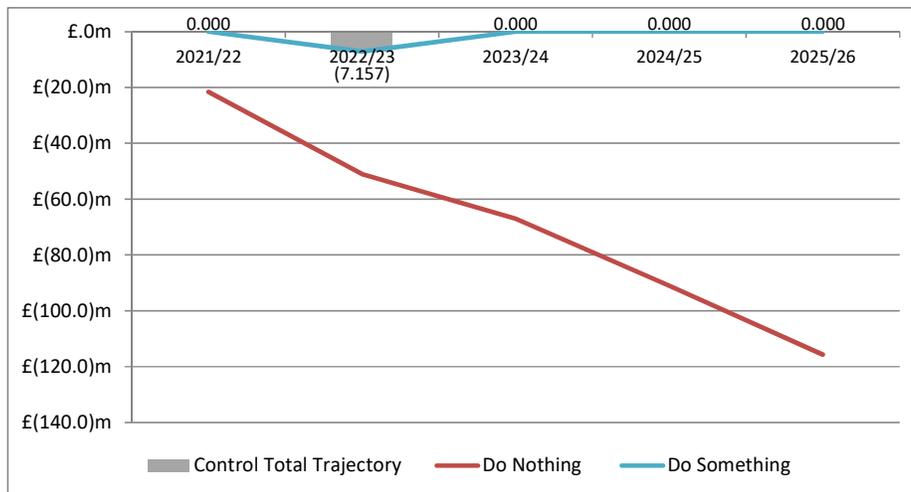


Table 8.5 BSUH Control Trajectory in MTFP Scenarios

Adjusted Surplus/(Deficit) £m	2021/22	2022/23	2023/24	2024/25	2025/26
Control Total Trajectory	0.000	(7.157)	0.000	0.000	0.000
Do Nothing	(21.628)	(51.083)	(67.116)	(91.043)	(115.714)
Do Something	0.000	(7.157)	0.000	0.000	0.000
Efficiency in Do Something	21.628	22.298	23.190	23.927	24.671
% of cost base	3.0%	3.0%	3.0%	3.0%	3.0%

8.4.13 The delivery of a 3% efficiency target is possible but stretching and was rigorously tested by NHSEI in development of the medium term financial plan and agreement of the financial support. Cost reductions delivered in the initial years of the Management Contract were largely through tactical opportunities. These tactical opportunities will decrease over time. The ability to exploit these opportunities is only possible in a larger organisation with greater opportunities for economies of scale.

8.4.14 BSUH will therefore need to look to strategic opportunities to ensure the full 3% can be delivered over time. Given this relies on actions outside the control of the Trust these are inherently higher risk. As with WSHFT, delivery will require close working with system partners to realise the full benefit from the identified opportunities.

8.5 Consolidated Financial Projections (Counter-Factual Scenario)

8.5.1 The performance of the individual Trusts has been consolidated to provide the counter-factual baseline from which incremental benefits can be evaluated. This is summarised in Table 8.6.

Table 8.6 Consolidated Financial Projections for WSHFT and BSUH

£m	2021/22	2022/23	2023/24	2024/25	2025/26
WSHT Control Total Surplus	3.54	2.41	2.48	0.00	0.00
BSUHT Control Total (Deficit)	(7.16)	0.00	0.00	0.00	0.00
Combined Trust Performance (Counterfactual)	(3.62)	2.41	2.48	0.00	0.00
<i>Memo: Efficiency requirement included within above trajectories</i>					
WSHT	10.151	11.536	13.896	7.951	11.550
BSUHT	21.628	22.298	23.190	23.927	24.671
Combined efficiency requirement	31.779	33.834	37.086	31.878	36.221
Merged operating cost base (exc impairments)	1,186	1,222	1,266	1,312	1,357
% efficiency	2.61%	2.69%	2.85%	2.37%	2.60%

8.6 Efficiency Background

8.6.1 WSHFT has several years' experience of delivering recurrent quality-led efficiencies supported by a best in class Programme Management Office (PMO). The Efficiency Programme governance system and processes have been tested and validated through internal and external audit and in 2019 WSHFT achieved Outstanding for Use of Resources.

8.6.2 Since the commencement of the Management Contract with BSUH, a Group Director of Efficiency and Delivery has provided a single point of leadership for the development and delivery of both Trusts' Efficiency Programmes.

8.6.3 The governance system, proven to deliver results, in WSHFT was implemented in BSUH from April 2017 and has delivered over £70m of recurrent cost reduction over three years for BSUH, whilst continuing to deliver successful programmes at WSHFT. The effectiveness of the Trust’s approach to efficiency was extensively tested as part of BSUH’s exit from financial special measures which was achieved in July 2018.

8.6.4 The table below provides a summary of the cost reduction achieved at each Trust in the three years since 2017.

Table 8.7 Efficiency Delivery in WSHFT and BSUH

Trust	2017/18 £m	2018/19 £m	2019/20 £m
WSHFT	20.0	18.2	11.7
BSUH	20.0	30.2	26.6

8.6.5 The robustness of the rolling pipeline of efficiencies and the maturity of the efficiency planning and delivery, means both organisations have continued to deliver cost reduction during the pandemic and plans are in place to achieve a minimum of 1.1% by each Trust in 2020/21. In addition to this, a significant amount of clinical change was achieved in the early part of the pandemic. A “What Went Well” programme provided a framework to validate these changes and ensure the changes are captured and embedded as business as usual. Key efficiency schemes have also been aligned to the Trusts’ Restoration and Recovery plans to ensure best value is achieved to minimise the requirement for premium rate capacity. The Trusts have also taken the opportunity to introduce lean improvement methodologies from the Patient First improvement programme to develop the Efficiency Programme for the new Trust. This will enable a reduced reliance on tactical efficiencies and will build a strong pipeline of opportunities to remove waste and unwarranted variation in clinical models of care and patient pathways and across corporate services’ processes.

8.6.6 Both Trusts have a strong platform and have a robust approach to quality-led sustainable efficiency that plays an important role in the financial sustainability of each Trust. This approach will also ensure the Trust is able to deliver the incremental benefits of merger and recover transaction costs over the first three years of operation as a new Trust.

8.6.7 The following sections will further detail how in the context of the new merged organisation, building on the existing strength of delivery in both WSHFT and BSUH Trusts as follows;

- Providing more detail and assurance about the new Trust’s approach to efficiency building on the predecessor Trusts’ track record of delivery
- Using Model Hospital analysis to outline the efficiency opportunity for each Trust
- Outlining the efficiency requirement for the first five years and summarising the opportunities already identified

- Assessing the incremental benefits of the merger and how these will be achieved

8.7 Approach to Efficiency Delivery

- 8.7.1 The PMO at both Trusts already operates the same processes in the identification, development and delivery of efficiencies. The approach will be tailored to the opportunity, using either Prince2-based methodology for where deliverables are known, through to lean methodology to understand the problem before a solution is determined. Both approaches follow a data driven methodology that takes the Trusts through the onward process of identification, development, delivery and review.
- 8.7.2 In both Trusts, identification and delivery of improvement is quality-led, with focus on the improvement of productivity, the removal of waste, the reduction of spend and/or improvements to income opportunities whilst at the same time delivering patient benefits. Opportunities are identified through a number of sources, including local knowledge of clinicians and health economy/partner initiatives. Benchmarking is also undertaken both, internally and externally, to help identify where opportunities may exist.
- 8.7.3 Further detail the approach to Efficiency is contained in Appendix F.

8.8 External Benchmarking

- 8.8.1 To understand how productivity and quality compares to other Trusts, external benchmarking is used to identify variation and apparent waste. This facilitates a better understanding of where to seek opportunities to improve.
- 8.8.2 Model Hospital is the principal external benchmarking tool used by the Trusts but this is supported by supplementary sources including GIRFT, Dr Foster, and Civil Eyes which are more clinically focussed. Analysis from Model Hospital demonstrates potential efficiency and productivity benefits through the removal of unwarranted variation compared.
- 8.8.3 Both Trusts undertake an annual refresh of Model Hospital when the prior year becomes available as well as ad hoc analysis to support specific projects. This is used to engage with clinicians and operational teams.

8.9 Internal Benchmarking

- 8.9.1 Internal benchmarking builds on the themes of Model Hospital, but instead looks at internal variation rather than external. Using patient-level information and costing system data for WSHFT, a bespoke portal has been developed by the Finance department for use by clinical teams.
- 8.9.2 The tool enables users to look at data in a number of ways to help understand the level of variance and what may be driving some of the deviation, including as follows;
- Patient care episodes / patient pathways
 - Length of stay

- Frequent attenders
- Variations in HRG activity and cost

8.9.3 Opportunities are shown by looking at the mean cost of delivering each HRG, and calculating the savings that may be possible if the Trust could move any above-mean activity back to mean. The mean is the Trust's own performance, and not reliant on benchmarking against external Trusts.

8.10 Efficiency Requirement and Assessment of Opportunities

8.10.1 The table below explains the existing efficiency requirement that exists in both Trusts over the next five financial years. Between 2021/22 and 2025/26 this requires a combined baseline efficiency requirement of 2.37%-2.85%.

Table 8.8 Baseline Efficiency Requirements 2020/21 - 2025/26

£m	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
WSHFT	15.8	10.2	11.5	13.9	8.0	11.5	70.9
BSUH	22.0	21.6	22.3	23.1	23.9	24.7	137.6
Combined efficiency requirement	37.8	31.8	33.8	37.1	31.9	36.2	208.6
% efficiency	3.23%	2.61%	2.69%	2.85%	2.37%	2.60%	

8.10.2 Through the development of its medium term financial proposition, BSUH undertook significant work on its long term efficiency plans which have been rigorously tested and assured by NHSEI. Delivery of a 3% annual efficiency was one of the key principles on which the agreed financial settlement was based.

8.10.3 The BSUH baseline performance data has been refreshed and the same methodology has now been adopted at WSHFT. This has resulted in both Trusts being able to articulate efficiency opportunities that will be sufficient to deliver the efficiency requirements identified over the next five financial years from 2021/22 to 2025/26.

8.10.4 Headroom is captured in the efficiency plan to acknowledge the risk of individual scheme under-delivery. By over-programming to the value of around 10% of the programme, this provides headroom to mitigate any challenges identified during project delivery.

8.11 Delivering Incremental Benefits

8.11.1 As a merged Trust, there are significant benefits from both ease or speed of implementation and therefore a greater opportunity to go further and faster within existing opportunities. In addition, there are new opportunities created through the larger scale of the Trust.

8.11.2 Incremental benefits will be progressed using the same processes identified for the standard efficiency programme.

8.11.3 Both Trusts have reviewed top-level opportunities that have been identified through a variety of methods, including benefits workshops, clinical strategy development, and existing discussions between Trust clinical and corporate operational teams. These are supported and evidenced by Model Hospital and other benchmarking sources as well as through existing practical examples of collaboration e.g. Procurement.

8.12 Transformation and Transaction Costs

8.12.1 During, and in preparation for, the BSUH Management Contract there has been a total investment in change management, organisational and leadership development and operational resilience of £7.6m.

8.12.2 In completing the transaction and delivering the benefits outlined in Section 8.11 the new organisation would expect to incur a further £6.4m of non-recurrent costs. This cost projection is based on resourcing plans for the merger and acquisition programme work streams. Implementation and benefits realisation costs are estimates and will be refined as work in these areas progresses.

8.12.3 The Trust is seeking financial support to cover the necessary contractual and integration costs as well as a contribution towards the organisational and leadership development programme alongside this to ensure the merger is a success. The Trust has already used its own resources to invest significantly in introducing and embedding Patient First in BSUH as well as in extensive clinical leadership and programme office support to ensure improvement is truly embedded. This has enabled the funding request to be substantially lower than significant transactions for other Trusts.

8.12.4 It should also be noted that as already outlined, there is no 'Do Nothing' option for this transaction. If the merger does not proceed, there will be a requirement to put in place a new Executive leadership team and sub-structure for BSUH. The costs associated with this will be significantly more than the projected transaction costs.

8.13 Consolidated Financial Projections – Merged Trust

8.13.1 The incremental benefits of merger deliver a recurrent benefit of £9.9m at 2025/26 pay and prices. Delivery of the incremental benefit increases the efficiency delivery of the enlarged Trust to 2.9% in 2021/22 and 3% in 2022/23 and 2023/24.

8.13.2 The counter-factual financial projections for both BSUH and WSHFT show a sustainable financial position. The merger and opportunities afforded from economies of scale and the resulting incremental financial benefits will give the new Trust the head-room to invest in developing more resilient services and improving patient experience and has been reflected in the financial model. Such investment would be aligned with the Clinical Strategy priorities and be subject to separate business cases. It is expected to include some or all of the following areas;

- Long-term response to COVID-19 including maintaining pathway segregation if required

- Long-term investment in restoration and recovery - particularly within diagnostic services such as endoscopy which have significant challenges to throughput and backlogs
- Developing and enhancing critical care services
- Progression toward 7 days' services
- Developing resilient rotas, with a particular focus on out of hours' medical rotas
- Reducing occupancy levels to enabling flow and improve performance against Constitutional standards
- Enhancing infection prevention and control support

8.13.3 Table 8.9 shows the impact of this additional efficiency delivery and additional investment on the financial performance of the enlarged Trust

Table 8.9 Financial Projections for Enlarged Trust

Control Total Surplus/(Deficit) £m	2021/22	2022/23	2023/24	2024/25	2025/26
Combined Trust Performance (Counterfactual)	(3.62)	2.41	2.48	0.00	0.00
Enlarged Trust Performance (after incremental benefits and resilience investment)	0.09	2.53	2.60	0.12	0.12
<i>Memo: Efficiency requirement included within above trajectories</i>					
WSHT	10.15	11.54	13.90	7.95	11.55
BSUHT	21.63	22.30	23.19	23.93	24.67
Incremental Benefits (in year delivery)	3.65	3.74	1.77		
Combined efficiency requirement	35.43	37.58	38.85	31.88	36.22
Cost Base	1,185	1,224	1,266	1,312	1,356
% efficiency	2.90%	2.98%	2.98%	2.37%	2.60%

8.13.4 The forecast control total position in 2021/22 is a small surplus of £0.1m. The £3.6m deficit forecast in the counterfactual has been mitigated through the delivery of £3.6m of incremental benefits.

8.13.5 As a result of delivering a balanced position in its first year the PDC deficit support that would otherwise be required to offset the residual BSUH deficit is not required, which causes a reduction in the PDC dividend payable by the enlarged Trust.

8.13.6 Additional investment in resilience commences from the 2022/23 financial year and is contingent upon the delivery of incremental benefits. The surpluses in 2022/23 and 2023/24 are in line with the control total surplus trajectory set for WSHT as part of the LTP.

8.14 Financial Risks and Sensitivities

8.14.1 The Board review of transaction and downside risks (Section 10.8) identified a number of risks as having a financial implication. These are summarised in Table 8.10 which describes the risk and how it could be expected to manifest itself financially.

Table 8.10 Downside Risks and Financial Consequences

Downside Risk	Financial Implication
Clinical Framework Strategy being developed which may highlight additional investment needs or changes to the 3T's investment (in terms of space / type of space required)	<ul style="list-style-type: none"> • Under-delivery of incremental benefits • Increased revenue investment - predominantly due to workforce growth • Increased capital costs
Efficiencies will increasingly come from the system – which the enlarged organisation will have more control over but efficiency targets are still challenging.	<ul style="list-style-type: none"> • Under-delivery of efficiency schemes • Security of income
Enlarged organisations often face a dip in financial performance just after merger as focus is removed from the day to day.	<ul style="list-style-type: none"> • Workforce pressures increase costs • Under-delivery of efficiency schemes
Risk to engagement of staff (and therefore retention / finance / patient experience) if merger is not perceived to be a 'merger of equals'.	<ul style="list-style-type: none"> • Workforce pressures increase costs
Merger becomes the focus of the organisation meaning there is less focus on other strategic change or projects.	<ul style="list-style-type: none"> • Under-delivery of efficiency schemes • Under-delivery of incremental benefits

8.14.2 The Trusts have developed a number of financial scenarios to test both the impact of these risks and the sensitivity of the financial projections to variations in modelling assumptions. These are shown in Table 8.11 below.

Table 8.11 Financial Sensitivity

Sensitivity	Comment	Adjustment to be tested
Security of income	<p>The funding shown in the model is based on national tariff and a cost and volume contract. In the Aligned Incentives Contracts that BSUH and WSHFT had with commissioners in 2019/20, in the Long Term plan and in the 2020/21 financial framework there has been an increasing shift towards blended payment models, meaning that activity growth is increasingly likely to be funded at marginal rates.</p> <p>There is a further risk that funding in future years will be constrained due to the economic impacts from COVID-19 and local and national "lock-downs".</p>	Funding is 1% per annum lower than modelled in base case with no commensurate reduction in activity levels.
Workforce pressures	<p>The WSHFT medium term plan identified an emerging pressure from workforce gaps which will need to be addressed through efficiency and transformation schemes. The BSUH medium term financial plan assumes that there will be an opportunity to mitigate workforce growth that would otherwise arise following the opening of the 3Ts development.</p>	Model wte at 0.5% higher than currently forecast and increase the proportion of the workforce that is filled by temporary staff by 5%.

Sensitivity	Comment	Adjustment to be tested
	There is a risk that either the total workforce required to deliver the forecast activity levels increases or that there is an increased usage of premium rate staffing (or both).	
Under-delivery of efficiencies	It is assumed that recurrent efficiencies will be delivered in both the counterfactual and merger models. The total efficiency ask exceeds the national efficiency requirement of 1.1% due to the impact of the MFF reduction and the underlying BSUH financial position. Delivery of variable levels of efficiency will be tested.	Efficiency delivery is 0.5% lower than planned.
Under-delivery of incremental merger benefits	There is a risk that the incremental benefits of the merger are not delivered to the extent anticipated and/or as quickly as anticipated.	50% downside risk on incremental benefits
Excess transaction costs	Due to the complex nature of the change and the developing organisational structures the transaction costs and costs of change will be higher than estimated	25% increase in transaction costs

8.14.3 The sensitised performance has been based on each risk occurring in isolation. No attempt has been made to consider a number of risks happening in combination, but it is considered that this analysis is adequate to broadly show the extent to which each risk would affect the control total trajectory and test the robustness of plans.

8.14.4 In addition to the sensitivity modelling the Trust has also considered the likelihood of each risk, the possible specific actions that could be adopted to mitigate either the impact or the likelihood of the risk and more generalised actions that the Trust would seek to take if it became apparent that the financial performance of the merged Trust was under pressure. This analysis is summarised in Table 8.12.

Table 8.12 Financial Mitigations

Sensitivity	Likelihood	Mitigations
Security of income	Moderate	<ul style="list-style-type: none"> Engagement with ICS - including leadership and participation in strategic and operational planning and oversight groups. ICS Acute Services Review will identify opportunities for collaboration across the ICS. These opportunities have not been modelled in the base case for the merged organisation and will provide opportunities to reduce the cost of delivering acute services in the ICS.
Workforce pressures	High	<ul style="list-style-type: none"> Medical and Nursing pay bill reduction will be Patient First break-through objective with oversight by the appropriate Board Committee
Non-delivery of efficiencies	Low	<ul style="list-style-type: none"> Maintain and develop a pipeline of efficiency schemes on a rolling basis to ensure slippage can be mitigated in year Efficiency schemes are risk adjusted at planning stage, review efficiency schemes that are delivering to stretch above their risk adjusted value to maximise the extent to which the savings are realised
Non-delivery of incremental merger benefits	Moderate	<ul style="list-style-type: none"> Incremental merger benefits will be assured by the established PMO (which has a single point of leadership for both BSUH and WSHFT) and managed as part of the efficiency plan Post Transaction Integration Plan to ensure enablers to support delivery of benefits are monitored and any slippage identified and addressed in a timely way.
Excess transaction costs	Moderate	<ul style="list-style-type: none"> Fortnightly monitoring at Executive M&A Steering Group. Managing Change policy will focus on maximising redeployment of staff with oversight by Remuneration Committee.
Mitigations and Financial Controls common to all scenarios		
<ul style="list-style-type: none"> Use of the Trust's embedded Patient First methodology for strategy deployment review to provide early indication of deterioration and to develop and deploy counter-measures. Clear management and committee structures which are fully recruited to in order to manage performance from merger date 		

8.14.5 These mitigations will allow the new Trust to lessen the impact of each sensitivity scenario and deliver a better financial position than under the unmitigated downside.

8.15 Financial Summary

8.15.1 It is important to acknowledge that the financial projections have been prepared under the LTP financial framework. There have been substantial changes to the financial framework in 2020/21 and an updated financial framework for 2021/22 is anticipated later in the year. The projections in this chapter do not therefore set a control total for the merged organisation but rather describe the incremental financial impact of merger.

8.15.2 The financial modelling demonstrates there is no adverse financial impact on either organisation from merging. Under a consistent set of financial assumptions to those

used as part of the LTP and the agreement of the Medium Term Financial Settlement for BSUH, the combined Trust is able to deliver a sustainable financial position from the point of merger.

- 8.15.3 The financial modelling also demonstrates that the enlarged Trust is more resilient under a downside scenario and has greater flexibility and greater scope and opportunity to respond to emerging financial and operational pressures.

9 Communications and Engagement

9.1 Introduction

- 9.1.1 Communication and engagement has formed a key part of the merger programme and its many constituent parts.
- 9.1.2 Since the agreement of the SOC both Trusts have kept staff, patients and stakeholders updated regularly on progress and have specifically engaged on a number of subjects including the organisational name, vision and values and expected benefits.
- 9.1.3 Under the Management Contract WSHFT's leadership of BSUH has been supported by a combined communications and engagement function that has been working across both Trusts since 2017. The step change in service quality, sustainability and performance seen at BSUH over the course of this relationship has been driven by the pace and breadth of the Trust's adoption of the Patient First improvement methodologies that underpinned similar progress already seen at WSHFT. This was in large part due to the ability of the combined communications and engagement team to explain the theory and practice of Patient First to staff and generate buy-in through tangible examples of its success in action.
- 9.1.4 As Patient First has become part of normal business at both BSUH and WSHFT, the team has developed a common approach to sharing news and information that aligns all communications and engagement activity with one or more of the strategic themes of Patient First to maximise its support for the Trusts' True North objectives. This joint working has been strengthened further during the merger process to date and provides a firm basis for the communication and engagement needed to support the merger.
- 9.1.5 Preparation for 1st April 2021 and communication and engagement post-merger will be key to creating a successful organisation and achieving all the expected benefits.
- 9.1.6 This section of the FBC sets out;
- Summary of Communications and Engagement for the development of the FBC
 - Communications and Engagement Strategy
 - Progress and Approach since the Strategic Case
 - Engagement Activity
 - Survey Feedback Summary
 - External Partners Feedback

9.2 Summary of Engagement for the Strategic Case

9.2.1 The SOC described the stakeholder engagement undertaken ahead of submission. Feedback was positive including a letter of support from the CEO of Sussex Commissioning Alliance and ICS Lead for the Sussex Health and Care Partnership.

9.2.2 A range of stakeholder engagement activities were undertaken to support the development of the Strategic and Full Business Cases. Engagement was led by the WSHFT and BSUH CEO and provided key stakeholder and influencers an overview of the considerations for the future organisational arrangements including the preferred option for a M&A (subject to FBC approval). Appendix J summarises the stakeholder engagement that occurred during this process.

9.3 Communications and Engagement Strategy

9.3.1 The plan to form a new acute trust for West Sussex and Brighton and Hove is supported by a comprehensive Communications and Engagement Strategy (Appendix I) which was agreed at the Merger and Acquisitions Steering Group in September 2020.

9.3.2 The Strategy is underpinned by the following principles

- **Transparency:** Organisational change can cause anxiety. To build trust in the engagement, leaders are committed to providing as much information as possible about those things that are known and also those things that are yet to be decided and to report back on questions that cannot yet be answered. Individuals being engaged should understand what they are and are not able to influence. Feedback will be published at appropriate intervals and this should also demonstrate how it has influenced plans.
- **Equality of opportunity as one organisation:** There should be a core baseline of engagement activity that all staff across both Trusts have an opportunity to be involved in, and receive feedback from, regardless of their role or where they work. Similarly, the patients, stakeholders and local communities for both Trusts should have equal opportunities. Wherever possible, engagement activities should be run jointly across both Trusts to build the sense of one organisation.
- **Patient First as the underpinning enabler:** In line with the Trusts' Patient First approach, all engagement should be tied back to the patient benefits of the merger. All engagement and brand development activities should be justifiable, cost-effective and should never inadvertently appear to be about simply changing name or signage.
- **Aligned engagement:** The various strands of engagement, such as the naming, the Clinical Strategy, OD plans and the brand should be coordinated in one plan and carried out through the same mechanisms to minimise engagement fatigue and ensure alignment.

- **What does it mean for me?** To ensure relevance and maximise engagement, all engagement activities should enable individuals involved to consider what the merger means for them, their teams and their communities.

9.3.3 Established communications channels are being actively used to engage with the widest possible audiences to re-assure involve and excite staff, patients, partners and the public about the opportunities that exist as the new organisation is formed.

9.3.4 The benefits of merger continue to inform the narrative during the period leading up to and beyond 1st April 2021, identifying and sharing examples of teams working together to find solutions to problems. These benefits, identified in the period leading up to Strategic Case have been consolidated into the following key messages;

By merging the new Trust will;

- Deliver outstanding, compassionate care locally and increase the opportunities for specialised services to flourish in Sussex
- Grow our clinical expertise and make Sussex a leader in health excellence
- Bring together the very best of both organisations to innovate and improve the health of our communities
- Continue to equip and empower our people to improve services for patients through Patient First
- Make the best use of our shared resources.

9.3.5 The development of the benefits of the merger continues to inform the narrative during the period up to and after 1st April 2021. Key messages and a campaign strapline, 'Better for everyone' have been developed to help inform and engage audiences.

9.3.6 To enable genuine co-production of the new Trust's priorities, the Trusts have communicated and engaged with a wide range of audiences, including staff, patients, partners, interest groups and the general public.

9.4 Progress and Approach since the Strategic Outline Case

9.4.1 Since the completion of the SOC, communication and engagement activity has continued to build on the work carried out to support the decision to pursue a merger.

9.4.2 This next phase of activity was designed to help ensure staff, patients and stakeholders be kept informed on progress on the development of the new organisation and have the opportunity to help shape it as follows;

- Build understanding and support for the merger across a range of internal and external audiences
- Minimise uncertainty or confusion for patients, staff, partners and residents

- Support the development of a common vision, values and culture for closer working
 - Enable staff of both organisations to shape and become advocates for the new organisation
 - Maintain and improve the reputation of WSHFT, BSUH and ultimately, the new organisation
- 9.4.3 During the development period of the FBC activities have focussed on seeking the views of staff, patients and stakeholders on the naming of the new organisation, the Clinical Strategy and Vision and Values of the new organisation as well as hearing about the Trusts audiences' hopes and any concerns.
- 9.4.4 A key focus of the engagement activity during this period has been the development of a survey of which the findings, described in more detail below, have been used to shape future plans. In headline terms, the survey sought views on the vision and values of the new organisation, asked about people's hopes and fears as well as what the new Trust should be called. The survey launched on 8th October 2020. It opened to the public on 12th October and closed to all respondents on 27th October 2020.
- 9.4.5 A set of core materials has also been developed to underpin engagement activities, and will be updated for each phase of engagement. It includes
- A core presentation (including content tailored for different audiences) focusing on the rationale, benefits, progress and next steps
 - Feedback received so far and how that has influenced plans
 - Current issues and questions for feedback
 - Staff, public and stakeholder FAQs.

9.5 Staff Engagement Activity

- 9.5.1 Staff engagement is a priority for both WSHFT and BSUH as articulated through Patient First and the People True North strategic theme. The engagement activities have been strengthened further during this period of organisational change, building on the established methods for ensuring staff voices are heard and acted upon. This activity has also been coordinated closely with Human Resources.
- 9.5.2 Given the restrictions on face-to-face meetings, the vast majority of engagement opportunities have been online, actually enabling greater reach than possible in person. Activities throughout the period leading up to submission of the FBC have included
- Regular updates to consultant and senior medical staff groups
 - Leadership briefings
 - All staff briefings

- Executive attendance at various team meetings to share updates for cascade
- Video messages from each of the Executive Directors and Chair made available via internet as well as both Trusts' YouTube channels
- All relevant information, including frequently asked questions, is available on the Trusts' intranet sites and some of this material is displayed as screen savers
- Video content and information has also been shared via Workplace (the internal social media channel) at BSUH
- Leaflets, display stands and posters outlining key messages at all sites.
- Inclusion as Theme of the Week
- Inclusion in weekly internal newsletters (Buzz at BSUH and Headlines at WSHFT)

9.6 Stakeholder Engagement Activity

9.6.1 Engagement with Health and care system partners has taken place largely through existing forums and personal relationships. However, written briefings with requests for feedback have also been undertaken during this important stage of the merger plans.

9.6.2 There are established ways of working with statutory stakeholders such as MPs, HOSCs and Healthwatch, which have been used to ensure they are engaged in the development of the new organisation. Healthwatch have also been encouraged to help the Trusts reach a wide audience with materials including the promotion of the survey open in the period leading up to FBC.

9.6.3 Engagement with regulatory stakeholders, NHSEI and the Care Quality Commission has been carried out throughout the merger process and feedback logged. Both the NHSEI Locality Director and the CQC Regional Lead are members of the Trusts' Merger Steering Group chaired by the Chief Executive.

9.7 Public Engagement Activity

9.7.1 Patients and the public in Sussex have a high degree of affection for their local hospitals and like to know what is happening to local health services. However, very few seek to become actively involved in helping to shape changes. Engagement therefore, will continue to focus on the care and experiences that patients, carers and visitors will receive from the new organisation, starting with its vision and values.

9.7.2 Both organisations make use of a variety of ways of engaging with the communities served including via an established membership constituency at WSHFT. Again, while Covid-19 may have restricted the opportunities available for face-to-face meetings and engagement, there have been increased opportunities provided by virtual tools.

- Board meetings held in public

- Online information and survey
- Membership newsletter
- Media items
- Social media

9.7.3 Looking ahead, both Trusts will continue to go over and above existing Trust channels, by working with partner organisations such as Healthwatch, condition specific patient groups and voluntary sector partners.

9.7.4 Further, specific engagement is also planned for governors and members.

9.7.5 A full list of engagement activity and events can be found in Appendix J.

9.8 Survey Feedback Summary

9.8.1 A total of 3,896 people took part in the Trusts' interactive survey, providing important feedback on the vision, values and hopes and concerns for the new organisation.

9.8.2 The full survey results are included as Appendix K.

9.8.3 Survey respondents were asked to vote for the four values they felt were most important using the list of existing values for WSHFT and BSUH. They were also asked to nominate additional values that weren't listed. There was a good level of consistency from staff across both organisations as well as from members of the public, with the most popular choices from the existing values being;

- Communication
- Respect
- Teamwork
- Compassion
- Professionalism

9.8.4 In addition, a significant number of participants suggested alternative values with 'Inclusion' featuring most often.

9.8.5 The vision questions were asked according to True North strategic theme. For each of the five themes: patient experience; sustainability; people; quality; and systems and partnerships, survey respondents were asked to rank a series of statements in order of preference from one to five (one as most important, five as least important).

9.8.6 Once again, there was a high level of consistency between all three survey response cohorts, but particularly between the two staff groups, with both WSHFT and BSUH staff nominating the same priority issues for each of the five strategic themes and some slight divergence in responses from the public.

9.8.7 The priority issues for each strategic theme were as follows;

- Patient: Caring staff and feeling safe
- Sustainability: Develop a resilient workforce and innovation and greater use of technology
- People: Supportive colleagues and managers and professional development and education
- Quality: Clinical excellence and a learning culture
- Systems and Partnerships: Collaborative working and sharing best practice

9.8.8 The Trusts are developing the communications plan for sharing the full survey results, including how to mitigate the concerns of staff and the public and are developing a comprehensive message calendar to manage expectations and ensure critical information is communicated as early as possible to ensure accuracy.

9.8.9 Participants were also asked to describe their hopes for the new organisation. Staff at both Trusts recognised the opportunity to improve the continuity of care for patients. Sharing best practice and ensuring a learning culture were consistent themes with many staff hoping to learn from each other in order to create single, preferred pathways in the best interests of patients.

9.8.10 Staff also recognised an opportunity for career and professional development within the new organisation.

9.8.11 Public respondents described a range of potential benefits that they would like to see including a reduction in waiting times, improved efficiency, reduced travel and better sharing of patient notes between hospitals.

9.8.12 For the public, the concern raised most frequently in the survey related to fears around having to travel further to access care and services.

9.8.13 For staff, the main concerns were around job security, particularly in relation to potential rationalisation as the Trusts merge, and concern that staff would be expected to travel across the wider geographical area and cover shifts in hospitals they are unfamiliar with. A very small percentage (less than 1%) of public respondents said they did not agree with merger.

9.8.14 Through internal and external communications, reflecting the strategic boundaries of the developing single Clinical Strategy, the Trusts have committed to maintaining A&E and maternity services everywhere they are currently provided, while further developing specialist services to improve access to care for all. Trust leaders have also used virtual staff briefings to highlight key messages around the commitment to local hospitals that are the heart of their local communities. They have talked about the opportunities that exist for those who want to pursue them across the new, bigger Trust, but been clear that it is not expected colleagues will have to leave their local jobs or change their lifestyles due to the merger.

9.9 External Partners Feedback

- 9.9.1 Health and care partners have been supportive of the proposal to merge along with MPs from across West Sussex and Brighton and Hove who recognise the potential benefits for patients. They welcomed assurances provided on high profile services such as A&E and maternity and continued investment in each of the main hospitals.
- 9.9.2 The Health and Social Care Committee (Brighton and Hove) and Health and Adult Social Care Committee (West Sussex) have been assured that the merger process and clinical strategy are being developed with appropriate engagement and involvement from staff, partners and the public.

9.10 Engagement and Communications Summary

- 9.10.1 The Communications and Engagement Strategy has played a key role in the merger programme, building understanding of and support for the merger among patients, staff and partners; minimising uncertainty for them; and providing opportunities for all stakeholders to be involved in the process.
- 9.10.2 The comprehensive and wide ranging focus the Trusts have placed on engagement has helped to facilitate broad support for the merger programme (as evidenced by the engagement feedback and survey results) as well as providing opportunities for staff, patients and public, and partners to ask questions, air concerns and receive information in a timely way. This approach has included supporting the development of shared vision, values and priorities upon which the new organisation will be founded.
- 9.10.3 In summary, the principles of transparency, equality and Patient First that supported the development of the SOC and this FBC will continue to underpin the approach to continuous engagement as the merger programme proceeds to 1 April 2021, and after this date following the creation of the new Trust.

10 Managing the Transaction and Integration

10.1 Introduction

- 10.1.1 The creation of a new successful organisation by merger requires both significant planning and significant delivery resource. Alongside planning and implementation of the merger the Trust Board faces a complex agenda including post-Covid-19 restoration of services in the context of challenging waiting times and the prospect of further Covid-19 outbreaks and the delivery of the 3Ts capital programme.
- 10.1.2 WSHFT and BSUH are already working together within a Management Contract arrangement which means a significant amount of partnership and integration required to form a new Trust has already occurred. This position provides the baseline for the approach and work needed to form and develop the new organisation.
- 10.1.3 This existing close working relationship between WSHFT and BSUH relationship will serve both organisations well in regard to mitigating risks of the transaction but this relationship needs to be supported by both detailed plans and a dedicated resource. The aim is to deliver the transaction without disruption to other competing strategic priorities.
- 10.1.4 This section of the FBC sets out the following plans to successfully deliver the transaction and manage the successful transition to a new merged organisation;
- Transaction Programme Governance
 - Competition and Market Considerations
 - Heads of Terms and Transaction Agreement
 - Due Diligence
 - Approach to Risk Management
 - Transaction and Downside Risks

10.2 Transaction Programme Governance

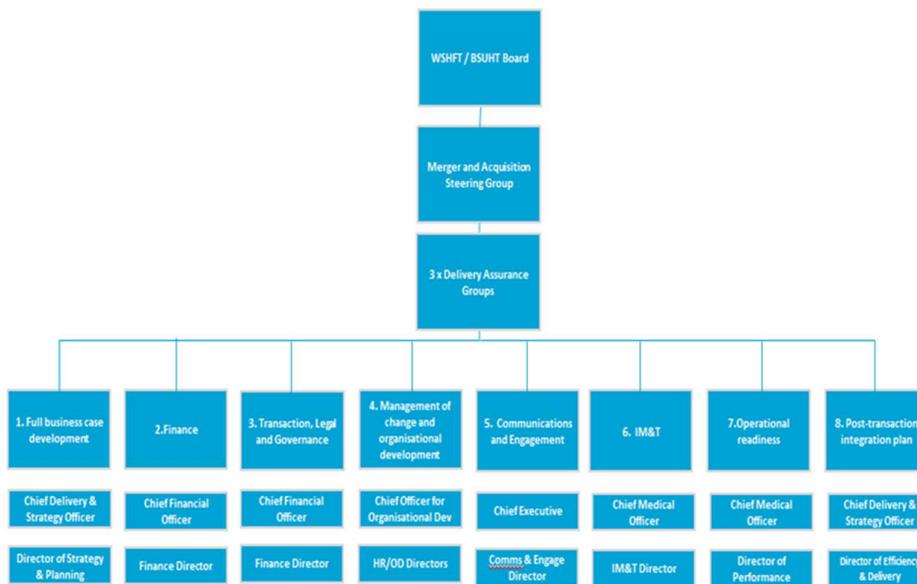
- 10.2.1 WSHFT has extensive experience of deploying best practice end-to-end programme management methodologies to all major programmes of work. Both WSHFT and BSUH have well-established Programme Management Offices under a single point of leadership provided by the Group Director of Efficiency and Delivery.
- 10.2.2 The approach to the merger programme has and will continue to follow established Trust practices, will learn from others, and will ensure Board assurance and programme oversight is in place throughout the lifetime of the programme.

- 10.2.3 The governance for the transaction is through the joint Merger & Acquisition Programme. The programme governance has been designed to ensure robust internal governance and accountability within both organisations. This Executive-led programme will set the direction for the merger and ensure alignment between work streams. It will also ensure the programme is sufficiently resourced to deliver it successfully within the agreed scope, time, cost and quality parameters.
- 10.2.4 The programme is overseen by the Merger & Acquisition Steering Group. The purpose of the Steering Group is to assure planning and delivery, and provide direction on strategic issues for the programme. High level terms of reference include;
- Management of the transaction including the development of the FBC that articulates a compelling case for change and clear patient benefit
 - Preparation for Go Live – ensuring the organisation is safe and effective from Day 1 and supported by robust implementation plans
 - Post Transaction Implementation planning – the mechanism for completing the integration of structures, systems and processes to enable the benefits of merger to be realised through business-as-usual at the earliest opportunity.
- 10.2.5 The Steering Group reports directly to the WSHFT and BSUH Boards and in future will report directly to the Board of the new organisation. The Steering group is chaired by the Chief Executive and membership includes;
- Chief Delivery and Strategy Officer
 - Chief Officer for Organisational Development
 - Chief Financial Officer
 - Chief Medical Officer, Deputy CEO
 - M&A Programme Director (who is the Group Director for Efficiency and Delivery)
 - Group Director of Communications
- 10.2.6 The Steering Group membership includes representation from the NSHEI Locality Director for Kent, Surrey & Sussex to enable greater visibility and support for the M&A Programme and to provide guidance and an escalation route for issues and risks. The Regional CQC Lead also attends the Steering Group, to ensure visibility of plans, provide assurance on risk management and any potential safety or quality issues, and provide expert advice as required.
- 10.2.7 Key duties of the Steering Group include the following;
- Ensuring successful completion of the FBC detailing the planned merger between WSHFT and BSUH
 - Ensuring a robust Programme Plan has been produced and that each participant maintains committed to its delivery

- Ensuring the Programme is sufficiently resourced and delivered within agreed scope, time, cost and quality parameters
- Ensuring there is an effective risk management system in place and that risks and issues are effectively acted upon throughout the lifecycle of the transaction and onward benefit delivery
- Providing regular reports to the Trust Board and where appropriate external stakeholders such as NHSEI and the Clinical Commissioning Group (CCG).
- Ensuring all commercial transactions (including variations) between the Trust, contractor and any third party are appropriately authorised and signed-off in a timely way.

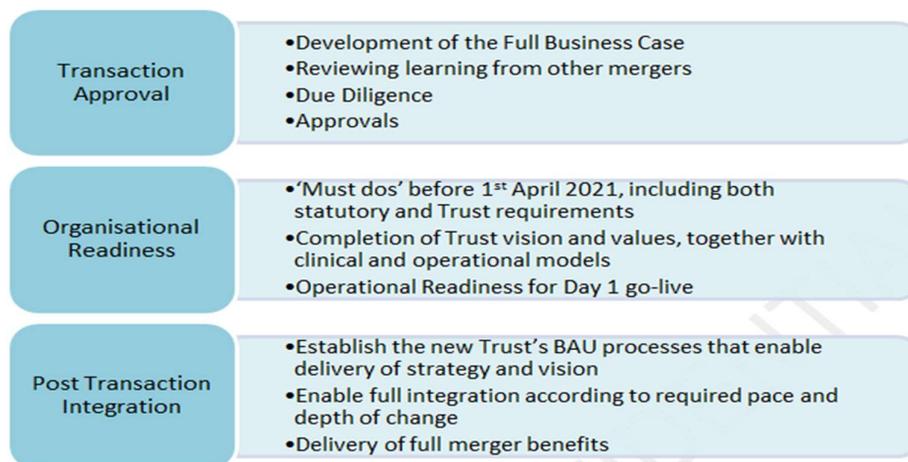
10.2.8 The programme governance structure is shown below and shows three Delivery Assurance groups, managing eight work streams, reporting to the M&A Steering Group.

Figure 10.1 Mergers and Acquisition Governance Framework



10.2.9 The programme has been primarily designed to reflect the three stages of work to form and effectively run a merged organisation. Three Delivery Assurance Groups are in place to oversee the eight individual work streams and the interdependencies between them. The three Delivery Assurance groups are shown below with their scope, each focussing on a different element of the successful merging of both organisations

Figure 10.2 Delivery Assurance Groups



10.2.10 The weekly Delivery Assurance Groups are chaired by the Chief Delivery and Strategy Officer who is the Executive SRO for the programme. Membership includes programme lead from M&A Programme Office, SROs for work streams and other individuals determined by the Executive SRO.

10.2.11 The Delivery Assurance Group key duties are to consider work stream progress in relation to the three key stages of the M&A Transaction, review assurance from work stream owners on progress and deliverables, receive key programme and project documentation, and review or approve (where appropriate) requests to adjust milestone dates and deliverables. The Groups identify points of escalation that are not within its scope of control or approval that need to be raised either to the M&A Steering Group or directly to NHSEI for advice and resolution.

10.2.12 The table below outlines the scope of each of the eight work streams.

Table 10.1 Merger Workstreams

	Workstream	Lead	Scope
1	FBC development	Chief Delivery & Strategy Officer	<ul style="list-style-type: none"> • Development of the FBC • Design approach to Due Diligence
2	Finance	Chief Finance Officer	<ul style="list-style-type: none"> • Development of long-term financial support to support full business case and strategic financial planning for merged organisation. • Review, agreement and implementation of financial reporting systems and processes for merged organisation
3	Transaction, Legal and Governance	Chief Finance Officer	<ul style="list-style-type: none"> • Due diligence (commercial, financial, operational, workforce, IT, estate, legal/regulatory) • Transaction risk identification / collation, quantification, management mitigation • Management of external assurance processes

	Workstream	Lead	Scope
			<ul style="list-style-type: none"> Membership, governors and Board structures
4	Management of change and organisational development	Chief Workforce and Organisational Development Officer	<ul style="list-style-type: none"> Cultural behavioural alignment Development of Executive and leadership structures Development of internal management of change including formal staff consultation (where required)
5	Communications and Engagement	Chief Executive Officer	<ul style="list-style-type: none"> Engagement and communication with stakeholders Naming and branding Digital presence
6	IM&T	Chief Medical Officer	<ul style="list-style-type: none"> Update all patient & primary care facing information and systems to reflect new identity Update and support system changes required to support combined mandatory reporting requirements Maintain existing Programme of work concurrently and ensure decisions support merger
7	Operation readiness	Chief Medical Officer	<ul style="list-style-type: none"> Standard Operating Procedures, business continuity including on-call Clinical Services' Operational Plans Service transfer processes Performance reporting and statutory submissions
8	Post-transaction integration plan	Chief Delivery and Strategy Officer	<ul style="list-style-type: none"> Development of the PTIP that will: <ul style="list-style-type: none"> Describe the Target Operating Model Establish Trust business as usual processes at the earliest safe opportunity Develop structures and processes that will enable the Trust to deliver its vision and strategy

10.2.13 Alongside regular assurance meetings, a series of Board sessions have taken place chaired by the Group Chairman. These sessions are led by Executives leading on work stream and specific agenda items, and have three key aims;

- To update the Board on the status of the Merger
- To request and receive Board guidance, shaping policies and strategies
- To sign off key decisions and/or submissions

10.2.14 The meetings are a combination of workshop style to support review and discussion on items, through to formal convening of the joint or individual Boards where decisions and approval is required.

10.3 Programme Workstream Resourcing

- 10.3.1 Recognising the reduced programme timeline (Section 11) and the complex environment within which both organisations operate, the programme has identified the need to provide dedicated resource to the transaction and future integration. This is particularly important alongside current priorities to restore services to pre-Covid-19 levels and the potential of continued Covid-19 resurgence over the Winter and Spring period.
- 10.3.2 The engagement of focussed resource, together with the Executive-led governance structure, will ensure there are mechanisms in place to minimise the impact of the Programme on the day-to-day operation of the two Trusts, staff, patients and visitors, as well as other key objectives such as 3Ts and restoration and recovery priorities.
- 10.3.3 Following best-practice recommendations from lessons learnt, the Trusts have ensured existing staff are engaged where possible. This not only enables the benefits from current Trust knowledge to be utilised, it also ensures the use of interim and/or agency resource is limited to only where specific specialist knowledge is required or where using internal capacity will adversely impact on business as usual activity.
- 10.3.4 It should be noted operational and clinical teams are not impacted by the resourcing requirements of the programme, with backfill provided into key corporate support where required.
- 10.3.5 Subject matter experts (SMEs) have been appointed for a number of work streams, to ensure dedicated resource that is phased as required over the duration of the merger programme. A summary of key SMEs are shown in the below table.

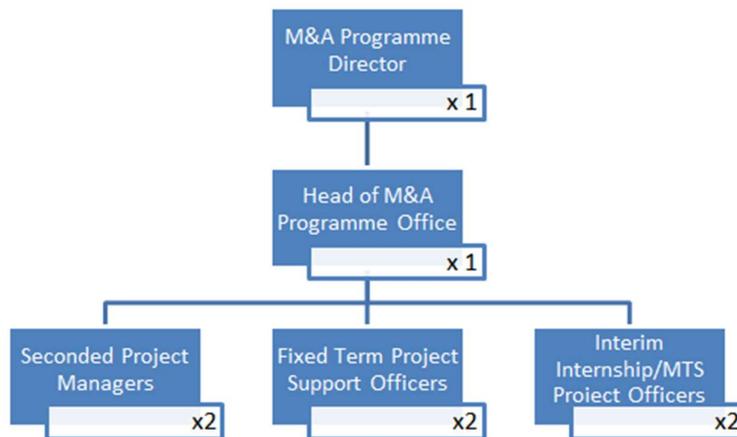
Table 10.2 Merger Work Streams and SME resourcing

Workstream	SME Resource
Finance	<ul style="list-style-type: none"> • Appointment of the WSHFT Finance director, who is a senior finance professional with experience of merger and Foundation Trust applications; provides dedicated support to the Chief Financial Officer for the duration of the transaction approval; the WSHFT substantive role has been backfilled accordingly • Allowance for financial systems and reporting integration SME
Management of Change and Organisational Development	<ul style="list-style-type: none"> • Three experienced external HR leads have been appointed, who are supporting the Chief Workforce and Organisational Development Officer on statutory workforce integration and organisational development
M&A Programme Officer	<ul style="list-style-type: none"> • External short-term appointment of Programme Manager with recent experience of NHS mergers and acquisitions. This support was exited once plans reached appropriate level of maturity
Clinical Strategy	<ul style="list-style-type: none"> • Interim appointment to lead strategy development, reporting to the Chief Medical Officer. This individual also works within the ICS Acute Care Collaborative and ensures full alignment with the ICS Acute Services Strategy

10.3.6 To support the successful delivery of the Transaction and its subsequent benefits, the Trusts have established a joint M&A Programme Office. The office comprises of experienced staff seconded from within both Trusts' PMOs, as well as fixed term project officers to support work stream progression.

10.3.7 The M&A Programme Office reports into the Executive SRO, and is led by a Programme Director who has extensive experience of managing major change programmes in their role as Group Director of Efficiency and Delivery across both Trusts. The Programme Office is also benefiting from engagement into two short-term positions – an internship and MTS trainee on a flexi-placement. The PMO structure is below.

Figure 10.3 M&A PMO



10.3.8 The Programme Office is staffed to deliver the requirements of the programme, and is continually under review to ensure correct resourcing of the team in accordance with the needs of the programme.

- The Programme Office will remain in situ once go-live has been achieved, and will oversee the monitoring and delivery of the PTIP until it transitions fully into business as usual activity
- The project officers, whilst providing support into the programme governance, also directly support specific work streams in key deliverables
- The Programme Office is able to run a lean resource model due to dedicated subject matter expertise being directly available in the Director SRO-led work streams (rather than being held in a large central project team)

10.3.9 Each of the work streams has a lead project manager assigned with administrative support available.

10.3.10 The anticipated resources required to deliver the Programme over the next two years are summarised in the Financial Strategy Chapter.

10.3.11 A different level of support is anticipated post 1st April 2021, subject to any other future merger or acquisition plans. As in-house expertise has now been established, the need for external support will be reduced.

10.3.12 Reviews will continue during each stage of the Programme, to ensure the right level of resource is in place to enable successful delivery of each work stream requirement.

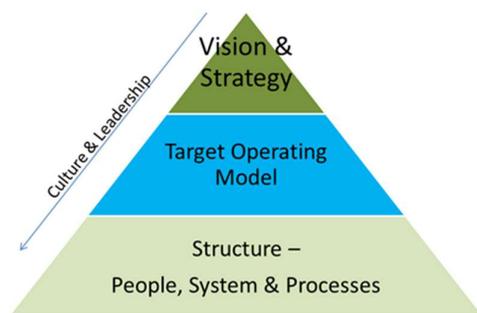
10.4 Post Transaction Integration Plan (PTIP) Delivery

10.4.1 Through the progression of one integrated programme, the Programme Office will manage the transition from transaction approval and Day 1 readiness, into PTIP delivery oversight and support, and over time into business as usual. Resources within the Programme Office will be flexed, to reflect the changing business priorities at each stage of the merger process and provide relevant levels of support.

10.4.2 With the holding of the steady state across both operational and clinical services until after 1st April 2021, programme delivery resource will be required as part of the transitional arrangements until fully embedded into business-as-usual activity.

10.4.3 The purpose of the PTIP is to achieve the Target Operating Model (TOM) and establish the new Trust's BAU processes at the earliest safe opportunity. Through these structures and processes, the TOM will enable the Trust to deliver its strategy which will ensure the onward benefits of merger are achieved.

Figure 10.4 Integration of TOM



10.4.4 As with all other aspects of this merger programme, the starting point for the PTIP is different to that for other acquiring or merging Trusts which will typically begin integration only from Day 1. A significant amount of integration required to form a new Trust has already occurred during the tenure of the Management Contract and provides the baseline for future integration plans.

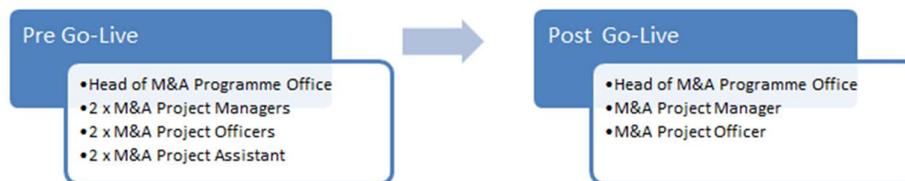
10.4.5 Starting in Q4 2020/21, WSHFT has commissioned Internal Audit to assess the robustness of Day 1 Plans to ensure any gaps are addressed.

10.4.6 Through the M&A Programme, the Trust has undertaken a comprehensive due diligence exercise to ensure it fully understands the current state of its governance

structures and processes so that any potential gaps that might arise as a result of integration are addressed.

- 10.4.7 Notwithstanding the above, there is a substantial amount of work to do to design and implement the target operating model. This must be done in a way that minimises the impact on clinical and operational teams at a time of managing Covid-19 alongside the restoration and recovery of services.
- 10.4.8 Through the already established M&A Programme Office which will stay in place to support transition to the new structures and until benefits of merger can be delivered using fully integrated business processes aligned to the clinical operating model. This will be a reduced team from the current M&A Programme Office supporting the delivery of the transaction and will comprise the following;

Figure 10.5 Future M&A PMO



10.5 Overview of Integration Principles

- 10.5.1 Earlier chapters of this FBC set out the governance structures for the new organisation, and preparatory work will be undertaken to ensure these are in place from Day 1. Alongside the new governance structures, work is underway to articulate the clinical operating model and the corporate operating model and the people impact of these new arrangements.
- 10.5.2 Consistent key business processes that ensure the safe and effective operation of both Trusts are already in place. Under the Management Contract, the shared executive leadership has already aligned a number of key business processes across the group, including single points of leadership at Director-level in several corporate areas, namely Strategy and Planning, the Efficiency Programme, Continuous Improvement, IM&T, Capital and Communications.
- 10.5.3 In readiness for Day 1, where appropriate, these business processes will be brought into single - rather than the current duplicate – processes, to align to the new Trust's corporate governance structures and processes. Post transaction they will also then be aligned to the clinical operating model.
- 10.5.4 The PTIP will set out the planning, processes and governance arrangements that will need to be developed and implemented to ensure the Trusts achieve robust integration. The integration principles and high level principles are as follows;

The **Clinical Operating Model** integration process will be as follows;

- Run a steady state until at least April 2021 and develop inputs to inform Clinical Operating Model (clinical strategy, operational and clinical engagement, benchmarking and opportunities)
- Develop proposed model and integration plan from April 2021 – June 2021 with staged implementation and change process following that with aim of material changes completed by end of September 2021 recognising need to transition and stability entering into Winter 2021

The **Corporate Operating Model** integration process will be as follows;

- Design and inputs in December 2020 - January 2021 to confirm principles, depth and any interim transitional steps for integration of functions and processes
- Process to move to interim (or where appropriate final) structures and processes from April 2021 to support the design and transition to the new Clinical Operating Model.

10.5.5 Subsequently implement final changes to fully align to the Clinical Operating Model (for example appropriate Business Partner functions) once implemented from October 2021 onwards

10.5.6 The Boards of the Trusts have recognised the risks of Covid-19, Winter urgent care pressures, focus on Restoration, clarity on the outputs of the Trust and ICS Clinical Strategy, and overall operational capacity, and have therefore agreed the PTIP pace and depth of integration to deliberately reflect mitigation of those risks.

10.5.7 Whilst integration will be completed within the first year post-go-live, the incremental benefits of merger will be delivered over a much longer period and through the new merged Trust's strategic deployment framework.

10.5.8 There are a number of key enabling strategies that have been identified and mobilised that will ensure the Trust can deliver the incremental benefits. These are as follows;

- The Clinical Strategy that is under development and will be finalised by the end of March 2020 and will set the strategic direction and improvement opportunities for clinical services
- A continued focus on continuous improvement encapsulated and driven forward by the Patient First Improvement Programme
- Ongoing development and delivery of the efficiency programme to ensure sustainability and achieve the incremental benefits set out in the financial strategy
- A comprehensive organisational development programme that provides a workforce with the skills and competencies to deliver the new organisation's strategy in line with the Trust's vision and values

10.6 Timeline of Integration

- 10.6.1 As described, and with NHSEI support, the Trusts will have managed the transaction approval process and readiness for Day 1 within a significantly shortened timeframe. This means the Trusts have limited themselves within this phase to must-do activities and a few strategically important changes.
- 10.6.2 There is an amount of integration of corporate services that can happen in readiness for Day 1 but complete integration can only be achieved once the new clinical operating model is in place.
- 10.6.3 The Target Operating Model (TOM) will be fully developed during Q4 of 2020/21, and it is envisaged that the majority of required integration will be completed within six months of go-live, providing a firm base for delivery of the Trust's 2021/22 Operational Plan.
- 10.6.4 The Boards have agreed an objective that by the end of Q4 2021/22, integration to the TOM is complete, enabling onward delivery of transformation benefits over the next 2-3 years through established BAU processes and structures.

10.7 Lessons Learnt from other Organisational Mergers

- 10.7.1 The Trusts have learned from others' experience of mergers and ensured learning is integrated into the management and delivery of a successful merged organisation. A literature review was conducted to identify both best practice and specific risks that may need considering and mitigating.
- 10.7.2 Facilitated by NHSEI, this review has been supplemented through contact with other Trusts, obtaining recent lessons learnt from mergers or acquisitions they have undertaken.
- 10.7.3 The full lessons learnt document is in Appendix L.

10.8 Management of the Transaction Process Risk Management

- 10.8.1 The Executive-owned Risk Register for the transaction is maintained by the Merger Programme Office, and risks are managed in line with the Trusts' existing risk management strategies through business-as-usual arrangements which include the quantification and onward management of identified risks.
- 10.8.2 Potential risks identified through the lessons learnt reviews from other mergers have been considered and fed into the Programme's Risk Register.
- 10.8.3 The programme Risk Register is reviewed fortnightly at the M&A Steering Group. It is also shared into the weekly Delivery Assurance Group meetings, to ensure full awareness of risks at work stream level and support relevant mitigation actions to be developed.
- 10.8.4 Risks are owned by lead Executives, who are responsible for considering any changes to risk likelihood and impact scores, as well as tolerance to the identified risks and ensuring mitigations are relevant and up-to-date.

10.8.5 Individual work stream risks are also captured at a local level, and form part of the weekly delivery assurance group meetings where rag-rated actions, risks and exceptions are reviewed across all SROs for agreement of onward escalation requirements.

10.8.6 The full M&A Transaction Risk Register is in Appendix M.

10.9 Equality Impact Assessment (EIA)

10.9.1 The Trusts have completed an Equality Impact Assessment (Appendix N) to assess whether the merger has an impact on any protected groups. The EIA is important in meeting the public sector equality duty as outlined in Section 149 of the 2020 Equality Act.

10.9.2 The EIA has not identified any negative impact on groups with protected characteristics. Positive impacts have been identified for disability, age, sexual orientation and gender reassignment.

10.9.3 The merger does not propose any specific changes to current patient services or configuration as part of the transaction. Any future changes are expected to be identified through the development of the Clinical Strategy which sits within a set of agreed non-negotiable strategic boundaries. The Boards of both WSHFT and BSUH have made the commitment that any future service changes will be subject to the normal consultation requirements and completion of an EIA for each in line with the requirements of the Act.

10.10 Quality Impact Assessment

10.10.1 As part of normal BAU activities, any proposed changes (including individual efficiency plans) are subject to quality impact assessment to ensure both negative and positive impacts are captured. The Trust's QIA reviews impact on four pillars within the Patient First methodology.

Figure 10.6 QIA Assessment



10.10.2 These scored assessments are subsequently reviewed by Chief Medical Officer and Chief Nursing Officers, to confirm support to proceed. They are then submitted onwards to the Quality Committee of the Boards for further review and consideration.

10.11 Competition and Market Considerations

- 10.11.1 WSHFT and NHS Improvement engaged the Competition and Market Authority (CMA) when entering into the Management Contract in 2017 and again at the point of extending the Management Contract in 2020. In 2017, NHSEI prepared a briefing paper for CMA which included an analysis of GP referral data and gathered additional information about how competition was working between the parties at that time. The analysis was in line with the approach taken by the CMA in previous cases.
- 10.11.2 The analysis identified the geographic overlap between the parties (the two Trusts) appears to be limited to GP practices located in the area between Brighton and Worthing. From the GP referral analysis, NHSEI identified those services which met the CMA criteria for further review¹⁰ and used a screening process to exclude those services for which there were two or more alternatives. This process identified 14 services as candidates for further examination.
- 10.11.3 For most of the 14 services subjected to further examination, it was identified the Trusts were already collaborating or there were other factors suggesting any impact on competition arising from the arrangement was likely to be limited in practice.
- 10.11.4 The CMA does not review arrangements that may be temporary and so, taking account of advice from NHSEI, the Trusts did not formally notify the CMA when entering into the Management Contract. As the Trusts are now proceeding to merge then it is necessary to consider if the CMA should be notified.
- 10.11.5 Recently there have been important developments in the competition assessment of NHS mergers. In its recent decision on the Bournemouth/Poole transaction¹¹, the CMA found the transaction would not be expected to lead to a substantial lessening of competition. Key factors that led to this conclusion were as follows;
- Challenges faced by NHS providers, including significant growth in demand for services, financial pressures and capacity constraints. The CMA found that “the NHS across England is taking a collaborative approach in response to these constraints and, as a result, competition between providers is typically limited.”
 - Implementation of key national policies contained in the NHS Long Term Plan (LTP), the Five Year Forward View, local Sustainability and Transformation Partnerships (STPs), and the introduction of control totals. The CMA noted that the focus of national policy is on collaboration and integration across providers
 - The use of block contracts by the Trusts’ primary commissioner in that case
 - The move to ICS
 - The introduction of financial risk sharing mechanisms within systems, including the linkage of performance incentive payments to system performance.

¹⁰ This used the CMA’s criteria set out in the report on the proposed merger of Ashford and St Peter’s NHS Foundation Trust (Ashford and St Peter’s NHS FT) and Royal Surrey County Hospital NHS Foundation Trust (Royal Surrey County Hospital NHS FT).

¹¹https://assets.publishing.service.gov.uk/media/5eb2dc08e90e070835525d24/Poole_Bournemouth_full_text_decision_CMA.pdf

10.11.6 NHSEI have advised the Trusts that if similar factors were present in the merger of WSHFT and BSUH, it would be unlikely the CMA would seek to carry out an investigation as part of an approvals process.

10.11.7 WSHFT and BSUH have therefore considered whether similar factors are present in this transaction in discussion with NHSEI and note that;

- The Operational Planning and Contracting Guidance published in January 2020 links incentive payments to overall system performance as well as individual provider performance¹²
- The national policy direction continues to focus on collaboration rather than competition and is broadly unchanged from the position at the time that the Bournemouth/Poole transaction was reviewed
- Despite good delivery in BSUH and continued high performance in WSHFT, in common with the rest of the NHS, both Trusts have challenges in the sustainable delivery of services, linked to increasing demand, fragility of workforce, financial challenge, and an increasing need for mutual service support to ensure resilience
- Prior to the COVID-19 pandemic, Aligned Incentive Contracts were in place for WSHFT and BSUH which include an Expected Income Guarantees (blocks) and incentives
- The Sussex Acute Care Collaborative is chaired by the WSHFT/BSUH Chief Executive Officer, as a key initiative to facilitate system-wide collaboration and acute transformation across Sussex
- The market analysis carried out by NHSEI prior to the Management Contract and the finding that there was likely to be limited impact on competition remains accurate and relevant and likely more so given the further factors outlined.

10.11.8 The Trust engaged Capsticks LLP to provide an initial legal review of considerations pertinent to the Strategic Case. No concerns were noted from this review in respect of the competition analysis.

10.11.9 Having given due consideration to the factors outlined in paragraphs above and advice from NHSEI, the Trusts do not consider that the proposed transaction will lead to a substantial lessening of competition and have not referred the proposed transaction to the CMA.

10.12 Head of Terms and Transaction Agreement

10.12.1 Heads of Terms for the Transaction Agreement will be agreed between both Trusts and NHSEI at the point of business case approval, ahead of commencing drafting on the full Transaction Agreement.

¹² <https://www.england.nhs.uk/wp-content/uploads/2020/01/2020-21-NHS-Operational-Planning-Contracting-Guidance.pdf>

10.12.2 The Heads of Terms set out the formal agreement to cooperate between WSHFT and BSUH and also establishes the important components of the transaction agreement that will include descriptions of the statutory processes, assurances and approval steps taken as part of the transaction including the following;

- A 'long stop' date beyond which the transaction cannot be completed without further approval from all parties
- Confirmation of the assets and liabilities of BSUH that will transfer to WSHFT
- A description of the TUPE process for the transfer of employment of BSUH staff
- Formal commitments from WSHFT and BSUH to proceed with the transaction
- Details of any warranties, indemnities or undertakings from BSUH to WSHFT arising out of the due diligence process
- Details of any financial support arrangements agreed as part of the on-going support for the new Trust
- Detail of any commitments for Strategic Capital for major schemes to be completed following the formation of the new single organisation

10.12.3 The transaction documents will need to be executed in order to complete the proposed transaction, and will include the following;

- The Transaction Agreement, which will supplement the Grant of Acquisition and outline the steps to be taken prior to completion and describe any other contracts to be entered into in relation to the transaction
- The joint application made by the Trusts to NHSEI accompanied by;
 - Evidence of approval of the acquisition and entry into a significant transaction by the WSHFT council of governors. WSHFT's constitution requires more than half of the members of the Council of Governors to support this transaction which mirrors the statutory requirement. Additionally, WSHFT's Constitution also requires that more than half the members of the Council of Governors approve entry into a significant transaction and this approval will be secured alongside the acquisition approval
 - A copy of the proposed Constitution for the newly merged organisation amended on the assumption that WSHFT acquires BSUH.
 - A letter of support from the Secretary of State.
 - The approved minutes of the Council of Governors meeting for WSHFT.
 - The Grant of Acquisition made by NHSEI which will transfer all of the assets and liabilities of BSUH to WSHFT.

- NHSE Standard Services Contract(s) for commissioning of the Transferring Services from WSHFT.

10.12.4 The transaction will be effected by NHSEI using its powers under section 56A of the 2006 NHS Act to grant the Trusts' application for the transaction by making a Grant of Acquisition as a result of which will be as follows;

- The transferring assets and liabilities will transfer to WSHFT (newly merged organisation)
- The transferring employees will transfer to WSHFT in accordance with the TUPE Regulations
- WSHFT's amended Constitution will take effect
- BSUH will be dissolved and its establishment order revoked
- The charitable funds will transfer to WSHFT in its capacity as corporate Trustee
- The new Board and Council of Governors will take effect

10.12.5 At the point the Grant of Acquisition takes effect, the organisation, previously known as Western Sussex Hospitals NHS Foundation Trust (WSHFT) will be re-named as University Hospitals Sussex NHS Foundation Trust.

10.13 Due Diligence

This section has been redacted as it is commercially sensitive.

10.14 Approach to Risk Management

10.14.1 WSHFT and BSUH have already established a common risk management approach and have developed a dynamic Board Assurance Framework (BAF). This section describes the processes and structures that will be in place to manage risks in the merged organisation and how they compare to the current processes and structures in the current organisations.

10.14.2 Risk management is both a statutory requirement and a key aspect of good governance. WSHFT and BSUH have in place a risk management strategy which provides the overarching framework and processes to support managers and staff in ensuring that the organisations are able to deliver strategic objectives by identifying and managing risks, enhancing opportunities and creating an environment that adds value to ongoing operational activities.

10.14.3 The risk management process helps ensure that risks are identified, assessed, controlled, and when necessary, escalated.

10.14.4 The Chief Executive is the responsible officer for risks and is accountable for ensuring the Trust can discharge its legal duty for all aspects of risk. The Executive

Directors are accountable to the Chief Executive and the Board for the maintenance of effective systems of internal control within their areas of responsibility. Executive Directors are responsible for reporting on controls and assurances of the highest risks to the strategic objectives, through the BAF, which is described below. The Chief Medical Officer is the sponsoring Executive Director for the risk management strategy.

10.15 Risk Monitoring

10.15.1 Currently, the organisational wide risks (across both WSHFT and BSUH) are identified and monitored through the local risk registers which are reviewed through the Divisional governance structure. Corporate directorate risk registers are reviewed by Executive Directors. The local risk registers feed into the Corporate Risk Register. Both the local and corporate risk registers are reviewed by the Trust Executive Committee (TEC) and Management Groups to assess consistency and the effectiveness of management action. The Boards' define the sub-committee responsible for managing each of the BAF risks.

10.15.2 The merged organisation will have a single Corporate Risk Register (CRR) in place, building from the situation under the Management Contract where individual CRRs are in place at each organisation, fed by individual local risk registers. Local risk registers held at Divisional and Corporate Directorate level will continue to be maintained and feed into the CRR at the merged organisation. As at the individual organisations currently, the CRR for the merged organisation will be reviewed by the Trust Executive Committee (TEC) for the enlarged organisation.

10.16 Risk Governance

10.16.1 There are different operational levels ensuring the governance of risk in each Trust as follows;

- Board of Directors
- Trust Executive Committee (TEC)
- Management Groups.

10.16.2 The Boards review risk principally through the following related mechanisms;

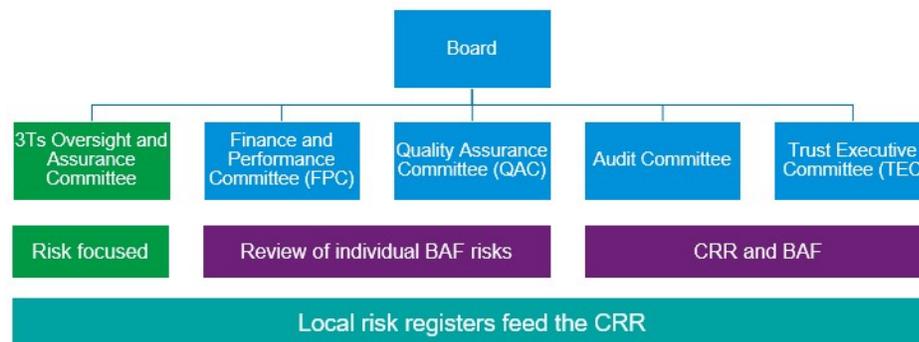
- **The Risk Appetite Statement** is defined by the Board and defines the amount of risk the Board is willing to accept in the delivery of the strategic objectives and the levels within which organisational risks should be managed
- **The BAF** sets out the risks which threaten the achievement of the strategic objectives. Each risk on the BAF is assigned by the Board to one of its sub-committees for review and challenge. Board sub-committees (after considering the assurances received) make recommendations to the Board related to any changes to individual BAF risks or direct to the lead Executive to review the risk score ahead of the Committee's formal report to the Board, so the Board can consider the Committee's view. The Board retains oversight for the whole BAF

and actively considers it at each meeting. The Audit Committee receives the highly scored risks (CRR - those risks with a score above 12 or with an impact of 5) alongside the BAF. Responsibilities of the Board and sub-committees are clearly outlined in the Risk Management Strategy (this process is the same across both WSHFT and BSUH under the Management Contract). The BAF is structured around the five Domains and articulates thirteen strategic risks

- **The CRR**, which comprises all risks with a score of 12 and above or which have an impact score of 5 (from both divisional and corporate directorate risk registers) are considered at TEC which supports the Trust in operating an effective risk management approach. This process is in operation within both organisations under the Management Contract
- **Local Risk Registers**, held at divisional and corporate directorate level are the method through which risks are recorded, reviewed and monitored through the divisional governance structure
- **The Annual Governance Statement**, signed by the Chief Executive as the accountable officer, sets out the organisational approach to internal control in line with other NHS organisations.

10.16.3 Figure 10.7 gives an overview of this process:

Figure 10.7 Risk Governance Process



10.16.4 As well as Board sub-committees, the Trusts set up task and finish groups to deal with specific risks. A specific example of this is the 3Ts Oversight and Assurance Committee which has been set up to oversee the 3Ts Programme Board.

10.16.5 The scope of the risk management strategy (which is consistent across both organisations under the Management Contract) is to achieve the following;

- Ensure risk management is an integral part of open culture
- Identify risks to achieving the Trust's objectives requiring intervention
- Drive a standardised, strategic and accessible approach to risk management.

10.16.6 The resources available for managing risk are finite and so the aim is to achieve an optimum response to risk, prioritised in accordance with an initial evaluation. Risk

is unavoidable, and it is recognised that both WSHFT and BSUH operate in a high risk environment, and day to day management of risk is an expected and integral part of the provision of healthcare. Both organisations take actions to manage risk in a way that they can justify to a level which is tolerable based on their risk appetite. This practice is consistent across both Trust's and will continue after merger across the single enlarged Trust.

10.16.7 WSHFT and BSUH have a clearly defined risk appetite statement which is consistent. These statements were developed in September 2018 and reviewed in March 2019, with an additional review of the clinical risk appetite statement in October 2020 as the two Trusts moved into the restoration and recovery phase following the first peak of the COVID-19 pandemic. The Board of the merged Trusts will periodically review its appetite for and attitude to risk, updating where appropriate. The Boards use their stated risk appetite for setting the risk tolerances for different strategic objectives of the organisation.

10.16.8 Risks are considered across the following categories;

- Risks to patient care (linked to patient and quality strategic themes)
- Risks to safety (linked to quality strategic theme)
- Risks to sustainability (linked to sustainability strategic theme)
- Risks to people (linked to people strategic theme)
- Risks to systems and partnerships (linked to systems and partnerships strategic theme)

10.17 Board Assurance Framework (BAF)

10.17.1 Both WSHFT and BSUH have a BAF. The BAF is consistent across both organisations and is a dynamic document, which is continuously reviewed and refined by the Board. The BAF sets out the key strategic risks and in summary, describes the following areas;

- Strategic objectives
- Principal risks to meeting the strategic objectives
- Risk scores
- The Board sub-committee that is responsible for monitoring the risk
- Assigned Executive Team risk owner
- Existing controls in place to mitigate risks, including any gaps in control
- The actions in place to provide assurance to the Board regarding the risk mitigation
- Any further mitigating actions to be set in place

- Sources of assurance (internal and external)

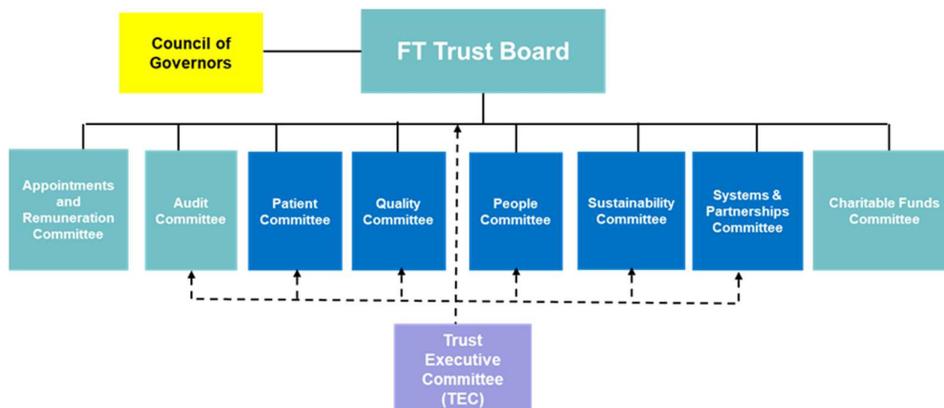
10.17.2 Given the risks are aligned to each Board sub-committee, each of the risks are reviewed through the appropriate Board sub-committee.

10.17.3 Set out below is a description of how BAU risks are managed within both organisations.

- Risks are recorded on local risk registers and corporate directorate level risk registers
- Local Risk Registers and corporate directorate level risk registers are reviewed by Trust Executive Committee (TEC) and other appropriate management groups to provide scrutiny
- Corporate Risk Register (risks with a score of 12 and above and those with an impact score of 5) and presented to Trust Executive Committee and reviewed by Audit Committee to assess the robustness of the links between the CRR and the BAF. Risks with a score of over 12 which have a quality aspect are also reviewed by the Quality Assurance Committee
- The BAF is reviewed by the Board, sub-committees and Trust Executive Committee.

10.17.4 The proposed governance structure for the merged organisation is summarised in the diagram below:

Figure 10.8 Proposed Governance Structure for the new Trust



10.17.5 The proposed governance structure for the merged organisation will see the same process of BAF risk oversight being provided by a named Board Committee who will make recommendations to the Board based on their review of reported assurances. There will remain a complementary review of the risk management processes including the CRR and BAF by the Audit Committee and TEC.

10.18 Programme and Project Risk Management

10.18.1 Risks associated with specific programmes and projects are created alongside the BAU risk registers. For example, risks associated with the merger and

acquisition process are contained within a separate risk register which is reviewed at each of the M&A Steering Group meetings.

10.18.2 The M&A Programme Management Office is responsible for maintaining the programme risk register and related mitigations. These are also reviewed to consider whether they impact on the BAF.

10.19 Transaction and Downside Risks

10.19.1 To ensure all relevant risks to the merger are identified the specific circumstance of the current arrangement and the insight that has been gained from the Management Contract have been considered. To challenge the breadth and priority of risks the Board undertook an analysis of current risks specifically as follows;

- Review of all BAF entries (across both WSHFT and BSUH) and CRR entries rated 15 and above
- Review of the Merger and Acquisition Risk Register
- Compare risks identified to other merger business cases
- Undertake specific one to one challenge session with key Executive Directors to collate the risk universe associated with the acquisition.

10.19.2 The output from this work was then evaluated by all Board Members through a facilitated workshop, which considered the connectivity of risks between the five Patient First domains of Patient, Sustainability, People, Quality and Systems and Partnerships to allow for consideration of whether a risk (if it was realised) was likely to cause other risks to be realised. This identified the high level of connectivity of the group of risks centred on the People domain.

10.19.3 Through the workshop, the Board confirmed a number of risks would not be significantly impacted by the merger and thus would remain under review though the BAU processes described above.

10.19.4 Where the Board workshop identified risks which were impacted by the merger and the subsequent integration it assessed the impact of the merger relevant to the current risk score to determine if the risk at the merger date was increased and the extent to which that increased risk remained during integration. The downside risks established through the Board workshop are shown in Table 10.3.

10.19.5 For each of these risks the current BAF risk rating is indicated and the impact at the merger date and during the first year of integration. Over time the expectation is all risks would decrease following the merger, however, the timescale for the decrease is different for each risk (some may decrease after 12 months, others such as the staffing risks may decrease over a longer time frame).

10.19.6 The Board were confident from the mitigation plans being developed that after 12 months of integration only two of the impacted risks would remain elevated from their pre-merger scores as follows;

- Developing and sustaining the leadership and organisational capability and capacity
- Inability to effect cultural change and involve and engage staff in a way that leads to continuous improvements

10.19.7 The Board identified one risk - “Unable to develop and maintain collaborative relationships with partner organisations based on shared aims, objectives, and timescales” - where the merger and integration presented an opportunity to reduce the risk further.

10.19.8 The table also cross references the identified risks to show where they are covered in the Trusts’ risk management processes and how they link to the financial sensitivity in Section 8. This also aligns to the proposed Board Committee and governance structures for the new organisation – with alignment of Committees to the Patient First True North themes under which the BAF is structured and the downside risks were assessed.

Table 10.3 Downside Risks and Mitigation

Risk Grades based on Risk Rating	
1-3	Low Risk
4-6	Moderate Risk
8-12	High Risk
15-25	Extreme Risk

Domain	Strategic Risk	BAF RAG Rating (impact x likelihood)	Likelihood at			Actions and Mitigations
			Merger date	After 6 months	After 12 months	
Patient Care	Deliver or demonstrate a continuous and sustained improvement in patient experience	9 (3 x 3)	12 (3 x 4)	12 (3 x 4)	9 (3 x 3)	Consider patient experience as part of the Clinical Strategy Framework Clear messaging to patients on the benefits of merger Clear messaging to staff on any new changing patient flows in place Consideration of fragile services
Sustainability	Align or invest in our workforce, finance, estate and IM&T infrastructure	16 (4 x 4)	20 (4 x 5)	20 (4 x 5)	16 (4 x 4)	Development of project plan for the upgrade and linking of this to the Clinical Framework Strategy Development of Clinical Framework Strategy and communication plan for staff in terms of service development for individual services. Requires clear messaging where there won't be service development Finalisation of 3T's funding plan
Sustainability	Deliver ongoing efficiencies and flex our resources in an agile way	16 (4 x 4)	16 (4 x 4)	20 (4 x 5)	16 (4 x 4)	Delivery of increased efficiency / development of contingency Engagement with ICS

Domain	Strategic Risk	BAF RAG Rating (impact x likelihood)	Likelihood at			Actions and Mitigations
			Merger date	After 6 months	After 12 months	
						<p>Opportunities for economies of scale identified which are then developed</p> <p>Clear management and committee structures which are fully recruited to in order to manage performance from merger date</p> <p>Plan for engaging clinicians in clinical operating model</p>
Sustainability	Meet high standards of financial stewardship	16 (4 x 4)	20 (4 x 5)	20 (4 x 5)	16 (4 x 4)	<p>Project plan for the system upgrades / migrations</p> <p>Clear management and committee structures which are fully recruited to in order to manage performance from merger date</p>
People	Develop and sustain the leadership and organisational capability and capacity	12 (4 x 3)	16 (4 x 4)	16 (4 x 4)	16 (4 x 4)	<p>Need to clearly articulate roles and Executive responsibilities in the merged organisation</p> <p>Early engagement with staff who may be displaced at Service Director/Trust Director level</p> <p>Consistent engagement and communication with staff at both organisations</p> <p>Clear accountability framework which individual sites can operate within</p>
People	Unable to effect cultural change and involve and engage staff in a	8 (4 x 2)	12 (4 x 3)	12 (4 x 3)	12 (4 x 3)	<p>Clear and early articulation of strategy and benefits which is shared with staff consistently across both organisations</p>

Domain	Strategic Risk	BAF RAG Rating (impact x likelihood)	Likelihood at			Actions and Mitigations
			Merger date	After 6 months	After 12 months	
	way that leads to continuous improvements					<p>Articulation of benefits which specifically impact staff rather than the wider benefits of the merged organisation</p> <p>Linking of cultural change to Patient First, creating a consistent cultural message so staff understand the vision of the enlarged organisation</p> <p>Pulse surveys to involve and engage staff</p>
People	Unable to meet our workforce requirements through the effective recruitment, development, training and retention of staff	9 (3 x 3)	12 (3 x 4)	12 (3 x 4)	9 (3 x 3)	<p>Early engagement with staff on the merger and the impacts it will have on them and the way they work</p> <p>Articulation of benefits which specifically impact staff rather than the wider benefits of the merged organisation</p> <p>Creating clarity over organisational structure (Trust and hospital), particularly at senior management and mid-tier levels</p> <p>Pulse surveys to involve and engage staff</p>
Quality	Unable to deliver and demonstrate compliance with regulatory requirements or clinical standards	9 (3 x 3)	12 (3 x 4)	9 (3 x 3)	9 (3 x 3)	<p>Thought to be given to the administration to ensure there are clear flows of information through the organisation, with standard operating procedures identified prior to the merger (i.e. not bolted on as an afterthought)</p> <p>Linking of all clinical standards to Patient First</p> <p>Clear management and committee structures which are fully recruited to in order to manage performance from merger date</p> <p>Clear project plan for merging of PAS systems</p>
Quality	Unable to deliver service improvements and improve	9 (3 x 3)	12 (3 x 4)	9 (3 x 3)	9 (3 x 3)	<p>Development of Clinical Strategy Framework which includes engagement with staff across</p>

Domain	Strategic Risk	BAF RAG Rating (impact x likelihood)	Likelihood at			Actions and Mitigations
			Merger date	After 6 months	After 12 months	
	safety, care quality and outcomes for our patients					<p>the merged organisation as well as other relevant stakeholders</p> <p>Clear plan for engaging staff within individual services as part of any system redesign</p> <p>Clear plan for engagement of clinical staff across both organisations</p>
Systems and Partnerships	Unable to develop and maintain collaborative relationships with partner organisations based on shared aims, objectives, and timescales	12 (4 x 3)	12 (4 x 3)	8 (4 x 2)	8 (4 x 2)	<p>Consistent engagement with ICS</p> <p>Engagement with the future of the ICS (including e.g. the Clinical Framework Strategy)</p> <p>Enlarged organisation is an increased positive voice within the ICS and is a key driver for the merger</p>
Systems and Partnerships	Unable to define and deliver the strategic intentions, plans and optimal configuration that will enable our services to be sustainable	12 (4 x 3)	16 (4 x 4)	16 (4 x 4)	12 (4 x 3)	<p>Consistent engagement with ICS</p> <p>Engagement with the future of the ICS (including e.g. the Clinical Framework Strategy)</p> <p>Articulation of merger benefits to all relevant stakeholders with a targeted communication plan for each group</p> <p>Finalisation of 3T's funding plan and linking 3T's to the Clinical Framework Strategy</p> <p>Enlarged organisation is an increased positive voice within the ICS and is a key driver for the merger</p>

10.20 Managing the Transaction and Integration - Summary

- 10.20.1 The processes to identify and manage risk are consistent and embedded across both organisations, with both organisations having synchronised risk management processes over the course of the Management Contract.
- 10.20.2 To ensure the continuation of the shared approach to collaborative and supportive working between the Trust and partners that has enabled the success of the Management Contract, it is also the intention to agree a 'Compact' with key partners and NSHEI to support the successful transaction and integration process of the merger.
- 10.20.3 Following the merger, the Board of the single organisation will continue to apply the sound risk management processes it has developed and embedded at both BSUH and WSHFT with a rigorous review of the BAF through the new committee structure. The delivery of the Trust's Post Transaction Integration Plan will drive the focus on the developed risk mitigations which the Board will monitor in conjunction with the adjusted BAF as a result of merger and integration to see the expected risk reductions within the first 12 months materialise.

11 Programme Timeline

11.1 Introduction

11.1.1 The Trusts have agreed a reduced timeline for merger with NHSEI to reflect the Management Contract and WHSFT's track record and specifically the Well Led Outstanding rating. Subject to approvals, the new Trust will come in to operation from 1st April 2021. To enable this, NHSEI has agreed a proportionately reduced scope of works to review the merger application.

11.1.2 Key dates in the transaction approval timeline are as follows;

Figure 11.1 Transaction Approval Timeline



11.1.3 In order to achieve a continued and safe and effective operation from Day 1 the Trusts have identified a number of statutory requirements and a small number of discretionary changes they wish to have in place for 1st April 2021. Robust delivery plans are in place for these changes.

11.1.4 The statutory requirements for 1st April 2021 are as follows;

- New Council of Governors structure
- Minimum membership achieved by Day 1
- Updated CQC registration
- NHS Resolution registration
- Board Assurance Framework (BAF)
- A new Board and Committee structure
- Notify Charity Commission of change in trustee for BSUH charity
- Electronic Staff Record updated with new Trust name
- Plan to TUPE BSUH staff to WSHT

11.1.5 The discretionary changes are below and are principally driven by operational necessity;

- Financial system changes including implementation of single financial ledger, payroll and revision of associated financial reporting
- Contracting and commissioning processes to be in place under new Trust name
- Internal and external auditors and counter fraud governance in place
- Single tendering and procurement system
- Clinical and corporate operating models agreed (not implemented)
- A new Executive structure will be in operation from Q3/4 2020/21
- Refreshed True North and strategic deployment for the new organisation and a new clinical strategy (Phase 1)
- Reporting processes to deliver the requirements for the new Board and committee structure and external reporting obligations
- Refreshed IT infrastructure to improve experience of staff who will work across the merged organisation, including shared contacts directory
- The name of the new organisation will be shared with staff, patients, public and partners as part of the merger communications plan; single visual identity
- Complete the development of the command and control structure and processes to ensure effective Emergency Preparedness, Resilience and Response delivery

11.1.6 The Trusts are seeking to minimise organisational change in the lead up to 1st April 2021 to ensure clinical and operational services are supported to, and remain focused on, delivery of restoration and recovery plans alongside the management of COVID-19 surge. The Trusts will have engaged with staff to develop the clinical and model in detail but will not begin formal consultation or transition toward it until after 1st April 2021. The exact timings for this will be informed by Board level risk based decision-making and in the context of the ongoing impact of the pandemic.

11.1.7 The decision to only change what has to be changed in advance of 1st April 2021 means a significant amount of the remaining integration activity will be deferred into the first year of operation. Over the term of the existing Management Contract, the Trusts have aligned many corporate systems and processes including quality governance, efficiency, IM&T, capital, strategy and planning, communications and there are also single points of leadership in place in a number of these areas. This significantly reduces the scope, risk and cost of holding steady state for clinical services until after 1st April 2021.

- 11.1.8 The Boards have reviewed and received assurance that the Trusts will complete the transaction, and deliver the must do changes in order to continue to operate safely and effectively from Day 1.
- 11.1.9 The implementation timeline is kept under review through the Programme's established delivery assurance systems and processes and in partnership with the regional team to ensure any risks are managed and continue to meet NHSEI requirements.
- 11.1.10 This section of the FBC will provide more detail of the current planning timetable as follows;
- Full Business Case and Transaction Approval Process
 - Reduced Scope of Works at Stage 2
 - NHSEI Stage 2 Process
 - External Party Discussions
 - Board-to-Board Meeting
 - Transaction Risk Rating
 - NHSEI Stage 3 Process
 - Go-Live Preparedness
 - Post Transaction Integration Plan

11.2 Full Business Case and Transaction Approval Process

- 11.2.1 The development of the SOC and this FBC has been managed in accordance with the 2017 NHSI Transaction Guidance set out by NHSEI (2017)¹³. The guidance sets out a three stage process.
- 11.2.2 The SOC was approved by Trust Boards in July 2020 and submitted to NHSEI to complete Stage 1. Stage 2 ensures formal submission of the Full Business Case and supporting documentation for subsequent review by NHSEI, leading to release of recommended transaction risk rating. Stage 3 is the formal request and approval of the transaction.

11.3 Reduced Scope of Works at Stage 2

- 11.3.1 Building on the successful Management Contract in place between WSHFT and BSUH since April 2017, a reduced timescale for the transaction was agreed with NHSEI to complete the merger by 1st April 2021.
- 11.3.2 The SOC was submitted to NHSEI in July 2020, detailing the Trusts' plans and seeking support to proceed with the April 2021 go-live.

¹³ https://improvement.nhs.uk/documents/1983/Transactions_guidance_2017_Final.pdf

- 11.3.3 Positive feedback was received following NHSEI Provider Oversight Committee on 8th September with support to proceed to Full Business Case (Appendix A).
- 11.3.4 A significantly reduced scope of works was proposed by NHSEI and agreed by the Trusts due to the strength of the SOC, WSHFT's strong track record on quality and financial delivery with a well-embedded quality improvement approach and well-regarded leadership team. The major improvements delivered at BSUH under the Management Contract over the last 3.5 years were also noted alongside WSHFT's CQC 'Outstanding' rating for Well Led.
- 11.3.5 Despite some items not being formally required, the Trusts have continued to progress these where it determined they would be beneficial to the success of the process. This includes the following;
- Completion of Due Diligence, which has been shared informally with NHSEI and has been fed into project plans and risk workshops
 - Development of an LTFM, where it is helpful to understand in more depth the risks and opportunities for the new organisation
 - Review of Quality Governance, where the Good Governance Institute has been commissioned to support development of Quality and Clinical Governance framework
- 11.3.6 The Stage 2 review process has been agreed with NHSEI and is tailored to this specific transaction. The table below indicates the items confirmed as out of scope, together with the confirmed in-scope focus.

Table 11.1 Scope of Works

	TRANSACTION INTEGRATION	QUALITY & PATIENT BENEFITS	FINANCE	OTHER
In Scope	PTIP Safe Operating from Day 1	Letter from CQC providing assurance	Incremental benefits and costs specific to merger	Evidence Stakeholder engagement and what they have said (it does not have to be supportive); show we have asked people who have a legitimate view
	Governance for the Integration	Credible planning for patient benefits with right level of clinical engagement	Risk of short term deterioration – review first year post merger, bridge analysis and key assumptions, current year position and forecast	
	How engaging with staff		Independent review of financial reporting procedures	
			Will want a risk assessment of planning guidance when it comes out, with ministerial approval predicated on	

	TRANSACTION INTEGRATION	QUALITY & PATIENT BENEFITS	FINANCE	OTHER
			assessment of VFM of transaction	
Out of Scope	Due Diligence	Independent opinion on quality governance arrangements	Sustainability of enlarged organisation	Strategy - No further update required <u>unless</u> there is a material change in the environment that may impact Board capacity
	Risk Management Procedures		Sensitivity analysis	
	Independent Opinion on PTIP		Independent opinion of working capital	
			LTFM remodelling (although this is likely to still be required to satisfy the DH economic test)	

11.4 NHSEI Stage 2 Process

11.4.1 The key purpose of Stage 2 approval is to ensure the following;

- The benefits to the patient have been fully considered – both those existing under the current Management Contract as well as incremental benefits achievable from full merger – and plans are in place to ensure ongoing delivery post-transaction
- Incremental risks of merger have been considered, with robust risk management actions put in place where appropriate
- Clarity in the content of the FBC, and that any local due diligence has been completed
- Transaction funding and the Heads of Terms have been agreed
- Full business case documentation has been approved by the acquiring Trust Board

11.4.2 Alongside the development of the FBC, the programme team has been developing the PTIP content as well as other submissions required for NHSEI review. This will be submitted to NHSEI in January 2021 to support transaction approval.

11.4.3 The following timeline has been agreed with NHSEI for the first part of the Stage 2 review.

Figure 11.2 Stage 2 Timeline (Part One)



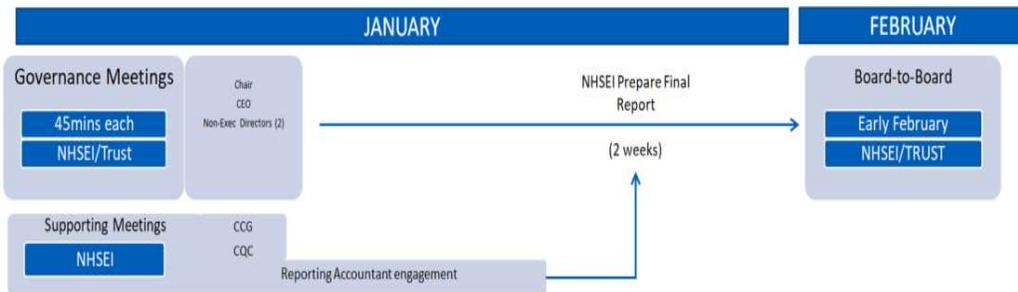
11.4.4 NHSEI have indicated they may also wish to meet with additional clinical staff to further review benefits to patients, pending content review of the FBC. This will be facilitated as required.

11.5 External Party Discussions

11.5.1 Additional external scrutiny requirements were reduced in scope following review of the Strategic Case and subsequent feedback from NHSEI. NHSEI will hold direct discussions with the local clinical commissioning group (CCG), CQC and the external Reporting Accountant for Financial Reporting Procedures only.

11.5.2 The following timeline has been agreed with NHSEI for the second part of the Stage 2 review.

Figure 11.3 Stage 2 Timeline (Part Two)



11.6 Board-to-Board Meeting

11.6.1 The Board-to-Board meeting is a key element of the assurance of the FBC and is a meeting between the acquiring Trust board (WSHFT) and the NHS Improvement Board. The meeting will take place on 9th February 2021.

11.6.2 Prior to the Board-to-Board meeting, WSHFT will complete a number of self-certification, statements and memoranda. These include Board statement and memorandum confirming the following;

- Board self-certification

- Review and approval of the PTIP
- Financial reporting procedures, including Independent Accountant's report and signed opinion on financial reporting procedures
- Working capital
- Self-certification on any service reconfiguration by Medical Director
- Quality governance arrangements.

11.7 Transaction Risk Rating

11.7.1 Following the Board-to-Board meeting NHSEI make a decision on the risk rating for the transaction. The table below outlines the basis of the NHSEI transaction risk ratings.

Table 11.2 NHS Improvement's Transaction Risk Rating Categories

Risk rating	Finding
Green	No material concerns have arisen from NHS Improvement's detailed review.
Amber	Some significant issues have arisen from NHS Improvement's detailed review that the Trust will need to address and that may require ongoing regulatory monitoring. However, no issue is serious enough to stop or delay the transaction
Red	NHSEI considers the issues arising from the review to be serious enough to delay the transaction. The Trust will need to address the risks posed by these issues by restructuring the proposal. If this Trust considers this is impossible, NHSEI will use our regulatory powers to stop the transaction if required

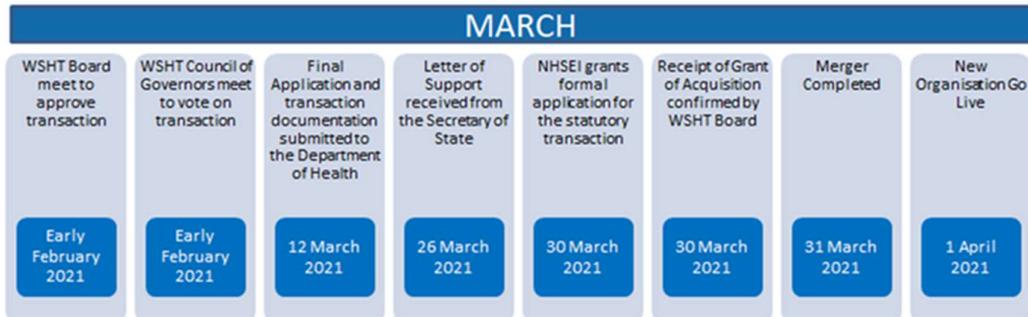
11.7.2 NHSEI have already acknowledged the complexity of assigning risk-rating using current criteria that assesses financial and operational risk due to the impact of the Covid-19 pandemic on baseline performance.

11.7.3 The Trusts will proceed to Stage 3 following the decision by NHSEI to issue risk rating of amber or green at the end of Stage 2.

11.8 NHSEI Stage 3 Process

11.8.1 Following award of the risk rating from NHSEI, a number of formal steps need to take place to progress to formal merger. The key steps are shown in the table below.

Figure 11.4 Stage 3 Timeline



11.8.2 Alongside the Stage 3 process, there are specific requirements for statutory transactions that will be progressed during March 2020. These include the following;

- Joint written application to NHS Improvement for the acquisition
- A copy of the proposed constitution of the acquiring Foundation Trust amended on the assumption that it is acquiring the target trust
- Evidence the majority of the Council of Governors of the acquiring Foundation Trust has approved the application.

11.9 Go-Live Preparedness

11.9.1 Through delivery of the required actions in line with the timelines detailed above, the Trusts will be able to successfully complete transaction approval, as well as ensure delivery of the key items that are required to be in place for 1st April 2021 to ensure safe and effective care is maintained.

11.9.2 To ensure delivery of a new Board and Committee Structure, significant work has taken place to draft a new structure, and committee membership requirements will continue to ensure correct representation levels have been achieved.

11.9.3 To ensure delivery of a new Executive structure, check and challenge has taken place across executive portfolios to ensure no gaps or overlaps, to understand impact to existing workforce and to ensure consultation with relevant members of staff has taken place. This has taken the format of executive away-days, with onward facilitation by KPMG with whom the Trust has an ongoing relationship supporting the Board level aspects of the merger programme.

11.9.4 The decision to deliver a single financial ledger for go-live has resulted in a specific work stream established to plan and deliver key actions, under the direction of the Chief Financial Officer. Project plans are in place to deliver required activity prior to 1st April 2021.

- 11.9.5 Preparatory work including the alignment of the Trust's improvement and performance management routines is taking place now following agreement of the new organisation's True North and refreshed Strategy Deployment priorities.
- 11.9.6 The formal transfer of staff from BSUH to WSHFT as part of TUPE arrangements has been planned, enabling all staff to work under the new Trust as of 1st April 2021.
- 11.9.7 As part of operational readiness, and to fully support the new Board and Committee Structure, a complete review of the Trust's reporting has begun to ensure the correct flow of information into the new structure moving forward. Shadow reporting will take place during transition to ensure integrity of data is retained, with key expertise from within both Trusts being utilised to deliver the technical aspects of the requirement.
- 11.9.8 Alongside a significant IM&T portfolio to deliver future improvements, merger-specific benefits have been identified and are being progressed to support user experience at go-live. Whilst many improvements have already been initiated over the past 3.5 years that enable a certain level of integration, additional changes including single extension dialling and shared folders will further improve both Trust's ability for staff to work seamlessly together.
- 11.9.9 Recognising the importance of an NHS name that patients can immediately relate to, there is significant work to review and implement branding changes together with associated communication updates. Following development of the new brand under the Communications umbrella, the implementation of required changes is progressing under a work stream that brings together key expertise from Communications, IM&T, Human Resources and Estates & Facilities. A list of required changes has been compiled, and prioritised, to ensure those items needing to be in place by 1st April 2021 are actioned.
- 11.9.10 To ensure safe services able to respond in a coordinated and complete way a major or internal critical incident as required, the development of the command and control structure and processes that in turn ensure effective delivery of Emergency Preparedness, Resilience and Response plans will be completed by 1st April 2021.

11.10 Post-Transaction Integration Plan Timeline

- 11.10.1 As described above, the Trusts are delivering a significantly shortened timeline for the transaction approval process. Plans for Day 1 readiness are also reflective of the existing relationship between both Trusts, with many of the must-do's already either fully or partly established over the past 3.5 years of the Management Contract.
- 11.10.2 The Trusts have agreed with NHSEI a longer timeline to develop and submit the PTIP, specifically so it can provide greater detail about corporate and clinical operating models and the Clinical Strategy that is currently in development. The key development timelines are set out in Table 11.3.

Table 11.3 PTIP Timeline

Action	Timescale
PTIP Strategy signed off by the Board	26 November 2020
First draft PTIP shared with NHSEI	18 December 2020
PTIP Sign Off by Board	7 January 2021
PTIP Submission to NHSEI	8 January 2021

12 Conclusion and Recommendations

12.1 Summary

- 12.1.1 Following three years of formalised joint working enabled through a Management Contract, both BSUH and WSHFT have made significant improvements and are both stable well performing Trusts. This includes shared leadership at Board level and a well aligned single strategic methodology and framework for delivery and improvement through the Trusts' Patient First approach.
- 12.1.2 There is a strong national policy, and local Sussex context to support integration of services, only further increased by the ambitions of both the Trusts. Linked to this both Trusts continue to face the same sustainability pressures in the long term driven by fragile and sometimes fragmented services, workforce and financial constraints.
- 12.1.3 The Trusts need to take a new approach to meeting these challenges and the preferred approach is the merger of the two Trusts through the acquisition of BSUH by WSHFT to form a new NHS Foundation Trust.
- 12.1.4 This FBC has outlined the compelling case for change and demonstrates the assessment and planning required to ensure the merged organisation will build on the successes of both WSHFT and BSUH, and be set up to deliver a solid range of benefits that will advantage patients, staff and the Trusts as they come together as one new organisation for the future.

13 Appendices

- A. NHSEI Strategic Case Feedback Letter*
- B. Draft Constitution
- C. Summary of Principal Changes to WSHFT Constitution
- D. Summary of Board Experience
- E. Financial Modelling Assumptions*
- F. Approach to Efficiency
- G. Benchmarked Opportunity for Enlarged Trust*
- H. Financial Sensitivity*
- I. Communication and Engagement Strategy
- J. Stakeholder Engagement Activities
- K. Full Survey Results
- L. Lessons Learnt from other Trusts
- M. M&A Transaction Risk Register*
- N. Equality Impact Assessment

* redacted due to commercial sensitivity

Appendix B: Draft Constitution

NEW NAME NHS Foundation Trust

Constitution

Version 0.1 October 2020 (for enlarged FT)

Version 0.2 November 2020 (revised post capsticks review)

Version 1.0 **xxxxxxx** approved by Board and Council of Governors

NEW NAME NHS Foundation Trust

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Annex 3 – The Model Election Rules

Annex 4 – Additional Provisions – Board of Governors

Annex 5 – Standing Orders – Board of Governors

Annex 6 – Standing Orders – Board of Directors

Annex 7 – Further Provisions

Annex 8 – Role Descriptions for Governor and Lead Governor

Annex 9 – Governor Code of Conduct

1. Interpretation and definitions

Unless otherwise stated, 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.

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

the 2006 Act is the National Health Service Act 2006.

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

Acquisition Date means the date of the acquisition by Western Sussex Hospitals NHS Foundation Trust (**WSHFT**) of Brighton and Sussex University Hospitals NHS Trust (**BSUHT**) being the date on which NHS Improvement grants the application of WSHFT to acquire BSUHT pursuant to Section 56A of the 2006 Act.

Annual Members Meeting is defined in paragraph 10 of the Constitution.

Constitution means this constitution and all annexes to it.

Initial Public Governors means the elected public governors of the Trust who hold office with WSHFT immediately prior to the Acquisition Date, as set out in Part A of Annex 2.

Initial Staff Governors means the elected staff governors of the Trust who hold office with WSHFT immediately prior to the Acquisition Date, as set out in Part A of Annex 2.

Monitor is the body corporate known as NHS Improvement and created pursuant to Section 61 of the 2012 Act.

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.

2. Name

The name of the Foundation Trust is **NEW NAME** NHS Foundation Trust (the Trust).

3. Principal purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfill its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to —
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. Powers

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

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

5. Membership and constituencies

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

5.1.1 a public constituency; or

5.1.2 a staff constituency

6. Application for membership

- 6.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust.

7. Public Constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

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

7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

8. Staff Constituency

- 8.1 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:

8.1.1 he is 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

8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the 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.

8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

8.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 1 and being referred to as a class within the Staff Constituency.

8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 1.

Automatic membership by default – staff

8.6 An individual who is:

8.6.1 eligible to become a member of the Staff Constituency, and

8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within 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.

9. Restriction on membership

- 9.1 An individual, who is a member of a constituency, or of an area or class within a constituency, may not while membership of that constituency, area or class continues, be a member of any other constituency, area or class.
- 9.2 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.
- 9.3 An individual must be at least 16 years old to become a member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 7 – Further Provisions Part B (Membership of the Trust).

10. Annual Members' Meeting

- 10.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

11. Council of Governors – composition

- 11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2 The composition of the Council of Governors is specified in Annex 2 and shall change in accordance with the dates set out in Table 1 and Table 2 of Annex 2.
- 11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are areas or classes within a constituency, by their area or class within that constituency.
- 11.4 To reflect the enlarged size of the Trust, the public constituency and the staff constituency and the number of governors to be elected by

each constituency, or, where appropriate, by each area or class of each constituency, shall increase and shall be revised on the dates specified in Annex 2.

12. Council of Governors – election of governors

- 12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of first past the post (FPP) polling and the Model Election Rules shall be construed accordingly.
- 12.2 The Model Election Rules as published by NHS Providers (previously the Foundation Trust Network) form part of this Constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 3.
- 12.3 A subsequent 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 43 of the Constitution (amendment of the Constitution).
- 12.4 An election, if contested, shall be by secret ballot.

13. Council of Governors – tenure

- 13.1 The composition of the Council of Governors as at the Acquisition Date is set out in Table 1 of Annex 2. In determining which Initial Public Governors and Initial Staff Governors transfer at the Acquisition Date, the process set out in paragraphs 13.2 – 13.6 below will apply.

Lead governor

- 13.2 The lead governor elected to represent the public constituency and holding office immediately prior to the Acquisition Date will transfer automatically to the same public constituency area to sit as lead governor from the Acquisition Date. For the avoidance of doubt, if no lead governor holds office immediately prior to the Acquisition Date than this paragraph 13.2 shall not apply.

Initial Public Governors

- 13.3 After applying paragraph 13.2, where the total number of Initial Public Governor posts that would qualify to represent a specific public constituency area is:
- 13.3.1 equal to or fewer than the number of posts available for that public constituency area, the Initial Public Governor(s) shall transfer automatically;
 - 13.3.2 greater than the number of posts available for that public constituency area, then the process set out in paragraph 13.4 below will apply.
- 13.4 Where on the Acquisition Date there is a greater number of Initial Public Governors for any public constituency area those Initial Public Governors with the greatest aggregate consecutive length of service will automatically vacate office first with the Initial Public Governor with the next greatest aggregate consecutive length of service vacating office second until the remaining number of Initial Public Governors is equal to the relevant constituency area at which point all remaining Initial Public Governors shall transfer automatically.

Initial Staff Governors

- 13.5 Where the total number of Initial Staff Governors posts that would qualify to represent a specific staff class is:
- 13.5.1 equal to the number of posts available for that staff class, the Initial Staff Governor(s) shall transfer automatically;
 - 13.5.2 greater than the number of posts available for that staff class then the process set out in paragraph 13.6 below will apply.
- 13.6 Where on the Acquisition Date there is a greater number of Initial Staff Governors for any staff class than available posts, those Initial Staff Governors with the shortest aggregate consecutive length of service will automatically vacate office first with the Initial Staff Governor with the next shortest aggregate consecutive length of service vacating office second until the remaining number of Initial Staff Governors is equal to the relevant staff class at which point all remaining Initial Staff Governors shall transfer automatically.
- 13.7 For the avoidance of doubt, as at the Acquisition Date there will be no elected public governors for the Brighton & Hove and Mid Sussex areas of the public constituency and no elected staff governors for the Princess Royal Hospital and Royal Sussex County Hospital staff class.
- 13.8 The first governor election held after the Acquisition Date to fill the governor vacancies identified in paragraph 13.7 above shall be conducted in such a way as to result in the initial terms of office for those elected governors to end on a phased basis to ensure that those elected governors do not all vacate the office on the same day and in

order that future elections also occur on a phased basis. As demonstrated in the below table and summarised as follows: in relation to the first elections for the:

13.8.1 public governors; in respect of the candidates for Brighton & Hove and Mid Sussex, the candidate with the highest number of votes shall hold office for a period of three years and where more than one governor post is available, the candidate with the second highest number of votes shall hold office for a period of two years;

13.8.2 staff governor; in respect of the candidate for the Princess Royal Hospital class, the candidate with the highest number of votes shall hold office for a period of two years;

13.8.3 staff governor; in respect of the candidate for the Royal Sussex County Hospital class, the candidate with the highest number of votes shall hold office for a period of three years.

Constituency	Class	3-year terms	2-year terms	Total
Public	Brighton & Hove	1	1	2
Public	Mid Sussex	1	1	2
Staff	Princess Royal Hospital	0	1	1
Staff	Royal Sussex County Hospital	1	0	1
	Totals	3	3	6

13.9 An elected governor may hold office for a period of up to 3 years from the date of nomination and at the end of this term they shall be eligible for re-election for up to two further terms of up to 3 years each (i.e. 9 years in total). For the avoidance of doubt, the Initial Public Governors and Initial Staff Governors that shall transfer after the Acquisition Date in accordance with the process set out in paragraphs 13.2 – 13.6 above will cease to hold office in accordance with the term set out in their original letters of appointment.

13.10 An elected governor shall cease to hold office if they cease to be a member of a constituency, area or class.

13.11 An appointed governor may hold office for a period of up to 3 years and at the end of this term they shall be eligible for re-appointment for up to two further terms of up to 3 years each (i.e. 9 years in total).

13.12 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.

13.13 A governor whose tenure of office is terminated shall not be eligible for re-appointment or to stand for re-election for a period of at least one year from the date of removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a two thirds of the voting members of the Council of Governors.

14. Council of Governors – disqualification and removal

14.1 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

14.2 The following may not become or continue as a member of the Council of Governors:

14.2.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

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

14.2.3 a person who within the preceding five years has been convicted in the British Islands of any offence if 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.

14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 4.

14.4 Provisions as to the removal of Governors are set out Annex 4 of this Constitution and Annex 9 of the Code of Conduct for Governors.

15. Council of Governors – duties of governors

- 15.1 The general duties of the Council of Governors are –
- 15.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and
 - 15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.
- 15.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.
- 15.3 All governors must comply with the Trust's Code of Conduct for Governors set out in Annex 9.

16. Council of Governors – meetings of governors

- 16.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 24.1 or paragraph 25.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 26.1 below), shall preside at meetings of the Council of Governors.
- 16.2 The Council of Governors shall appoint one of the governors, who is a member of the public constituency, to be the Lead Governor for such period, not exceeding the remainder of his term as a governor of the Trust and in accordance with the terms of appointment and role and description set out in Annex 8.
- 16.3 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of any particular meeting. Members of the public shall be excluded from meetings of the Council of Governors only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.
- 16.4 For the purposes 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 directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

17. Council of Governors – standing orders

- 17.1 The standing orders for the practice and procedure of the Council of Governors as may be amended from time to time are attached at Annex 5.

18. Council of Governors – referral to the Panel

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

- 18.1.1 to act in accordance with its Constitution; or
- 18.1.2 to act in accordance with provisions made by or under Chapter 5 of the 2006 Act

- 18.2 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.

19. Council of Governors - conflicts of interest of governors

- 19.1 If a governor has a pecuniary, personal or family 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 shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

20. Council of Governors – travel expenses

- 20.1 Governors shall not receive remuneration for acting as governors but the Trust may pay travelling and other expenses to members of the Council of Governors at rates, and in accordance with a policy, determined by the Trust.

21. Council of Governors – further provisions

21.1 Further provisions with respect to the Council of Governors are set out in Annex 4.

22. Board of Directors – composition

22.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. The composition will be such that there will always be a majority of non-executive directors (including the Chair).

22.2 The Board of Directors is to comprise:

22.2.1 a non-executive Chairman

22.2.2 at least 8 other non-executive directors, and

22.2.3 up to 8 executive directors.

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

22.4 The Chief Executive shall be the Accounting Officer.

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

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

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

22.8 The directors shall at all times have one vote each save that the Chairman shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.

22.9 The post of an executive director (excluding the Chief Executive) may be held by more than one eligible person on a job share basis. Where such an agreement is in force then the two individuals may only exercise one vote between them at a meeting of the Board of Directors. In the case of disagreements, they must abstain from voting and no vote may be cast. This must be recorded in the minutes for the Board meeting.

23. Board of Directors – general duty

23.1 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.

24. Board of Directors – qualification for appointment as a non-executive director

24.1 A person may be appointed as a non-executive director only if:

24.1.1 he is a member of a public constituency and he is not disqualified by virtue of paragraph 28 below.

25. Board of Directors – appointment and removal of chairman and other non-executive directors

25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint and, where necessary, remove (with the approval of three-quarters of the Council of Governors) the chairman of the Trust and the other non-executive directors. The Council of Governors Nomination Committee may identify suitable candidates to fill non-executive director vacancies as they arise and may make written recommendations to the Council of Governors. The Council of Governors shall be required to appoint one non-executive director who exercises functions for Brighton and Sussex Medical School. This candidate will be nominated by Brighton and Sussex Medical School for the Council of Governors Nomination Committee to review and consider and, where appropriate, recommend to the Council of Governors.

25.2 The Council of Governors at a general meeting of the Council of Governors shall appoint and, where necessary, remove the chairman

of the Trust and the other non-executive directors.

- 25.3 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

26. Board of Directors – appointment of deputy chairman and senior independent director

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.
- 26.2 The Board shall, following consultation with the Council of Governors, appoint one of the independent non-executive directors as a Senior Independent Director to act in accordance with the NHS Foundation Trust Code of Governance published by Monitor in 2013 and updated in July 2014 and the Board's Standing Orders.
- 26.3 The offices of Deputy Chairman and Senior Independent Director may be held by the same Non-Executive Director.

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

- 27.1 The non-executive directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

28. Board of Directors – disqualification

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

- 28.1 A person who fails to meet the requirements of the CQC fit and proper person regulations.
- 28.2 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 28.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 28.4 a person who within the preceding five years has been convicted in the British Islands of any offence if 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.

29. Board of Directors – meetings

- 29.1 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.
- 29.2 Before holding a meeting the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

30. Board of Directors – standing orders

- 30.1 The standing orders for the practice and procedure of the Board of Directors, as may be amended from time to time, are attached at Annex 6
- 30.2 The Board of Directors may adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the Trust from time to time.

31. Board of Directors - conflicts of interest of directors

- 31.1 The duties that a director of the Trust has by virtue of being a director include in particular –
- 31.1.1 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.
- 31.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 31.2 The duty referred to in sub-paragraph 31.1.1 is not infringed if –
- 31.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 31.2.2 The matter has been authorised in accordance with the Constitution.
- 31.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 31.4 In sub-paragraph 31.1.2 “third party” means a person other than –
- 31.4.1 The Trust, or
- 31.4.2 A person acting on its behalf
- 31.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors
- 31.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 31.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 31.8 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.

31.9 A director need not declare an interest –

31.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest:

31.9.2 If, or to the extent that, the directors are already aware of it:

31.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –

34.9.3.1 by a meeting of the Board of Directors, or

34.9.3.2 by a committee of the directors appointed for the purpose under the Constitution.

31.10 A matter shall be authorised for the purposes of paragraph 31.2.2:

31.10.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

31.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

31.10.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

32. Board of Directors – remuneration and terms of office

32.1 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 Chairman and the other non-executive directors.

- 32.2 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.

33. Registers

The Trust shall have:

- 33.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are areas or classes within it, the area or class to which he belongs;
- 33.2 a register of members of the Council of Governors;
- 33.3 a register of interests of governors;
- 33.4 a register of directors; and
- 33.5 a register of interests of the directors.

34. Admission to and removal from the registers

- 34.1 Further provisions as to the registers are set out within Annex 7.

35. Registers – inspection and copies

- 35.1 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 35.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –
- 35.2.1 any member of the Patients' Constituency; or

35.2.2 any other member of the Trust, if he so requests

35.3 So far as the registers are required to be made available:

35.3.1 they are to be available for inspection free of charge at all reasonable times; and

35.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

35.4 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.

36. Documents available for public inspection

36.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

36.1.1 a copy of the current Constitution;

36.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and

36.1.3 a copy of the latest annual report.

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

36.3 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.

36.4 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:

36.4.1 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.

- 36.4.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 36.4.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 36.4.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 36.4.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 36.4.6 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.
- 36.4.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 36.4.8 a copy of any final report published under section 65I (administrator's final report).
- 36.4.9 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.
- 36.4.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 36.5 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 36.6 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.

37. External Auditor

- 37.1 The Trust shall have an external auditor.
- 37.2 The Council of Governors shall appoint or remove the external auditor at a general meeting of the Council of Governors.
- 37.3 The external auditor shall carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS Improvement (previously Monitor) on standards, procedures and techniques to be adopted.

38. Audit committee

- 38.1 The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate. The membership and terms of reference of the Audit Committee shall be subject to approval by the Board of Directors.

39. Accounts

- 39.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 39.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 39.3 The accounts are to be audited by the Trust's external auditor.
- 39.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the of the Secretary of State direct.
- 39.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

40. Annual report, forward plans and non-NHS work

- 40.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.

- 40.2 The Trust shall give information as directed with regards its forward planning in respect of each financial year to NHS Improvement.
- 40.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 40.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 40.5 Each forward plan must include information about –
- 40.5.1 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
- 40.5.2 the income it expects to receive from doing so.
- 40.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must –
- 40.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and
- 40.6.2 notify the directors of the Trust of its determination.
- 40.7 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 of the members of the Council of Governors of the Trust voting approve its implementation.

41. Presentation of the annual accounts and reports to the governors and members

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

41.1.1 the annual accounts

41.1.2 any report of the auditor on them

41.1.3 the annual report.

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

41.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.

42. Instruments

42.1 The Trust shall have a seal.

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

42.3 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be executed or signed.

42.4 See further Annex 7 Part C (Custody of Seal and Sealing of Documents).

43. Amendment of the Constitution

43.1 The Trust may make amendments of its Constitution only if –

43.1.1 Over half of the membership of the Council of Governors of the Trust voting approve the amendments, and

43.1.2 Over half of the members of the Board of Directors of the Trust voting approve the amendments.

43.2 Amendments made under paragraph 43.1 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.

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

43.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

43.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

43.4 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.

43.5 Amendments by the Trust of its Constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

44. Mergers etc. and significant transactions

44.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of over half of the members of the Council of Governors.

44.2 The Trust may enter into a significant transaction only if over half of the members of the Council of Governors voting approve entering into the transaction.

44.3 In this paragraph, the following words have the following meanings:

44.3.1 "Significant transaction" means a transaction which meets any one of the tests below:

the fixed asset test; or

the turnover test;

44.4 The turnover test is met if, following the completion of the relevant transaction, the gross income of the Trust will increase or decrease by more than 25%.

44.5 The fixed asset is met if the assets which are the subject of the transaction exceeds 25% of the fixed assets of the Trust.

44.6 A transaction:

44.6.1 includes all agreements (including amendments to agreements) entered into by the Trust

44.6.2 excludes a transaction in the ordinary course of business including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust;

44.6.3 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services;

44.6.4 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

45. Indemnity

45.1 Members of the Board of Directors and Council of Governors 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 of their functions, save where they have acted recklessly.

45.2 The Trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of directors' and governors' liability to meet all or any liabilities which are properly the liabilities of the Trust under paragraph 45.1, including, without limitation, liability arising by reason of the Trust acting as a corporate

trustee of an NHS charity.

ANNEX 1 – CONSTITUENCY DETAILS

THE PUBLIC CONSTITUENCY

Members of the public shall be eligible for membership of the public constituency areas as shown in the table below, which also sets out the minimum numbers required in each area.

Public Constituency Area	Minimum Membership Per Area
Adur	90
Arun	220
Brighton & Hove	600
Chichester	160
East Sussex	75
Horsham	130
Mid Sussex	140
Worthing	150
Out of Area	75

THE STAFF CONSTITUENCY

The staff constituency is divided into a number of classes. Trust staff shall be eligible for membership of the class within the staff constituency as shown below.

Staff Class	Minimum Number of Members Per Class
Peripatetic	100
Princess Royal Hospital	100
Royal Sussex County Hospital	100
St Richards Hospital	100
Worthing & Southlands Hospital	100

ANNEX 2 – COMPOSITION OF COUNCIL OF GOVERNORS

Table 1 - Elected Governors

For the period from the Acquisition Date until new governor elections are held and new governors are elected on around August 2021 (Post Acquisition Elections) the Elected Governors shall comprise:

Constituency	Area/Class	Number
Public	Adur	1
Public	Arun	1
Public	Brighton & Hove	0
Public	Chichester	2
Public	Horsham	1
Public	Mid Sussex	0
Public	Worthing	1
Public	Out of Area	1
Staff	Peripatetic	1
Staff	Princess Royal Hospital	0
Staff	Royal Sussex County Hospital	0
Staff	St Richards Hospital	1
Staff	Worthing and Southlands Hospitals	1
Total Number of Elected Governors		10

Table 2 – Elected Governors

Following the Post Acquisition Elections the Elected Governors shall comprise:

Constituency	Area/Class	Number
Public	Adur	1
Public	Arun	1

Public	Brighton & Hove	2
Public	Chichester	2
Public	Horsham	1
Public	Mid Sussex	2
Public	Worthing	1
Public	East Sussex and Out of Area	1
Staff	Peripatetic	1
Staff	Princess Royal Hospital	1
Staff	Royal Sussex County Hospital	1
Staff	St Richards Hospital	1
Staff	Worthing and Southlands Hospitals	1
Total Number of Elected Governors		16

Table 3 - Appointed Governors

Type	Governor Appointed By:	Number
Local Authority*	Brighton and Hove City Council	1
	West Sussex County Council	1
Brighton & Sussex Medical School *	A governor would be appointed by agreement between Brighton & Sussex Universities.	1
Voluntary Sector	A governor shall be appointed, by agreement of the Council of Voluntary Services	1
Inclusion	A governor shall be appointed from the three Trust inclusion staff networks covering BAME, LGBT+ and Disability	1
Total Number of Appointed Governors		5
Total Number of Governors		21

**Note: These Governors must be appointed under paragraphs 9(4) and 9(6) of Schedule 7 of the National Health Service Act 2006 (as amended from time to time).*

In summary, the total number of Governors:

On the Acquisition Date there shall be 10 elected governors plus 5 appointed governors (15 in total) (composed as set out above); and

From on or around August 2021 there shall be shall be 21 Governors (composed as set out above).

Annex 3 - Model Election Rules

MODEL ELECTION RULES 2014

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
18. Method of election

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope

26. E-voting systems

The poll

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

Procedure for receipt of envelopes, internet votes, telephone vote and text message votes

36. Receipt of voting documents
37. Validity of votes
38. Declaration of identity but no ballot (public and patient constituency)
39. De-duplication of votes
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PART 6: COUNTING THE VOTES

41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
44. Rejected ballot papers and rejected text voting records
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PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

46. Declaration of result for contested elections
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PART 8: DISPOSAL OF DOCUMENTS

48. Sealing up of documents relating to the poll
49. Delivery of documents
50. Forwarding of documents received after close of the poll
51. Retention and public inspection of documents
52. Application for inspection of certain documents relating to election

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

53. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

54. Election expenses
55. Expenses and payments by candidates
56. Expenses incurred by other persons

Publicity

57. Publicity about election by the corporation
58. Information about candidates for inclusion with voting information
59. Meaning of "for the purposes of an election"

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

60. Application to question an election

PART 12: MISCELLANEOUS

61. Secrecy
62. Prohibition of disclosure of vote
63. Disqualification
64. Delay in postal service through industrial action or unforeseen event

1. Interpretation

1.1. In these rules, unless the context otherwise requires:

“*2006 Act*” means the National Health Service Act 2006;

“*corporation*” means the public benefit corporation subject to this constitution;

“*council of governors*” means the council of governors of the corporation;

“*declaration of identity*” has the meaning set out in rule 21.1;

“*election*” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the council of governors;

“*e-voting*” means voting using either the internet, telephone or text message;

“*e-voting information*” has the meaning set out in rule 24.2;

“*ID declaration form*” has the meaning set out in Rule 21.1; “*internet voting record*” has the meaning set out in rule 26.4(d);

“*internet voting system*” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (published by Monitor in December 2013) or any later version of such code.

“*list of eligible voters*” means the list referred to in rule 22.1, containing the information in rule 22.2;

“*method of polling*” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act and reference in these Model Election Rules to “*Monitor*” shall be read as reference to its statutory successor, “*NHS Improvement*”;

“*NHS Improvement*” is the operational name for the organisation which consists of (inter alia) Monitor and the NHS Trust Development Authority;

“numerical voting code” has the meaning set out in rule 64.2(b)

“polling website” has the meaning set out in rule 26.1;

“postal voting information” has the meaning set out in rule 24.1;

“telephone short code” means a short telephone number used for the purposes of submitting a vote by text message;

“telephone voting facility” has the meaning set out in rule 26.2;

“telephone voting record” has the meaning set out in rule 26.5 (d);

“text message voting facility” has the meaning set out in rule 26.3;

“text voting record” has the meaning set out in rule 26.6 (d);

“the telephone voting system” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

“the text message voting system” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

“voter ID number” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,

“voting information” means postal voting information and/or e-voting information

1.2. Other expressions used in these rules and in Schedule 7 to the NHS Act 2006 have the same meaning in these rules as in that Schedule.

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

2.1. The proceedings at an election shall be conducted in accordance with the following timetable:

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

3. Computation of time

3.1. In computing any period of time for the purposes of the timetable:

- (a) a Saturday or Sunday;
- (b) Christmas Day, Good Friday, or a bank holiday, or
- (c) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

3.2. In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

4. Returning Officer

4.1. Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

4.2. Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

5.1. Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

6.1. The corporation is to pay the returning officer:

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

7.1. The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

8.1. The returning officer is to publish a notice of the election stating:

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

9.1. Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

9.2. The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
- (b) is to prepare a nomination form for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

- 10.1. The nomination form must state the candidate's:
- (a) full name,
 - (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
 - (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

- 11.1. The nomination form must state:
- (a) any financial interest that the candidate has in the corporation, and
 - (b) whether the candidate is a member of a political party, and if so, which party,
- and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

- 12.1. The nomination form must include a declaration made by the candidate:
- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
 - (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

- 13.1. The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
 - (b) their declaration of interests as required under rule 11, is true and correct, and
 - (c) their declaration of eligibility, as required under rule 12, is true and correct.

13.2. Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

14. Decisions as to the validity of nomination

14.1. Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination form is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

14.2. The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

14.3. The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

14.4. Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.

14.5. The returning officer is to send notice of the decision as to whether a

nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

15.1. The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

15.2. The statement must show:

- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination form.

15.3. The statement must list the candidates standing for election in alphabetical order by surname.

15.4. The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

16.1. The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

16.2. If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

17.1. A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of

withdrawal which is signed by the candidate and attested by a witness.

18. Method of election

- 18.1. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

- 18.2. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

- 18.3. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
 - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

19. Poll to be taken by ballot

- 19.1. The votes at the poll must be given by secret ballot.
- 19.2. The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3. The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4. The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5. Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

20.1. The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2. Every ballot paper must specify:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

20.3. Each ballot paper must have a unique identifier.

20.4. Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies)

21.1. The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information

in the election, and

- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,
("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.

- 21.2. The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3. The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 22.1. The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2. The list is to include, for each member:
 - (a) a postal address; and,
 - (b) the member's e-mail address, if this has been providedto which his or her voting information may, subject to rule 22.3, be sent.
- 22.3. The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

23.1. The returning officer is to publish a notice of the poll stating:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1. Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (a) a ballot paper and ballot paper envelope,
- (b) the ID declaration form (if required),
- (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
- (d) a covering envelope;

("postal voting information").

24.2. Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter's voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
- (d) contact details of the returning officer,

("e-voting information").

24.3. The corporation may determine that any member of the corporation shall:

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

24.4. If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

24.5. The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

25.1. The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

- 25.2. The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
 - (b) pre-paid postage for return to that address.
- 25.3. There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

- 26.1. If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2. If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3. If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4. The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
in order to be able to cast his or her vote;
 - (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,

- (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) (the date and time of the voter's vote,
 - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
 - (f) prevent any voter from voting after the close of poll.

26.5. The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) instructions on how to vote and how to make a declaration of identity,

- (v) the date and time of the close of the poll, and
 - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
 - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
 - (f) prevent any voter from voting after the close of poll.

26.6. The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

- 27.1. An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

28. Voting by persons who require assistance

- 28.1. The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2. Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1. If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2. On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3. The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
 - (a) is satisfied as to the voter’s identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4. After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.

- 29.5. If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6. On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7. The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8. After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

- 30.1. Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2. The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3. After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):

- (a) the name of the voter
- (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
- (c) the voter ID number of the voter.

31. Issue of replacement voting information

31.1. If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

31.2. After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):

- (a) the name of the voter,
- (b) the unique identifier of any replacement ballot paper issued under this rule;
- (c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (public and patient constituencies)

32.1. In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

Polling by internet, telephone or text

33. Procedure for remote voting by internet

33.1. To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

33.2. When prompted to do so, the voter will need to enter his or her voter ID number.

- 33.3. If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4. To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5. The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1. To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2. When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3. If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4. When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5. The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1. To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2. The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

- 35.3. The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

Procedure for receipt of envelopes, internet votes, telephone votes and text message votes

36. Receipt of voting documents

- 36.1. Where the returning officer receives:
- (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2. The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- 36.3. The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

- 37.1. A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2. Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

37.3. Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

37.4. An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

37.5. Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

37.6. Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- (c) place the document or documents in a separate packet.

38. Declaration of identity but no ballot paper (public and patient constituency)¹⁴

38.1. Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (a) mark the ID declaration form “disqualified”,
- (b) record the name of the voter in the list of disqualified documents,

¹⁴ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

indicating that a declaration of identity was received from the voter without a ballot paper, and

- (c) place the ID declaration form in a separate packet.

39. De-duplication of votes

39.1. Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2. If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

39.3. Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4. Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text

voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

40.1. As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

41. Interpretation of Part 6

41.1. In Part 6 of these rules:

“ballot document” means a ballot paper, internet voting record, telephone voting record or text voting record.

“continuing candidate” means any candidate not deemed to be elected, and not excluded,

“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot document:

(a) on which no second or subsequent preference is recorded for a continuing candidate,

or

(b) which is excluded by the returning officer under rule STV49,

“preference” as used in the following contexts has the meaning assigned below:

(a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“*quota*” means the number calculated in accordance with rule STV46,

“*surplus*” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,

“*stage of the count*” means:

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (c) the exclusion of one or more candidates at any given time,

“*transferable vote*” means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“*transferred vote*” means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred, and

42. Arrangements for counting of the votes

42.1. The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

42.2. The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

- 43.1. The returning officer is to:
- (a) count and record the number of:
 - (i) ballot papers that have been returned; and
 - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
 - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2. The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3. The returning officer is to proceed continuously with counting the votes as far as is practicable.

44. Rejected ballot papers and rejected text voting records

- 44.1 Any ballot paper:
- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - (b) on which votes are given for more candidates than the voter is entitled to vote,
 - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (d) which is unmarked or rejected because of uncertainty,
- shall, subject to rules 44.2 and 44.3, be rejected and not counted.
- 44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- 44.3 A ballot paper on which a vote is marked:
- (a) elsewhere than in the proper place,

- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules 44.7 and 44.8, be rejected and not counted.

44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

44.8 A text voting record on which a vote is marked:

- (a) otherwise than by means of a clear mark,
- (b) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

- (a) voting for more candidates than the voter is entitled to,
- (b) writing or mark by which voter could be identified, and
- (c) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

45. Equality of votes

45.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

**PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED
ELECTIONS**

46. Declaration of result for contested elections

46.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

46.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

47 Declaration of result for uncontested elections

47.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

- (a) declare the candidate or candidates remaining validly nominated to be elected,

- (b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

48. Sealing up of documents relating to the poll

48.1. On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- (b) the ballot papers and text voting records endorsed with “rejected in part”,
- (c) the rejected ballot papers and text voting records, and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records,

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

48.2. The returning officer must not open the sealed packets of:

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of spoiled ballot papers and the list of spoiled text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.

48.3. The returning officer must endorse on each packet a description of:

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

49. Delivery of documents

49.1. Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

50. Forwarding of documents received after close of the poll

50.1. Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

51. Retention and public inspection of documents

51.1. The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

51.2. With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

51.3. A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

52. Application for inspection of certain documents relating to an election

52.1. The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –

- (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.

52.2. A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

52.3. The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

52.4. On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

- (a) in giving its consent, and
- (b) in making the documents available for inspection

ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

- (i) that his or her vote was given, and

(ii) that Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

53. Countermand or abandonment of poll on death of candidate

- 53.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- 53.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- 53.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- 53.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- 53.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
 - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 53.6 The returning officer is to endorse on each packet a description of:

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

53.7

Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

54. Election expenses

54.1. Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to Monitor under Part 11 of these rules.

55. Expenses and payments by candidates

55.1. A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

56. Election expenses incurred by other persons

56.1. No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

56.2. Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

57. Publicity about election by the corporation

57.1. The corporation may:

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

57.2. Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

57.3. Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

58. Information about candidates for inclusion with voting information

58.1. The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

58.2. The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words,
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and

- (c) a photograph of the candidate.

59. Meaning of “for the purposes of an election”

59.1. In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

59.2. The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

60. Application to question an election

- 60.1. An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 60.2. An application may only be made once the outcome of the election has been declared by the returning officer.
- 60.3. An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 60.4. The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the independent panel may require.
- 60.5. The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 60.6. If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 60.7. Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 60.8. The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

60.9. The IEAP may prescribe rules of procedure for the determination of an application including costs.

61. Secrecy

61.1. The following persons:

- (a) the returning officer,
- (b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:

- (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv) the candidate(s) for whom any member has voted.

61.2. No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter or the voter ID number allocated to a voter.

61.3. The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

62. Prohibition of disclosure of vote

62.1. No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

63. Disqualification

63.1. A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

64. Delay in postal service through industrial action or unforeseen event

64.1. If industrial action, or some other unforeseen event, results in a delay in:

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

ANNEX 4 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. INTERPRETATION

- 1.1 In these Provisions, the clauses relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. APPLICATION OF THESE PROVISIONS

- 2.1 These Provisions apply to all meetings of the Council of Governors (“the **Council**”) and all other relevant activities of the Governors. All Governors are required to abide by these Provisions, which also apply to any persons attending meetings of the Council.
- 2.2 Except where required by law or the Constitution, at any meeting of the Council, the Chairman (or in his absence, the Deputy Chairman or a person deputising for him) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Governors are made aware of these Provisions, Governors are expected to familiarise themselves with the Provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Provisions by a Governor, another Governor or member of staff identifying such actual/suspected non-compliance shall report it to the Chairman or Secretary and the Chairman/ Secretary shall be responsible for taking such action as is necessary in accordance with the Code of Conduct for Governors set out in Annex 9 (specifically paragraph 7).

3. APPOINTMENT AND REMOVAL OF GOVERNORS

Election and Appointment to Office

- 3.1 Governors shall be elected or appointed by the means and on terms of office as prescribed by this Constitution.
- 3.2 A Governor shall, within 21 days of election or appointment, sign and deliver to the Secretary a declaration in the form prescribed at Appendix A. No Governor shall be entitled to vote or count in the quorum at a meeting of the Council of Governors until his declaration has been received by the Secretary. Such a declaration shall be valid for the Governor’s term of office.

- 3.3 A person shall not be eligible to become or continue in office as a Governor if:
- 3.3.1 any of the grounds contained in paragraph 14 of the Constitution apply to him; or
 - 3.3.2 in the case of an elected Governor, he ceases to be eligible to be a member of the Trust or constituency. For the avoidance of doubt and in accordance with paragraph 13.3 of the Constitution, a Public Governor who ceases to be eligible to be a member of that Public Constituency by virtue of moving to another area, shall cease to hold office. Subject to the Provisions set out in this Annex 4 and the Constitutional provisions in respect of eligibility for holding office as a Governor, a person ceasing to hold office by the means described in this clause shall be eligible to stand for election in the area to which he has moved; or
 - 3.3.3 he is a member of a Staff Class and any professional registration relevant to his eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months; or
 - 3.3.4 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him or the organisation ceases to exist; or
 - 3.3.5 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body; or
 - 3.3.6 he is a person whose term of office as the chair or as a member or director of a health service body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest; or
 - 3.3.7 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list; or
 - 3.3.8 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act; or
 - 3.3.9 has spoken or voted in a meeting on a matter in which he has a direct or indirect pecuniary or non-pecuniary interest and he is judged to have acted so by a majority of not less than three quarters of the Council; or

- 3.3.10 NHS Improvement has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or NHS Improvement has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust; or
- 3.3.11 he has received a written warning from the Trust for verbal and/or physical abuse towards any person; or
- 3.3.12 he does not agree to (or, having agreed, fails to) abide by the values as published by the Trust; or
- 3.3.13 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended) and his conviction is not spent under the Rehabilitation of Offenders Act 1974; or
- 3.3.14 he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs; or
- 3.3.15 he is a member of the UK Parliament; or
- 3.3.16 he is a Director of the Trust or a Governor of another NHS Foundation Trust; or
- 3.3.17 he is a member of a relevant local authority Overview and Scrutiny Committee; or
- 3.3.18 he is not 16 years of age, or older, at the closing date for nominations for election or appointment; or
- 3.3.19 he has contravened any other provision of this Constitution; or
- 3.3.20 his term of office is terminated pursuant to paragraph 3.4 below;

Termination of Office

- 3.4 A Governor's term of office shall be terminated:
 - 3.4.1 by the Governor giving notice in writing to the Secretary of his resignation from office at any time during that term of office;
 - 3.4.2 by a majority of the Governors present and voting at a meeting of

the Council if any grounds exist under paragraph 3.3 above

3.4.3 if the Council resolves to terminate his term of office on the grounds that in the reasonable opinion of over half of the Council of Governors voting at a meeting of the Council convened for that purpose that his continuing as a Governor would or would be likely to:

- (a) prejudice the ability of the Trust to fulfill its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
- (b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
- (c) adversely affect public confidence in the goods and services provided by the Trust; or
- (d) otherwise bring the Trust into disrepute or be detrimental to the interests of the Trust.

3.4.4 if over half of the Council of Governors of the Council resolve that:

- (a) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
- (b) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust; or
- (c) the Governor has failed to or refused to undertake and/or satisfactorily complete any training which the Council has required him to undertake in his capacity as a Governor by a date six months from the date of his election or appointment; or
- (d) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, the Constitution, and/or the Trust's Terms of Authorisation; or
- (e) he has committed a material breach of any Role Description or Code of Conduct applicable to Governors of the Trust and/or these Provisions.

- 3.5 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered him disqualified, and the Secretary shall report the matter to the Council and the Board.
- 3.6 Upon a Governor resigning or ceasing to be eligible to continue in office that person shall cease to be a Governor and his name shall be removed from the Register of Governors.

Vacancies

- 3.7 Where a Governor resigns or his office is terminated, elected Governors shall be replaced in accordance with paragraphs 3.8 and 3.9 below and, in the case of appointed Governors, the Trust shall within 30 days of the vacancy having arisen invite the appointing body to appoint a new Governor to hold office for the remainder of the term of office.
- 3.8 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chairman and Chief Executive of the Trust, who shall use their reasonable endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chairman and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.
- 3.9 Where an elected Governor ceases to hold office during the first six months of his term of office, the Trust shall offer the unsuccessful candidate who secured the highest number of votes in the last election for the area or class in which the vacancy has arisen, the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that candidate is unwilling, or unable, to fill the vacancy it will then be offered to that unsuccessful candidate who secured the next highest number of votes.
- 3.10 If there is no reserve candidate, or the reserve candidate is unable or unwilling to fill the vacancy, the Council may seek to co-opt a non-voting associate governor from that constituency or agree to allow that office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are public [to be less than half the total membership of the Council. In that event an election will be held in accordance with the election scheme as soon as reasonably practicable.
- 3.11 No defect in the election or appointment of a Governor or any deficiency in the composition of the Council shall affect the validity of any act or decision of the Council.

4. DECLARATIONS AND REGISTER OF GOVERNORS' INTERESTS

- 4.1 In accordance with the Constitution, Governors are required to declare on election or appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.
- 4.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Provisions and delivering it to the Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.
- 4.3 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.
- 4.4 The term "relevant and material interests" may include (but may not be limited to) the following:
- 4.4.1 directorships, including non-executive directorships held in private or public limited companies (with the exception of those of dormant companies);
 - 4.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;
 - 4.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;
 - 4.4.4 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;
 - 4.4.5 research funding/grants that may be received by an individual or their department;
- 4.5 Any traveling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.

4.6 Subject to any other provision of this Constitution, a Governor shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:

4.6.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

4.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.

4.7 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

4.7.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;

4.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

4.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.

4.9 If a Governor has any doubt about the relevance of an interest, he must take advice from the Secretary.

5. STANDARDS OF CONDUCT

5.1 Governors shall comply with the terms of the Role Description for Governors which shall be approved by the Council and the Board, and which the Secretary shall issue to Governors upon election or appointment to the Council. The Governors shall also comply with any codes of conduct or other standards referenced in the Role Description.

5.2 In the event that there are concerns about a Governor's performance or conduct, the Chairman, with the support of the Lead Governor and Secretary where necessary, will address these directly with the Governor concerned. Where necessary, the Chairman will make recommendations to the Council, including in respect of any proposal that the Council should

remove the Governor from office in which case the Provisions of section 3 of these Provisions shall apply.

5.3 For further information see Annex 9.

6. REMUNERATION AND BUSINESS EXPENSES

6.1 Governors shall not receive remuneration.

6.2 The Trust is permitted to reimburse traveling expenses to Governors for attendance at meetings of the Council, or for any other business authorised by the Chairman as being reasonably within the role and duties of a Governor, at a rate and in accordance with a policy to be determined by the Board of Directors.

6.3 Expenses will be reimbursed by the Secretary on receipt of a completed and signed expenses form provided by the Secretary.

6.4 A summary of expenses paid to Governors will be published in the Annual Report.

7. COMPOSITION AND ROLE OF COUNCIL OF GOVERNORS

7.1 The composition of the Council shall be as set out in Annex 2 of the Constitution.

7.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Council is defined in its Terms of Reference which shall be approved by the Council and the Board.

7.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.

7.4 The role of the Deputy Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.

7.5 The role of the Lead Governor and Deputy Lead Governor shall be as defined in a Role Description which shall be approved by the Council and the Board, this is contained within Annex 8.

8. COMMITTEES OF THE COUNCIL

- 8.1 Subject to the Constitution, the Terms of Authorisation and such binding guidance as may be given by NHS Improvement, the Council may and, if so required by NHS Improvement, shall appoint committees of the Council consisting wholly or partly of members of the Trust (whether or not they include Governors) or wholly of persons who are not members of the Trust (whether or not they include Governors). The Council shall not delegate any of its powers to a committee but committees may act in an advisory capacity to assist the Council in carrying out its functions.
- 8.2 These Provisions of the Council shall apply with appropriate alteration to any committees established by the Council.
- 8.3 Each such committee or sub-committee shall have such terms of reference. Such terms of reference and the membership of committees or sub-committees shall be subject to approval by the Council.
- 8.4 The Council shall approve the appointment of the Chairman and members for each of the committees which it has formally constituted. Where the Council determines that persons who are neither Governors nor staff shall be appointed to a committee, the terms of such appointment shall be determined by the Council. The Council may request that external advisers assist them or any committee they appoint in carrying out its duties.
- 8.5 Elected and Appointed governors may form a sub-committee – the Pre-Council of Governors Committee – to prepare for forthcoming Council meetings.

9. SUSPENSION, AMENDMENT AND REVIEW OF THESE PROVISIONS

Suspension

- 9.1 These Provisions shall not be suspended except:
- 9.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Provisions, he may do so subject to such action being reported to the next meeting of the Council
- 9.1.2 at a meeting of the Council, where at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors
- 9.2 Any decision to waive Provisions shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

- 9.3 These Provisions shall be reviewed one year after approval by the Council

and then at least every three years thereafter.

9.4 These Provisions shall be amended only if:

9.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and

9.4.3 at least half of the Governors of the Council, including one staff Governor, one public Governor and one appointed Governor are in favour of amendment.

9.4.4 The proposed amendment(s) has/have been discussed the Board.

9.5 All amendments to these Provisions shall be subject to approval through any process prescribed by NHS Improvement.

APPENDIX A

DECLARATION BY GOVERNOR

NEW NAME NHS FOUNDATION TRUST

(the "Trust")

I, (insert full name)

of

.....
.....
.....(insert address)

Hereby declare that I am entitled to:-

(a) be elected to the Council of Governors as a Governor elected by one of the public constituencies/ the staff constituencies* because I am a member of one of the public constituencies/ /staff constituencies *; or

(b) be appointed to the Council of Governors as a governor because I have been appointed by a nominating organisation

and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under the Constitution of the Trust and that I am entitled to vote at meetings of the Council of Governors as a governor pursuant to such appointment or election.

Signed

Print
Name.....

Date of Declaration

ANNEX 5 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1. MEETINGS OF THE COUNCIL OF GOVERNORS

Frequency of Meetings

- 1.1 The Council of Governors (“the Council”) shall decide the frequency of and calendar for its meetings, subject to the Council holding a minimum of four general meetings per year. The Secretary shall ensure that within the meeting cycle of the Council, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.

- 1.2 Notwithstanding clause 1.1 above, the Chairman may at any time call a meeting of the Council. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the total number of Governors including at least two elected and two appointed Governors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more Governors may forthwith agree to call a meeting of the Council.

Admission of the Public

- 1.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Council unless the Council decides otherwise in relation to all or part of any particular meeting. The public shall be excluded from meetings of the Council only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.

- 1.4 The Chairman may exclude any member of the public from a meeting of the Council if the person is interfering with or preventing the proper conduct of the Council's business. The Chairman's decision in this respect shall be final.

- 1.5 The Chairman shall decide the arrangements through which any questions from members of the public will be asked and answered.

Admission of Directors

- 1.6 Subject to Provisions in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council and, subject to the decision of the Chairman, to speak to any item under consideration.

- 1.7 Subject to clause 1.9 below, the Chairman of the Trust, or in his absence, the Deputy Chairman shall preside at meetings of the Council. Neither the Chairman nor any person deputising for him shall be a member of the Council and he shall not have a vote on matters considered by the Council.
- 1.8 The Deputy Chairman may preside at meetings of the Council in the following circumstances:
- 1.8.1 when there is a need for someone to have the authority to chair any meeting of the Council when the Chairman is not present
 - 1.8.2 when the remuneration, allowance and other terms and conditions of the Chairman are being considered.
 - 1.8.3 when the appointment of the Chairman is being considered, should the current Chairman be a candidate for re-appointment.
 - 1.8.4 on occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council.
- 1.9 If it would not be appropriate for the Chairman or the Deputy Chairman to preside, one of the other Non-Executive Directors shall preside. If in exceptional circumstances it would not be appropriate for any Non-Executive Director to preside, the Council shall appoint one of its members to preside at that meeting. This shall normally be the Lead Governor.
- 1.10 Statements made by Governors at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

- 1.11 Before each meeting of the Council, a notice of the meeting agreed by the Chairman or by an officer of the Trust authorised by the Chairman to approve on his/her behalf shall be published on the Trust website no less than five clear days in advance of the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.
- 1.12 Except in the case of emergencies or in case of a need to conduct urgent

business, the Secretary shall give to all Governors at least five clear days written notice of the date and place of every meeting of the Council. Written notice shall be deemed to include communication by email. The notice shall be published on the Trust's website and otherwise made available to members of the public as considered appropriate by the Trust.

- 1.13 In the case of a meeting called by the Governors in default of the Chairman, the notice shall be signed by those respective Governors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Governors shall not affect the validity of a meeting.

Agenda and Notification of Business

- 1.14 At the direction of the Council, the Secretary shall draw up and maintain an agenda plan for the Council's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Council, which it will agree with the Board of Directors ("the Board"). The agenda plan shall be approved by the Council at least once in each calendar year.
- 1.15 The Council may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.
- 1.16 A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chairman or the Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chairman.
- 1.17 Before each meeting of the Council, an agenda setting out the business of the meeting, approved by the Chairman or by an officer of the Trust authorised by the Chairman on his/her behalf agreed by the Lead or Deputy Lead Governor, shall be posted online or delivered electronically to the membership of the Council of Governors, specifying the business proposed to be transacted at it at least five clear days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Council has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Governors and approved by the Chairman. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

- 1.18 The Secretary shall be responsible for compiling and distributing to Governors (and, where their attendance is permitted, members of the public) papers for meetings of the Council. Papers shall be issued at least five clear days prior to each meeting of the Council. Papers will only be tabled at the Council's meetings in exceptional circumstances and then only with the prior approval of the Chairman.

Quorum for Meetings

- 1.19 A meeting of the Council shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that the following requirements are all satisfied:

- 1.19.1 there shall be present at the meeting at least one third of all
Governors
1.19.2 of those present, at least 51% shall be publically elected Governors

A Governor shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Governors present at the meeting.

If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chairman.

- 1.20 If a Governor has declared a direct pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.

- 1.21 Where a Governor:

- 1.21.1 has declared an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
1.21.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
1.21.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does

not exceed one-hundredth of the total issued share capital of that class;

1.21.4 the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.

1.22. A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting.

1.23 The minutes shall record any declarations of interests on the part of Governors and any action taken in respect of them.

Conduct of Business

1.24 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the Chairman shall have a casting vote.

1.25 All questions put to the vote shall, at the discretion of the person presiding, 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.

1.26 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

1.27 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

1.28 In no circumstances may an absent Governor vote by proxy.

Minutes of Meetings

1.29 The minutes of the meeting, which shall include the names of the Governors present, shall be drawn up and submitted by Secretary for the Council's approval at its next meeting. Subject to the Chairman's approval, the minutes may be circulated in draft form to Governors prior to the Council's next meeting and made available to the public (including through the Trust's website).

- 1.30 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chairman considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

- 1.31 Where the Council so decides in respect of any matter or, where it is necessary, at the discretion of the Chairman, the Council may take decisions by means of a written resolution.
- 1.32 A resolution in writing sent to all Governors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Council duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governor.

2. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

- 2.1 These Standing Orders shall not be suspended except:
- 2.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Council
 - 2.1.2 at a meeting of the Council, at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors
- 2.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

- 2.3 These Standing Orders shall be reviewed one year after approval by the Council and then at least annually thereafter.
- 2.4 These Standing Orders shall be amended only if:

- 2.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 2.4.3 at least three quarters of the Governors present and voting at a meeting of the Council, including one Staff Governor, one Public Governor and one Appointed Governor are in favour of amendment.
 - 2.4.4 The proposed amendment(s) has/have been discussed the Board.
- 2.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by NHS Improvement.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

1. INTERPRETATION

- 1.1 In these Standing Orders, the provisions relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. APPLICATION OF STANDING ORDERS

- 2.1 These Standing Orders apply to all meetings of the Board of Directors (“the Board”) and all other relevant activities of the Directors. All Directors are required to abide by these Standing Orders, which also apply to any persons attending meetings of the Board.
- 2.2 Except where required by law or the Constitution, at any meeting of the Board, the Chairman (or in his absence, the Deputy Chairman) shall be the final authority on the interpretation of these Standing Orders (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Directors are made aware of these Standing Orders, Directors are expected to familiarise themselves with the provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Standing Orders by a Director, the person identifying such actual/ suspected non-compliance shall report it to the Chairman or Secretary and the Chairman/ Secretary shall be responsible for taking such action as is necessary, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

3. MEETINGS OF THE BOARD OF DIRECTORS

Frequency of Meetings

- 3.1 The Board shall decide the frequency of and calendar for its meetings, subject to the Board holding not less than four per year. The Secretary shall ensure that within the meeting cycle of the Board, meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 3.2 Notwithstanding clause 3.1 above, the Chairman may at any time call a meeting of the Board. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the total number of Directors, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has

been presented to him/her, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting of the Board.

Admission of the Public and Observers

- 3.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Board unless the Board decides otherwise in relation to all or part of any particular meeting. The Board may also invite observers to attend its meetings.
- 3.4 The public shall be excluded from meetings of the Board only where the business under discussion is commercially sensitive or is otherwise considered to be confidential. The Chairman may exclude any member of the public from a meeting of the Board if the person is interfering with or preventing the proper conduct of the Board's business. The Chairman's decision in this respect shall be final.
- 3.5 The Chairman shall decide the arrangements through which any questions from members of the public will be asked and answered.

Chairman for Meetings of the Board

- 3.6 The Chairman of the Trust, or in his absence, the Deputy Chairman shall preside at meetings of the Board.
- 3.7 The Deputy Chairman may preside at meetings of the Board in the following circumstances:
 - 3.7.1 when there is a need for someone to have the authority to chair any meeting of the Board when the Chairman is not present;
 - 3.7.2 on occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Board.
- 3.8 If it would not be appropriate for the Chairman or the Deputy Chairman to preside, then the remaining Non-Executive Directors shall choose one of the other Non-Executive Directors to preside.
- 3.9 Statements made by Directors at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

- 3.10 Before each meeting of the Board, a notice of the meeting signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every member of the Board, or sent by post to the usual place of residence of such Director, no less than five clear working days before the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.
- 3.11 Except in the case of emergencies or in case of a need to conduct urgent business, the Secretary shall give to all Directors at least 10 clear working days' written notice of the date and place of every meeting of the Board.

Written notice shall be deemed to include communication by email. Notice will also be published on the Trust's website.

- 3.12 In the case of a meeting called by the Directors in default of the Chairman, the notice shall be signed by those respective Directors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Directors shall not affect the validity of a meeting.

Agenda and Notification of Business

- 3.13 At the direction of the Board, the Secretary shall draw up and maintain a plan for the agenda of the Board's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Board, which it will agree with the Council. The agenda plan shall be approved by the Board at least once in each calendar year.
- 3.14 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 3.15 A Director desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chairman or the Secretary at least three clear business days before notice of the meeting is given. Requests made less than three days before the notice is given may be included on the agenda at the discretion of the Chairman.
- 3.16 Before each meeting of the Board, an agenda setting out the business of the meeting, approved by the Chairman or by an officer of the Trust authorised by the Chairman on his behalf shall be delivered electronically to every member

of the Board, specifying the business proposed to be transacted at it at least five clear days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Board has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Directors and approved by the Chairman. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

- 3.17 The Secretary shall be responsible for compiling and distributing to Directors (and, where their attendance is permitted, members of the public) papers for meetings of the Board. Papers shall be issued at least five clear days prior to each meeting of the Board. Papers will only be tabled at the Board's meetings in exceptional circumstances and then only with the prior approval of the Chairman.

Quorum for Meetings

- 3.18 A meeting of the Board shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that at least half of the Board must be present, including two Non-executive Directors and two Executive Directors. A Director shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Directors present at the meeting.
- 3.19 If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chairman.

Declaring interests

- 3.20 If a Director has declared a direct pecuniary interest in any matter, the Director must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.
- 3.21 Where a Director:
- 3.21.1 has declared an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
 - 3.21.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share

capital of the company or body, whichever is the less, and

3.21.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;

3.21.4 the Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.

3.22 A Director who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Director will count towards the quorum of the meeting.

3.23 The minutes shall record any declarations of interests on the part of Directors and any action taken in respect of them.

3.24 See further paragraph 4 (declarations and register of directors' interests) of Annex 7 (further provisions).

Conduct of Business

3.25 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Director requests, a question at a meeting shall be determined by a majority of the votes of the Director present and voting on the question and, in the case of any equality of votes, the Chairman shall have a casting vote.

3.26 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

3.27 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

3.28 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

3.29 An officer who has been formally appointed to act for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director, and shall therefore count towards the quorum. An officer attending the Board to

represent an Executive Director during a period of incapacity or temporary absence in the absence of a formal acting arrangement (i.e. a proxy) shall not exercise the voting rights of the Executive Director or count towards the quorum. The minutes shall record the status of Directors attending to represent Executive Directors.

- 3.30 For the avoidance of doubt, in no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

Minutes of Meetings

- 3.31 The minutes of the meeting, which shall include the names of the Directors present, shall be drawn up and submitted by Secretary for the Board's approval at its next meeting. Subject to the Chairman's approval, the minutes may be circulated in draft form to Directors prior to the Board's next meeting and made available to the public (including through the Trust's website)..
- 3.32 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chairman considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

- 3.33 Where the Board so decides in respect of any matter or, where it is necessary, at the discretion of the Chairman, the Board may take decisions by means of a written resolution.
- 3.34 A resolution in writing sent to all Directors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.

4. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

- 4.1 These Standing Orders shall not be suspended except:
- 4.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Board
 - 4.1.2 at a meeting of the Board, at least half of the total number of Directors are present, such number to include at least one Non-executive Director
- 4.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Board and shall be reported to the Audit Committee.

Amendment and Review

- 4.3 These Standing Orders shall be reviewed one year after approval by the Board and then at least annually thereafter.
- 4.4 These Standing Orders shall be amended only if:
- 4.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 4.4.3 at least three quarters of the Board present and voting at a meeting of the Board are in favour of amendment.
 - 4.4.4 The proposed amendment(s) has/have been discussed with the Council.
- 4.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by NHS Improvement.

ANNEX 7 – FURTHER PROVISIONS RELATING TO THE BOARD OF DIRECTORS

1. INTERPRETATION

- 1.1 In these Provisions, the clauses relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

PART A – PROVISIONS RELATING TO THE BOARD OF DIRECTORS

2. APPLICATION OF PROVISIONS

- 2.1 These Provisions apply to all meetings of the Board of Directors (“the Board”) and all other relevant activities of the Directors. All Directors are required to abide by these Provisions, which also apply to any persons attending meetings of the Board.
- 2.2 Except where required by law or the Constitution, at any meeting of the Board, the Chairman (or in his absence, the Deputy Chairman) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Directors are made aware of these Provisions, Directors are expected to familiarise themselves with the provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Provisions by a Director, the person identifying such actual/ suspected non-compliance shall report it to the Chairman or Secretary and the Chairman or Secretary shall be responsible for taking such action as is necessary, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

3. APPOINTMENT AND REMOVAL OF DIRECTORS

The provisions of this Section 3 shall be subject always to paragraphs 21 to 31 (inclusive) of the Constitution.

Chief Executive

- 3.1 There shall be a Nominations & Remuneration Committee of the Board which shall be responsible for appointing the Chief Executive. When the Committee is considering the appointment of the Chief Executive, it shall comprise of the Chairman and as many of the Non-Executive Directors as the Board decides.

The Committee shall make a recommendation to the Chairman and the other Non-Executive Directors, and their decision shall be subject to approval by the Council.

Executive Directors

- 3.2 The Board shall establish a Committee to appoint the Executive Directors. The Committee shall comprise of the Chairman, the Non-Executive Directors and the Chief Executive. The Committee's decision shall be final.

Terms of Office and Process

- 3.3 There shall be written policies and processes, approved by the Board, to set out the process by which the Chairman, Non-Executive Directors, Chief Executive and Executive Directors shall be appointed, and through which their terms and conditions of appointment shall be decided. In the case of the appointment of the Chairman, Non-Executive Directors and the Chief Executive, these policies and processes shall be subject to the approval of the Council.
- 3.4 Save for the initial Chairman and initial Non-Executive Directors who shall be appointed for a term in accordance with their letters of appointment, the Chairman and the Non-Executive Directors appointed after the Acquisition Date shall be appointed for a term of three years. Subject to other relevant provisions in the Constitution, Non-Executive Directors shall be subject to re-appointment thereafter at intervals of no more than 3 years. Non-executive Directors may serve for a term beyond 6 years subject to annual re-appointment. Non-Executive Directors may not serve for a term of more than nine years in aggregate.

Appointments – Other Matters

- 3.5 No defect in the appointment of a Director nor any deficiency in the composition of the Board shall affect the validity of any act or decision of the Board.
- 3.6 The Trust may confer on a person the title "Director" as an indication of his seniority and/or the corporate nature of his responsibilities within the Trust but such a person shall not be an Executive Director or Non-Executive Director of the Trust for the purposes of the 2006 Act unless he is a member of the Board of Directors as defined by the Constitution and, therefore, subject to Section 3.29 of Annex 6, he will have no right to vote at meetings of the Board.

Removal or Resignation from Office

- 3.7 A person shall not be eligible to become or continue in office as a Director if:

- 3.7.1 in respect of a Non-Executive Director, he does not meet the criteria for eligibility in paragraph 24 of the Constitution;
- 3.7.2 in respect of any Director, any of the grounds contained in paragraph 28 apply to him;
- 3.7.3 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
- 3.7.4 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list;
- 3.7.5 NHS Improvement has exercised its powers to remove him as a Director of the Trust or has suspended him from office or has disqualified him from holding office as a Director of the Trust for a specified period or NHS Improvement has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
- 3.7.6 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended) and his conviction is not spent under the Rehabilitation of Offenders Act 1974;
- 3.7.7 he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs;
- 3.7.8 he is a Governor of the Trust or a director of another NHS Foundation Trust;

Termination of Tenure

- 3.8 A Director's term of office shall be terminated:
 - 3.8.1 if he is a Non-Executive Director if he gives notice in writing to the Secretary of his resignation from office at any time during that term of office or under paragraph 25.2 of the Constitution;
 - 3.8.2 if he is an Executive Director if he gives notice in writing to the Chief Executive of his resignation from office at any time or under paragraph 27.3 of the Constitution.

- 3.9 Where a person has been appointed to the Board and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered him disqualified.
- 3.10 A Director whose tenure of office is terminated shall not be eligible for re-appointment for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a majority of the Board present and voting at a meeting.
- 3.11 Upon a Director resigning or ceasing to be eligible to continue in office that person shall cease to be a Director and his name shall be removed from the Register of Directors.

Vacancies

- 3.12 Where a Director resigns or his office is terminated, the vacancy shall be filled through the processes agreed as set out in Section 3.4 above.

4. DECLARATIONS AND REGISTER OF DIRECTORS' INTERESTS

- 4.1 In accordance with the Constitution, Directors are required to declare on appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust.
- 4.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Provisions and delivering it to the Secretary within 28 days of a Director's appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.
- 4.3 If a Director is present at a meeting of the Board and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.
- 4.4 The term "relevant and material interests" may include (but may not be limited to) the following:

- 4.4.1 directorships, including non-executive directorships held in private or

- public limited companies (with the exception of those of dormant companies);
- 4.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;
 - 4.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;
 - 4.4.4 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;
 - 4.4.5 research funding/grants that may be received by an individual or their department;
- 4.5 Any traveling or other expenses or allowances payable to a Director in accordance with this Constitution shall not be treated as a pecuniary interest.
- 4.6 Subject to any other provision of this Constitution, a Director shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:
- 4.6.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 4.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.
- 4.7 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 4.7.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - 4.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

- 4.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.
- 4.9 If a Director has any doubt about the relevance of an interest, he must take advice from the Secretary.

5. STANDARDS OF CONDUCT

- 5.1 Subject to the 2006 Act (as amended and/or replaced from time to time), Directors shall comply with the terms of their relevant Role Descriptions which shall be approved by the Board and, as set out in these Provisions, the Council, and which the Secretary shall issue to Directors upon appointment to the Board. The Directors shall comply with any codes of conduct or other standards referenced in their Role Descriptions.
- 5.2 In the event that there are concerns about a Non-Executive Director's performance or conduct, the Chairman, with the support of the Secretary where necessary, will address these directly with the Non-Executive Director concerned. Where necessary, the Chairman will make recommendations to the Board, including in respect of any proposal that the Board should remove the Non-Executive Director from office in which case the provisions of Section 3 of these Provisions shall apply.
- 5.3 In the event that there are concerns about an Executive Director's performance or conduct, the Chief Executive, with the support of the Secretary and others where necessary, will address these directly with the Executive Director concerned. Where necessary, the Chief Executive will make recommendations and/or reports to the Board, including in respect of any proposal that the Board should remove the Executive Director from office in which case the provisions of Section 3 of this Annex 7 shall apply.

6. REMUNERATION AND BUSINESS EXPENSES

- 6.1 The Trust is permitted to reimburse traveling expenses to Non-Executive Directors for attendance at meetings of the Board, or for any other business authorised by the Chairman as being reasonably within the role and duties of a Non-Executive Director, at a rate to be determined by the Council of Governors. The Chief Executive shall be responsible for authorising expenses incurred by Executive Directors, to be paid at a rate to be determined by the Chairman and Non-Executive Directors.
- 6.2 A summary of expenses paid to Directors will be published in the Annual Report.

7. COMPOSITION AND ROLE OF BOARD OF DIRECTORS

- 7.1 All of the Board's business shall be conducted in the name of the Trust.
- 7.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Board is defined in its Terms of Reference which shall be approved by the Board of Governors and the Board of Directors.
- 7.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the composition of the Board shall be as set out in the Constitution.
- 7.4 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chairman and the role of Non-Executive Director shall be as defined in Role Descriptions which shall be approved by the Council and the Board.
- 7.5 The Council shall appoint one of the Non-Executive Directors to be Deputy Chairman. The role of the Deputy Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 7.6 The Board shall appoint one of the Non-Executive Directors to be the Senior Independent Director ("SID"). The role of Senior Independent Director shall be as defined in the Role Description which shall be approved by the Board.

8. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 8.1 Subject to the Constitution, Terms of Authorisation or any relevant statutory provision, the Board may make arrangements for the delegation, on behalf of the Board, of any of its powers to a committee of directors or to an executive director.
- 8.2 The Board shall delegate responsibility and authority on any terms which it considers to be appropriate, such terms to be defined in written terms of reference approved by the Board.
- 8.3 The Board's arrangements for the exercise of functions through delegation shall be set out within a Scheme of Delegation to be approved by the Board. This shall include delegation to Committees and to Directors, and shall specify those matters which are reserved to the Board to decide.

9. COMMITTEES OF THE BOARD

- 9.1 Subject to the 2006 Act (as amended and/or replaced from time to time), the Board shall establish an Audit Committee and a Nominations & Remuneration Committee, whose role, responsibilities and authority shall be defined in terms of reference to be approved by the Board in accordance with paragraphs 32 and 38 of the Constitution. The Board shall appoint the Chairmen and the

Members of the Committees.

- 9.2 Subject to the Constitution, the Terms of Authorisation and such binding guidance as may be given by NHS Improvement, the Board may and, if so required by NHS Improvement, shall appoint other committees of the Board consisting wholly or partly of Directors or wholly of persons who are not Directors. The Board shall not delegate any of its powers to such committees but committees may act in an advisory capacity to assist the Board in carrying out its functions.
- 9.3 These Provisions of the Board shall as far as they are applicable apply with appropriate alteration to any committees established by the Board.

10. PROFESSIONAL ADVICE

- 10.1 The Board shall have direct access to any independent advice which it considers necessary for the proper discharge of its functions, such advice normally being obtained by the Secretary. Such advice shall be commissioned through terms of reference to be agreed by the Board and may be presented in written form and/or by advisors attending meetings of the Board. The Trust shall meet the cost of any such advice commissioned by the Board. The Board shall establish a policy to set out the circumstances in which and the arrangements through which advice shall be taken and reported to the Board.

11. DIRECTORS AND GOVERNORS: WORKING ARRANGEMENTS

Engagement, Collaboration and Consultation

- 11.1 The Board and the Council shall agree work-plans for their meetings and activities, which shall be complementary and integrated. The work-plans shall identify the matters on which and, where possible, the timetable over which the Board and the Council shall consult each other about the business which they deal with. The work-plans shall take account of the Trust's strategy and business plans.
- 11.2 As a minimum, the Board shall consult the Council on the following matters:
- 11.2.1 proposals for the Trust's strategy and its annual Business Plan;
 - 11.2.2 proposals for significant service developments;
 - 11.2.3 the Trust's operational performance and delivery against plans generally;
 - 11.2.4 service reviews and evaluations in respect of the Trust's services; and

11.2.5 development of the Trust's membership and plans for engagement with patients and the public generally.

- 11.3 The Board shall present to the Council the Trust's Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.
- 11.4 The Board and the Council shall hold at least one joint meeting per year.
- 11.5 Directors and Governors may agree to attend each other's' meetings through a schedule to be agreed by the Board and the Council.

Informal Communication

- 11.6 The Chairman shall use his reasonable endeavours to promote communication between the Board and the Council, including through:
- 11.6.1 participation of the Board in the induction, orientation and training of Governors;
- 11.6.2 development of special interest relationships between Non-Executive Directors and Governors;
- 11.6.3 discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer;
- 11.6.4 involvement in membership recruitment and briefings at events organised by the Trust.

Formal Communication

- 11.7 Where it is otherwise necessary, such as where it is prescribed by the Constitution, these Provisions, Terms of Authorisation or elsewhere, the Board and the Council shall communicate formally by the means set out below:
- 11.7.1 the Council may and, where required, shall at any time ask for matters to be referred to the Board. Any such referrals shall be made through the Chairman who shall arrange for the matter to be added to the agenda for the next scheduled meeting of the Board;
- 11.7.2 in the absence of the Council agreeing to refer a matter to the Board, any Governor may through the Chairman refer a matter to the Board of Directors but if the Chairman declines to refer

any such issue the said Governor may refer it provided that two thirds of the Governors present approve his request to do so. The Chairman shall then refer the matter to the Board and provide the response to the Council.

12. RESOLUTION OF DISPUTES

- 12.1 In the event of dispute between the Council and the Board then the dispute resolution procedure set out below shall be followed in order to resolve the matters concerned. The Council and the Board shall at all times recognise their roles and responsibilities as defined in the Constitution, these Provisions, Terms of Reference and any other documents approved.
- 12.2 The Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall endeavour through discussion with Governors and Directors or, if it is considered to be more expedient, appointed representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 12.3 In the event that it is not possible to resolve the dispute through the process described in 12.2 above, the Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to clearly and concisely produce a recommendation statement to the Council and to the Board with a view to resolving the dispute (the "Recommendation Statement").
- 12.4 The Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall ensure that the Recommendation Statement, without amendment or abbreviation in any way, shall be considered at the next scheduled meeting of both the Council and the Board. Where it is considered necessary or expedient to convene a meeting of the Council or of the Board earlier than is otherwise scheduled then the Chairman shall do so and in this event the relevant provisions of these Provisions shall apply.
- 12.5 If in the opinion of the Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, and following the further discussions prescribed in 12.4 there is no further prospect of a full resolution or, if at any stage in the process, in the opinion of the Chairman or the Senior Independent Director (as the case may be) there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly. In the event that the dispute cannot be resolved, the decisions of the Board shall prevail. In the event that the dispute is resolved to the satisfaction of the Council and the Board, the Board shall implement the decisions taken.
- 12.6 Nothing in this procedure shall prevent the Council, through the Lead

Governor, from informing NHS Improvement that in the Council's reasonable opinion its concerns are such that if they remain unresolved, the Trust will be at risk of breaching the terms of its Authorisation.

PART B – MEMBERSHIP OF THE TRUST

13. ELIGIBILITY FOR MEMBERSHIP

General

- 13.1 An individual shall not be eligible for membership of the Trust if he:
- 13.1.1 fails or ceases to fulfill the criteria for membership of any of the constituencies;
 - 13.1.2 was formerly employed by the Trust or any health service body and in the preceding two years was lawfully dismissed other than by reason of redundancy;
 - 13.1.3 has been involved as a perpetrator in a serious incident of violence or abuse in the last five years at any of the Trust's hospitals or against any of the Trust's Governors, Directors, staff members or patients;
 - 13.1.4 has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person's Acts 1933 to 1969 (as amended) and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 13.1.5 does not agree to abide by the Trust values as published by the Trust;
 - 13.1.6 has been identified as a vexatious complainant or has been excluded from treatment at any of the Trust's hospitals due to unacceptable behaviour;
 - 13.1.7 is deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust; or
 - 13.1.8 is under the age of sixteen years.
- 13.2 It is the responsibility of members to ensure that they are eligible for membership but if the Trust is on notice that a member may be disqualified from membership, the Trust shall carry out all reasonable enquiries to establish whether or not this is the case.
- 13.3 Where an individual is held by the Trust to be ineligible and/or disqualified from membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Secretary (or such other officer of

the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

13.4 The Secretary (or his nominated representative) shall:

- (a) review the decision having regard to any representations made by the individual concerned and such other material, if any, as the Secretary considers appropriate;
- (b) either confirm the decision or make some other decision as appropriate based on the evidence which he has considered; and
- (c) communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

13.5 If the member is aggrieved of the decision of the Secretary he may appeal in writing to the Council of Governors ("the Council") within 14 days of the Secretary's decision. The Council shall consider the matter at its next meeting and its decision shall be final

Public Membership

13.6 For the purposes of determining whether an individual lives in a public constituency, an individual shall be deemed to do so if;

13.6.1 his name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or

13.6.2 the Trust is otherwise satisfied that the individual lives within the said area.

Staff Membership

13.7 An individual shall be deemed to be eligible for membership of the staff constituency if he meets the eligibility criteria set out in the Constitution.

14. APPLICATION FOR MEMBERSHIP

14.1 Where a person wishes to apply to become a member of the Trust, the following procedure shall apply

14.1.1 the Trust shall upon request supply him with a form of application

for membership in a form determined by the Trust;

14.1.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonably practicable and in any event within 28 working days of receipt of the duly completed form consider the same;

14.1.3 unless the applicant is ineligible for membership or is disqualified from membership, the Trust shall cause his name to be entered on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;

14.1.4 upon the applicant's name being entered on the Trust's Register of Members he shall become a member;

14.1.5 the information to be included in the Trust's Register of Members shall include the following details relating to that member:

- (a) his/her full name and title;
- (b) his/her date of birth;
- (c) his/her full postal address;
- (d) his/her home telephone number (if any);
- (e) his/her email address (if any);
- (f) the constituency and, where relevant, the area or class of which he/she is a member;
- (g) the date upon which he/she became a member; and
- (h) his/her gender and ethnicity.

14.2 For the avoidance of doubt and subject to the restrictions on making the Trust's registers available in accordance with paragraph 35.2 of the Constitution, where a member of the public makes a request to inspect the Register of Members, pursuant to paragraph 35 of the Constitution (Registers – inspection of copies), the Trust shall disclose only those parts of the Register that detail the members' names, constituency, and, where relevant, their area or class within that constituency in accordance with paragraph 20 and paragraph 22(3) of Schedule 7 of the 2006 Act and subject always to compliance with data protection requirements.

15. REGISTER OF MEMBERS

15.1 For the avoidance of doubt, an individual shall become a member on the date upon which his/her name is entered on the Trust's Register of Members and shall cease to be a member upon the date on which his/her name is removed from the Register of Members as provided for in this Constitution.

15.2 The Register of Members and all other Registers shall be maintained in accordance with this Constitution and in accordance with the 2006 Act. The

Registers shall be reviewed and updated regularly and, in the case of the Register of Members, within 14 days of receipt of any new or amended information about members.

- 15.3 Where in the reasonable opinion of the Trust a member is no longer eligible or is disqualified from Membership of the Trust, the Trust shall be entitled to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member provided always that this power shall not be exercised until the Trust has given not less than fourteen days written notice to the member addressed to him at the address given in the Register of Members of its intention to remove him from the Register and that member has not within that period notified the Trust of his wish to continue as member and provided proof satisfactorily to the Trust of his continued eligibility.

16. TERMINATION OF MEMBERSHIP

- 16.1 A person shall cease to be a member if:

- 1.16.1 he resigns by notice in writing to the Trust;
- 1.16.2 he ceases to be entitled under this Constitution to be a member of any area within the Public Constituency or of any of the classes of the Staff Constituency;
- 1.16.3 he is expelled from membership in accordance with the provisions of this Constitution;
- 1.16.4 he dies.

- 16.2 An individual who is a member of the Public Constituency shall cease to be eligible to continue as a member if he ceases to live in the area of the Public Constituency of which he is a member save as provided elsewhere in these rules. In the event that a member moves to another Public Constituency area and requests to be a member in that area, if the Trust is satisfied that the individual concerned lives in such other area, that individual shall thereafter be treated as a member of that other area within the Public Constituency.

- 16.3 Where an individual is a member by virtue of their eligibility to be a member of a Staff Class and they cease to be eligible for membership of that Staff Class but are eligible for membership of some other Staff Class, then the Trust may give notice to that member of its intention to transfer him to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

PART C – OTHER PROVISIONS

17. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 17.1 The Common Seal of the Trust shall be kept by the Trust Secretary on behalf of the Chief Executive or designated officer in a secure place.
- 17.2 The seal of the Trust shall not be affixed to any documents unless the sealing has been authorised by a resolution of the Board, a committee, or, where the Board so decides, one or more Directors. The seal shall only be affixed in the presence of two Directors.
- 17.3 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by those who attested the seal. A report of all sealings shall be made to the Board at least quarterly. (The report shall contain details of the seal number, a description of the document and the date of sealing).

18. SIGNATURE OF DOCUMENTS

- 18.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 18.2 The Chief Executive or nominated Director(s) shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee, sub-committee or standing committee with delegated authority.

19. SECRETARY

- 19.1 The Trust shall have a Secretary, who may be an employee. The Secretary shall not be a Governor, or the Chief Executive or the Finance Director.
- 19.2 The Secretary shall be appointed and, where necessary, removed only by the Chairman and Chief Executive acting jointly, who shall report their actions to the Board and the Council.
- 19.3 The Secretary's functions shall be set out within a job description which shall be approved by the Chairman and the Chief Executive.

20.0 INDEMNITY FOR GOVERNORS, DIRECTORS AND THE SECRETARY

- 20.1 Members of the Council; and the Board; and the Secretary, who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their duties, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Resolution to cover such costs.

ANNEX 8 Lead & Deputy Lead Governor Role Description

Role Description

Accountability:

The Lead and Deputy Lead Governors are accountable to the Council of Governors collectively as a serving Member of the Council.

The Role:

- To be an external point of contact for NHS Improvement (formerly Monitor) where it may be considered inappropriate for the Chairman or the Deputy Chairman, or for the Secretary to deal with a particular matter.
- To facilitate communications and a good working relationship between the Governors and the Executive Board and Trust Board including acting as the principle independent channel for communications between the Governors and Executive Board and Trust Board through the Chairman, the Chief Executive, the Secretary or the Senior Independent Director.
- To consult routinely with the Governors, the Chairman and the Secretary regarding the planning and preparation of the Council of Governors agenda.
- To be a member of the Nominations and Remuneration Committee.
- To contribute to the appraisal of the Chairman by the Senior Independent Director, supported by the Secretary, in accordance with the process determined by the Council of Governors including the collation of input from other Governors and the Nominations and Remuneration Committee on the performance of the Chairman.
- Contribute to the determination of the appraisal process of the Non-Executive Directors to be undertaken by the Chairman and supported by the Nominations and Remuneration Committee.
- To recommend to the Council of Governors on behalf of the Nominations and Remuneration Committee any appointments/reappointments of Chair; Non-Executive Directors and/or the Chief Executive.

- To take an active role in the activities of the Council of Governors and to meet with the Chairman and the Secretary on a regular basis to discuss relevant issues.
- Support the Chairman and the Secretary in any action to remove a Governor due to unconstitutional behaviour in accordance with the Code of Conduct.
- To be involved in the induction process for any newly appointed Public Governor.
- The Lead Governor may call upon the support of the other Governors, the Chairman, the Secretary and the Senior Independent Director to carry out their role effectively to the benefit of the Council of Governors.
- In liaison with the Chairman and the Secretary, support the development of the skills and strengths of the Council of Governors and raise public awareness of all Governors.
- To chair meetings of Council of Governors where the Chairman, Deputy Chairman or other Non-Executive Director cannot chair the meeting due to a conflict of interest.
- Where approved by the Council and/or the Chairman speak for and represent the Council at the AGM and on other occasions
- Other duties as requested by the Council of Governors or the Chairman.
- Chair the Pre-Council of Governors meeting and any informal meetings.

The Person:

To fulfil this role effectively, the Lead Governor will need to:

- Be a publically elected Governor
- Have the confidence of Governor colleagues and members of the Executive Board and Trust Board
- Be able to forge constructive working relationships with colleagues
- Understand NHSI's role, the available guidance and the basis upon which NHSI may take regulatory action
- Be committed to the success of the Trust and understand the Trust's Constitution

- Have the ability to influence and negotiate
- Be able to present a well-reasoned, unbiased argument
- Demonstrate ability to maintain confidentiality of information.

The Appointment:

The tenure is two financial years with the option for re-election in accordance with due process, for up to the full tenure period of the elected Governor's 'appointment'.

In accordance with a process agreed by the Council of Governors, the Secretary will administer a bi annual nomination and election/re-election procedure that will require: -

- Submission of an expression of interest (for re-election and for new election candidates)
- Submission of a statement for support of no more than 250 words supporting candidature (only for NEW nominations and/or contested elections);
- Election by 'show of hands' or by secret ballot as determined by the relevant Council meeting.

Additional:

The Lead Governor will work closely with and be supported and deputised for by a Deputy Lead Governor whose appointment will follow the same procedure above. It is anticipated, where terms of office accord, that the Deputy Lead Governor will put themselves forward for Lead Governor position when that position becomes vacant, remaining subject to the appointment process above.

ANNEX 9

Code of Conduct for Governors

1.00 INTRODUCTION

- 1.01 The Council of Governors (the Council) in support of the individual governors has established a Code of Conduct for Governors which codifies the expectations of its individual Governors and the process which will be followed should there be a need to consider if a Governor has deviated from this Code.

2.00 FRAMEWORK FOR COUNCIL OF GOVERNORS

- 2.01 The Trust operates within a legal, regulatory and governance framework established by the NHS Act 2006, the Health and Social Care Act 2012, the NHS Foundation Trust Code of Governance published by Monitor in 2013 and updated in 2014 (**Code of Governance**) and Monitor's Risk Assessment Framework updated in August 2015 (**Risk Assessment Framework**) and other regulatory requirements and the Trust's Constitution. The Constitution defines the membership of the Council and defines the arrangements for appointing (and where necessary, removing) Governors.

- 2.02 The Trust's regulatory and governance framework is supplemented by this Code of Conduct for Governors and the Role Description for Governors set out in Annex 8 of the Constitution, both of which reflect the statutory responsibilities for the Council. It should be noted that nothing within this Code of Conduct shall take precedence over or in any way amend the Constitution or any regulatory requirements.

3.00 ROLE OF THE COUNCIL OF GOVERNORS

- 3.01 The role of the Council is defined in law and in Monitor's reference guide for NHS foundation trust governors dated October 2009 and updated in August 2013, including the Constitution. Although the role is not repeated here it is important as context for this Code of Conduct to recognise that it is essential for the good governance of the Trust for the Council and the Board of Directors (the Board) to engage actively and constructively. Such an approach will ensure that the Council is able to contribute to the development of the Trust's strategy and plans, approve transactions where appropriate, hold the Non-Executive Directors to account (for the performance of the Board), and represent to the Board the views of members and the public. This approach will also ensure that the Board takes into account the views of the Council – for example, in relation to the Trust's strategy - and that it seeks the Council's timely approval for transactions and other proposals as defined in the Constitution.

4.00 BOARD OF DIRECTORS/COUNCIL OF GOVERNORS ENGAGEMENT

- 4.01 The Terms of Reference for the Board and for the Council (and relevant Role Descriptions) state that the Board and Council will engage actively and constructively, recognising the Board's responsibility for determining the Trust's strategy and for directing and controlling the organisation. The Terms of Reference and the Constitution commit to a jointly-agreed work-plan to set out for each financial year the way in which the Board and the Council will work together. This will ensure that the Board and the Council consider business in a co-ordinated way, ensuring that the Council has the opportunity to comment on or approve (as appropriate by reference to the Constitution) proposals at the correct time.
- 4.02 This Code of Conduct commits the Council as a whole and Governors individually to engaging proactively and constructively with the Board, acting through the Chairman, the Senior Independent Director and any Lead Governor where appropriate according to their roles. The Council will work with the Board for the best interests of the Trust as a whole, taking into account all relevant advice and information presented to or requested by the Council. The Council will not unduly delay responses to proposals from the Board, acting proactively to agree with the Board the information which the Council will need in order properly to consider proposals.

5.00 CONDUCT OF GOVERNORS

- 5.01 This section of the Code sets out the conduct which all Governors agree to abide by. These commitments are in addition to compliance with regulatory requirements, the Code of Governance, the Constitution, the Terms of Reference for the Council and the Role Description for Governors.

Personal Conduct

- 5.02 Governors agree that they will:
- a) act in the best interests of patients and the Trust as a whole in the delivery of services within relevant financial and operational parameters;
 - b) be honest and act with integrity and probity at all times;
 - c) respect and treat with dignity and fairness, the public; patients; relatives; carers; NHS staff and partners in other agencies;

- d) not seek to profit from their position as a Governor or in any way use their position to gain advantage for any person;
- e) respect and value their fellow Governors as colleagues;
- f) ensure that no person is discriminated against on grounds of religion or belief; ethnic origin; gender; marital status; age; disability; sexual orientation or socio-economic status;
- g) show their commitment to team working by working constructively with their fellow Governors and the Board as well as with their colleagues in the NHS and the wider community;
- h) accept responsibility for their actions and generally take seriously the responsibilities which are commensurate with the decision-making rights assigned to the Council through the legal and regulatory framework;
- i) seek to ensure that the best interests of the public; patients; carers and staff are upheld in decision making and that those decisions are not influenced by gifts or inducements or any interests outside the Trust;
- j) not make, permit or knowingly allow to be made any untrue, misleading or misrepresentative statement either relating to their own role or to the functions or business of the Trust;
- k) at all times, uphold the values and core principles of the NHS and the Trust as set out in its Constitution;
- l) conduct themselves in a manner which reflects positively on the Trust and not in any manner which could be regarded as bringing it into disrepute, whether they are on Trust property or fulfilling their public function in the wider community;
- m) seek to ensure that the membership of the constituency from which they are elected is both properly informed and represented, or if they are appointed, then the body from which they are appointed is both properly informed and represented;
- n) at all times, uphold the seven principles of public life as set out by the Committee on Standards in Public Life (also known as the Nolan Committee and the Wicks Committee) as below:

Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves; their family or friends or other interested parties.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments; awarding contracts or recommending individuals for awards or benefits, holders of public office should make choices on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all the decision and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office shall promote and support these principles by leadership and example.

- o) seek advice from the Chairman or the Secretary on matters relating the Constitution, governance requirements or conduct, and have regard to the advice given to them.

Confidentiality

- 5.03 Governors will respect the confidentiality of the information to which they are made privy to as a result of their membership of the Council, except where information is made available in the public domain.

- 5.04 Governors will understand, endorse and promote the Trust's Information Governance and Security Policy in every aspect of their work.

- 5.05 Governors will make no public statements on behalf of the Trust or communicate in any way with the media without the prior consent of the Chairman or a designated officer from the Trust's Communications department.

Declaration of Interests

- 5.06 It is essential for good corporate governance and to maintain public confidence in the Trust that all decision making is robust and transparent. To support this, the Constitution and the Trust's Policy on Declaration of Interests set out requirements for Governors to declare relevant interests (as defined in the Constitution). Governors have a statutory responsibility to avoid interests which may conflict with the interests of the Trust.
- 5.07 Governors will declare interests on request from the Secretary or, as required by the Constitution, whenever they become aware of a potential conflict of interest in respect of a matter being considered by the Council. Governors should seek advice from the Secretary or the Chairman where they are unsure as to whether an interest needs to be declared. Declared interests will be included in a Register of Interests, which will be published.

6.00 PARTICIPATION IN MEETINGS AND IN TRAINING AND DEVELOPMENT

- 6.01 The Council is required by the Constitution to hold meetings as required each year. The schedule for these meetings and for other activities will be proposed by the Secretary and is subject to approval by the Council. Governors will attend meetings of the Council, and of any committees or working groups to which they are appointed, or they will give apologies for absence where they are not able to attend.
- 6.02 The Trust has a statutory duty to support the Council to discharge its responsibilities, including through training and development for Governors. A programme of development and information seminars will be developed each year and it is expected that Governors will participate in such activities.

7.00 UPHOLDING THIS CODE OF CONDUCT

- 7.01 The Constitution provides that where there are concerns as to the conduct or performance of a Governor these are to be addressed in the first instance by the Chairman, with support from the Secretary, to include training and development where is considered relevant and necessary. Where such concerns exist the

Chairman will write to the Governor concerned to set out the concerns and the action agreed to rectify or otherwise address them.

- 7.02 The Constitution provides for the circumstances in which a Governor can be removed from office, including where any Governor fails to comply with this Code of Conduct. It is for the Chairman to propose removal from office if this is necessary after all other course of action, including training and development where relevant, have been exhausted. As required by the Constitution, it is for the Council to determine (in accordance with rules set out in the Constitution) whether any Governor should be removed from office following a proposal from the Chairman.

Process for investigating potential non-compliance with this Code

- 7.03 The process outlined below is to provide a framework for reviewing any alleged non-compliance together with key principles to be followed. It should be noted that this process applies to all Governors irrespective of category (Public, Staff or Appointed).
- 7.04 Should a member of the Trust or a member of the Council of Governors be made aware that the behavior of a Governor is such that there may be a breach of the Code of Conduct they should inform the Chairman or the Secretary as soon as possible. Upon receipt of such a notification the Chairman will determine within 7 working days whether there is a prima facie case to address.
- 7.05 If the Chairman in consultation with the Lead Governor (except if the referral is about the Lead Governor and in this case this would be in consultation with the Deputy Lead Governor) believes there is a case, the Governor concerned will be notified and an initial investigation will be undertaken by a Governors' Compliance Committee which will be convened for the purpose of investigating the complaint. The Governors Compliance Committee will consist of the Chair, 1 Staff Governor, 1 Public and 1 Appointed Governor (a total of 3 Governors). The Governors' Compliance Committee will not include any person who has already been involved in the complaint process.
- 7.06 An initial investigation will be conducted this will be undertaken by the Secretary or an appropriate member of their team. The initial investigation will seek to gather appropriate statements from the 'complainant' and/or witnesses. This should normally be completed within 15 working days.
- 7.07 Once information has been gathered the Governor concerned will be invited to meet with the Governors' Compliance Committee to respond to the issues. For personal support, on a non-professional basis, the Governor may choose at all times to be accompanied. The Committee should meet within 10 working days of the completion of the investigation.
- 7.08 The purpose of Governors' Compliance Committee meeting will be to establish whether there is sufficient information upon which a complaint could be upheld. At the conclusion of the meeting the Committee will decide if the matter should be

referred to the Council and the Governors' Compliance Committee will make a recommendation to the Council in respect of the Governor. The recommendation to the Council of Governors will include the sanctions they deem appropriate. Such sanctions may range from the issuing of a written warning as to the Governor's future conduct and consequences, a requirement to undertake training, the suspension and/or removal of the Governor from office.

- 7.09 Following the Governors' Compliance Committee meeting the Governor under investigation will be formally written to within 5 working days setting out the recommendation prior to presentation to the Council.
- 7.10 The Council will in considering the most serious of sanctions (suspension or removal), require the approval of at least two-thirds of the total Council in order to implement. For all other sanctions a simple majority of those Governors in attendance will suffice.
- 7.11 Where there is any disagreement as to whether the proposal for removal of a Governor is justified, the Code of Governance, P34 para B.6.6 will apply. i.e. " , an independent assessor agreeable to both parties shall be requested to consider the evidence and determine whether the proposed removal is reasonable or otherwise."
- 7.12 All statements and reports to the Governors' Compliance Committee and the Council will be held by the Secretary's team.

Appendix B: Draft Constitution

NEW NAME NHS Foundation Trust

Constitution

Version 0.1 October 2020 (for enlarged FT)

Version 0.2 November 2020 (revised post capsticks review)

Version 1.0 **xxxxxxx** approved by Board and Council of Governors

NEW NAME NHS Foundation Trust

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Annex 1 – Constituency Details – Public / Staff / Patient

Annex 2 – Composition of Board of Governors

Annex 3 – The Model Election Rules

Annex 4 – Additional Provisions – Board of Governors

Annex 5 – Standing Orders – Board of Governors

Annex 6 – Standing Orders – Board of Directors

Annex 7 – Further Provisions

Annex 8 – Role Descriptions for Governor and Lead Governor

Annex 9 – Governor Code of Conduct

46. Interpretation and definitions

Unless otherwise stated, 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.

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

the 2006 Act is the National Health Service Act 2006.

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

Acquisition Date means the date of the acquisition by Western Sussex Hospitals NHS Foundation Trust (**WSHFT**) of Brighton and Sussex University Hospitals NHS Trust (**BSUHT**) being the date on which NHS Improvement grants the application of WSHFT to acquire BSUHT pursuant to Section 56A of the 2006 Act.

Annual Members Meeting is defined in paragraph 10 of the Constitution.

Constitution means this constitution and all annexes to it.

Initial Public Governors means the elected public governors of the Trust who hold office with WSHFT immediately prior to the Acquisition Date, as set out in Part A of Annex 2.

Initial Staff Governors means the elected staff governors of the Trust who hold office with WSHFT immediately prior to the Acquisition Date, as set out in Part A of Annex 2.

Monitor is the body corporate known as NHS Improvement and created pursuant to Section 61 of the 2012 Act.

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.

47. Name

The name of the Foundation Trust is **NEW NAME** NHS Foundation Trust (the Trust).

48. Principal purpose

- 48.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 48.2 The Trust does not fulfill its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 48.3 The Trust may provide goods and services for any purposes related to —
- 48.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 48.3.2 the promotion and protection of public health.
- 48.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

49. Powers

- 49.1 The powers of the Trust are set out in the 2006 Act.
- 49.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

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

50. Membership and constituencies

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

50.1.1 a public constituency; or

50.1.2 a staff constituency

51. Application for membership

6.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust.

52. Public Constituency

52.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

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

52.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

53. Staff Constituency

53.1 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:

53.1.1 he is 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

53.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

53.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the 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.

53.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

53.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 1 and being referred to as a class within the Staff Constituency.

53.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 1.

Automatic membership by default – staff

53.6 An individual who is:

53.6.1 eligible to become a member of the Staff Constituency, and

53.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within 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.

54. Restriction on membership

- 54.1 An individual, who is a member of a constituency, or of an area or class within a constituency, may not while membership of that constituency, area or class continues, be a member of any other constituency, area or class.
- 54.2 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.
- 54.3 An individual must be at least 16 years old to become a member of the Trust.
- 54.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 7 – Further Provisions Part B (Membership of the Trust).

55. Annual Members' Meeting

- 55.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

56. Council of Governors – composition

- 56.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 56.2 The composition of the Council of Governors is specified in Annex 2 and shall change in accordance with the dates set out in Table 1 and Table 2 of Annex 2.
- 56.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are areas or classes within a constituency, by their area or class within that constituency.
- 56.4 To reflect the enlarged size of the Trust, the public constituency and the staff constituency and the number of governors to be elected by

each constituency, or, where appropriate, by each area or class of each constituency, shall increase and shall be revised on the dates specified in Annex 2.

57. Council of Governors – election of governors

- 57.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of first past the post (FPP) polling and the Model Election Rules shall be construed accordingly.
- 57.2 The Model Election Rules as published by NHS Providers (previously the Foundation Trust Network) form part of this Constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 3.
- 57.3 A subsequent 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 43 of the Constitution (amendment of the Constitution).
- 57.4 An election, if contested, shall be by secret ballot.

58. Council of Governors – tenure

- 58.1 The composition of the Council of Governors as at the Acquisition Date is set out in Table 1 of Annex 2. In determining which Initial Public Governors and Initial Staff Governors transfer at the Acquisition Date, the process set out in paragraphs 13.2 – 13.6 below will apply.

Lead governor

- 58.2 The lead governor elected to represent the public constituency and holding office immediately prior to the Acquisition Date will transfer automatically to the same public constituency area to sit as lead governor from the Acquisition Date. For the avoidance of doubt, if no lead governor holds office immediately prior to the Acquisition Date than this paragraph 13.2 shall not apply.

Initial Public Governors

- 58.3 After applying paragraph 13.2, where the total number of Initial Public Governor posts that would qualify to represent a specific public constituency area is:
- 58.3.1 equal to or fewer than the number of posts available for that public constituency area, the Initial Public Governor(s) shall transfer automatically;
 - 58.3.2 greater than the number of posts available for that public constituency area, then the process set out in paragraph 13.4 below will apply.
- 58.4 Where on the Acquisition Date there is a greater number of Initial Public Governors for any public constituency area those Initial Public Governors with the greatest aggregate consecutive length of service will automatically vacate office first with the Initial Public Governor with the next greatest aggregate consecutive length of service vacating office second until the remaining number of Initial Public Governors is equal to the relevant constituency area at which point all remaining Initial Public Governors shall transfer automatically.

Initial Staff Governors

- 58.5 Where the total number of Initial Staff Governors posts that would qualify to represent a specific staff class is:
- 58.5.1 equal to the number of posts available for that staff class, the Initial Staff Governor(s) shall transfer automatically;
 - 58.5.2 greater than the number of posts available for that staff class then the process set out in paragraph 13.6 below will apply.
- 58.6 Where on the Acquisition Date there is a greater number of Initial Staff Governors for any staff class than available posts, those Initial Staff Governors with the shortest aggregate consecutive length of service will automatically vacate office first with the Initial Staff Governor with the next shortest aggregate consecutive length of service vacating office second until the remaining number of Initial Staff Governors is equal to the relevant staff class at which point all remaining Initial Staff Governors shall transfer automatically.
- 58.7 For the avoidance of doubt, as at the Acquisition Date there will be no elected public governors for the Brighton & Hove and Mid Sussex areas of the public constituency and no elected staff governors for the Princess Royal Hospital and Royal Sussex County Hospital staff class.
- 58.8 The first governor election held after the Acquisition Date to fill the governor vacancies identified in paragraph 13.7 above shall be conducted in such a way as to result in the initial terms of office for those elected governors to end on a phased basis to ensure that those elected governors do not all vacate the office on the same day and in

order that future elections also occur on a phased basis. As demonstrated in the below table and summarised as follows: in relation to the first elections for the:

58.8.1 public governors; in respect of the candidates for Brighton & Hove and Mid Sussex, the candidate with the highest number of votes shall hold office for a period of three years and where more than one governor post is available, the candidate with the second highest number of votes shall hold office for a period of two years;

58.8.2 staff governor; in respect of the candidate for the Princess Royal Hospital class, the candidate with the highest number of votes shall hold office for a period of two years;

58.8.3 staff governor; in respect of the candidate for the Royal Sussex County Hospital class, the candidate with the highest number of votes shall hold office for a period of three years.

Constituency	Class	3-year terms	2-year terms	Total
Public	Brighton & Hove	1	1	2
Public	Mid Sussex	1	1	2
Staff	Princess Royal Hospital	0	1	1
Staff	Royal Sussex County Hospital	1	0	1
	Totals	3	3	6

58.9 An elected governor may hold office for a period of up to 3 years from the date of nomination and at the end of this term they shall be eligible for re-election for up to two further terms of up to 3 years each (i.e. 9 years in total). For the avoidance of doubt, the Initial Public Governors and Initial Staff Governors that shall transfer after the Acquisition Date in accordance with the process set out in paragraphs 13.2 – 13.6 above will cease to hold office in accordance with the term set out in their original letters of appointment.

58.10 An elected governor shall cease to hold office if they cease to be a member of a constituency, area or class.

58.11 An appointed governor may hold office for a period of up to 3 years and at the end of this term they shall be eligible for re-appointment for up to two further terms of up to 3 years each (i.e. 9 years in total).

58.12 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.

58.13 A governor whose tenure of office is terminated shall not be eligible for re-appointment or to stand for re-election for a period of at least one year from the date of removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a two thirds of the voting members of the Council of Governors.

59. Council of Governors – disqualification and removal

59.1 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

59.2 The following may not become or continue as a member of the Council of Governors:

59.2.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

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

59.2.3 a person who within the preceding five years has been convicted in the British Islands of any offence if 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.

59.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 4.

59.4 Provisions as to the removal of Governors are set out Annex 4 of this Constitution and Annex 9 of the Code of Conduct for Governors.

60. Council of Governors – duties of governors

60.1 The general duties of the Council of Governors are –

60.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and

60.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

60.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

15.3 All governors must comply with the Trust's Code of Conduct for Governors set out in Annex 9.

61. Council of Governors – meetings of governors

61.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 24.1 or paragraph 25.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 26.1 below), shall preside at meetings of the Council of Governors.

61.2 The Council of Governors shall appoint one of the governors, who is a member of the public constituency, to be the Lead Governor for such period, not exceeding the remainder of his term as a governor of the Trust and in accordance with the terms of appointment and role and description set out in Annex 8.

61.3 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of any particular meeting. Members of the public shall be excluded from meetings of the Council of Governors only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.

61.4 For the purposes 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 directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

62. Council of Governors – standing orders

- 17.1 The standing orders for the practice and procedure of the Council of Governors as may be amended from time to time are attached at Annex 5.

63. Council of Governors – referral to the Panel

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

63.1.1 to act in accordance with its Constitution; or
63.1.2 to act in accordance with provisions made by or under Chapter 5 of the 2006 Act

- 63.2 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.

64. Council of Governors - conflicts of interest of governors

- 19.1 If a governor has a pecuniary, personal or family 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 shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

65. Council of Governors – travel expenses

- 20.1 Governors shall not receive remuneration for acting as governors but the Trust may pay travelling and other expenses to members of the Council of Governors at rates, and in accordance with a policy, determined by the Trust.

66. Council of Governors – further provisions

21.1 Further provisions with respect to the Council of Governors are set out in Annex 4.

67. Board of Directors – composition

67.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. The composition will be such that there will always be a majority of non-executive directors (including the Chair).

67.2 The Board of Directors is to comprise:

67.2.1 a non-executive Chairman

67.2.2 at least 8 other non-executive directors, and

67.2.3 up to 8 executive directors.

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

67.4 The Chief Executive shall be the Accounting Officer.

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

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

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

67.8 The directors shall at all times have one vote each save that the Chairman shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.

67.9 The post of an executive director (excluding the Chief Executive) may be held by more than one eligible person on a job share basis. Where such an agreement is in force then the two individuals may only exercise one vote between them at a meeting of the Board of Directors. In the case of disagreements, they must abstain from voting and no vote may be cast. This must be recorded in the minutes for the Board meeting.

68. Board of Directors – general duty

23.1 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.

69. Board of Directors – qualification for appointment as a non-executive director

24.1 A person may be appointed as a non-executive director only if:

69.1.1 he is a member of a public constituency and he is not disqualified by virtue of paragraph 28 below.

70. Board of Directors – appointment and removal of chairman and other non-executive directors

70.1 The Council of Governors at a general meeting of the Council of Governors shall appoint and, where necessary, remove (with the approval of three-quarters of the Council of Governors) the chairman of the Trust and the other non-executive directors. The Council of Governors Nomination Committee may identify suitable candidates to fill non-executive director vacancies as they arise and may make written recommendations to the Council of Governors. The Council of Governors shall be required to appoint one non-executive director who exercises functions for Brighton and Sussex Medical School. This candidate will be nominated by Brighton and Sussex Medical School for the Council of Governors Nomination Committee to review and consider and, where appropriate, recommend to the Council of Governors.

70.2 The Council of Governors at a general meeting of the Council of Governors shall appoint and, where necessary, remove the chairman

of the Trust and the other non-executive directors.

- 70.3 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

71. Board of Directors – appointment of deputy chairman and senior independent director

- 71.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.
- 71.2 The Board shall, following consultation with the Council of Governors, appoint one of the independent non-executive directors as a Senior Independent Director to act in accordance with the NHS Foundation Trust Code of Governance published by Monitor in 2013 and updated in July 2014 and the Board's Standing Orders.
- 71.3 The offices of Deputy Chairman and Senior Independent Director may be held by the same Non-Executive Director.

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

- 72.1 The non-executive directors shall appoint or remove the Chief Executive.
- 72.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 72.3 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

73. Board of Directors – disqualification

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

- 73.1 A person who fails to meet the requirements of the CQC fit and proper person regulations.
- 73.2 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 73.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 73.4 a person who within the preceding five years has been convicted in the British Islands of any offence if 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.

74. Board of Directors – meetings

- 74.1 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.
- 74.2 Before holding a meeting the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

75. Board of Directors – standing orders

- 75.1 The standing orders for the practice and procedure of the Board of Directors, as may be amended from time to time, are attached at Annex 6
- 75.2 The Board of Directors may adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the Trust from time to time.

76. Board of Directors - conflicts of interest of directors

- 76.1 The duties that a director of the Trust has by virtue of being a director include in particular –
- 76.1.1 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.
 - 76.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 76.2 The duty referred to in sub-paragraph 31.1.1 is not infringed if –
- 76.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 76.2.2 The matter has been authorised in accordance with the Constitution.
- 76.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 76.4 In sub-paragraph 31.1.2 “third party” means a person other than –
- 76.4.1 The Trust, or
 - 76.4.2 A person acting on its behalf
- 76.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors
- 76.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 76.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 76.8 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.

76.9 A director need not declare an interest –

76.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest:

76.9.2 If, or to the extent that, the directors are already aware of it:

76.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –

34.9.3.1 by a meeting of the Board of Directors, or

34.9.3.2 by a committee of the directors appointed for the purpose under the Constitution.

76.10 A matter shall be authorised for the purposes of paragraph 31.2.2:

76.10.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

76.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

76.10.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

77. Board of Directors – remuneration and terms of office

77.1 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 Chairman and the other non-executive directors.

- 77.2 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.

78. Registers

The Trust shall have:

- 78.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are areas or classes within it, the area or class to which he belongs;
- 78.2 a register of members of the Council of Governors;
- 78.3 a register of interests of governors;
- 78.4 a register of directors; and
- 78.5 a register of interests of the directors.

79. Admission to and removal from the registers

- 79.1 Further provisions as to the registers are set out within Annex 7.

80. Registers – inspection and copies

- 80.1 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 80.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –

- 80.2.1 any member of the Patients' Constituency; or

80.2.2 any other member of the Trust, if he so requests

80.3 So far as the registers are required to be made available:

80.3.1 they are to be available for inspection free of charge at all reasonable times; and

80.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

80.4 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.

81. Documents available for public inspection

81.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

81.1.1 a copy of the current Constitution;

81.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and

81.1.3 a copy of the latest annual report.

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

81.3 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.

81.4 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:

81.4.1 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.

- 81.4.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 81.4.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 81.4.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 81.4.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 81.4.6 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.
- 81.4.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 81.4.8 a copy of any final report published under section 65I (administrator's final report).
- 81.4.9 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.
- 81.4.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 81.5 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 81.6 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.

82. External Auditor

- 82.1 The Trust shall have an external auditor.
- 82.2 The Council of Governors shall appoint or remove the external auditor at a general meeting of the Council of Governors.
- 82.3 The external auditor shall carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS Improvement (previously Monitor) on standards, procedures and techniques to be adopted.

83. Audit committee

- 83.1 The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate. The membership and terms of reference of the Audit Committee shall be subject to approval by the Board of Directors.

84. Accounts

- 84.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 84.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 84.3 The accounts are to be audited by the Trust's external auditor.
- 84.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the of the Secretary of State direct.
- 84.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

85. Annual report, forward plans and non-NHS work

- 85.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.

- 85.2 The Trust shall give information as directed with regards its forward planning in respect of each financial year to NHS Improvement.
- 85.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 85.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 85.5 Each forward plan must include information about –
- 85.5.1 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
- 85.5.2 the income it expects to receive from doing so.
- 85.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must –
- 85.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and
- 85.6.2 notify the directors of the Trust of its determination.
- 85.7 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 of the members of the Council of Governors of the Trust voting approve its implementation.

86. Presentation of the annual accounts and reports to the governors and members

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

86.1.1 the annual accounts

86.1.2 any report of the auditor on them

86.1.3 the annual report.

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

86.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.

87. Instruments

87.1 The Trust shall have a seal.

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

87.3 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be executed or signed.

87.4 See further Annex 7 Part C (Custody of Seal and Sealing of Documents).

88. Amendment of the Constitution

88.1 The Trust may make amendments of its Constitution only if –

88.1.1 Over half of the membership of the Council of Governors of the Trust voting approve the amendments, and

88.1.2 Over half of the members of the Board of Directors of the Trust voting approve the amendments.

88.2 Amendments made under paragraph 43.1 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.

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

88.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

88.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

88.4 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.

88.5 Amendments by the Trust of its Constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

89. Mergers etc. and significant transactions

89.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of over half of the members of the Council of Governors.

89.2 The Trust may enter into a significant transaction only if over half of the members of the Council of Governors voting approve entering into the transaction.

89.3 In this paragraph, the following words have the following meanings:

89.3.1 "Significant transaction" means a transaction which meets any one of the tests below:

the fixed asset test; or

the turnover test;

89.4 The turnover test is met if, following the completion of the relevant transaction, the gross income of the Trust will increase or decrease by more than 25%.

89.5 The fixed asset is met if the assets which are the subject of the transaction exceeds 25% of the fixed assets of the Trust.

89.6 A transaction:

89.6.1 includes all agreements (including amendments to agreements) entered into by the Trust

89.6.2 excludes a transaction in the ordinary course of business including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust;

89.6.3 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services;

89.6.4 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

90. Indemnity

90.1 Members of the Board of Directors and Council of Governors 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 of their functions, save where they have acted recklessly.

90.2 The Trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of directors' and governors' liability to meet all or any liabilities which are properly the liabilities of the Trust under paragraph 45.1, including, without limitation, liability arising by reason of the Trust acting as a corporate

trustee of an NHS charity.

ANNEX 1 – CONSTITUENCY DETAILS

THE PUBLIC CONSTITUENCY

Members of the public shall be eligible for membership of the public constituency areas as shown in the table below, which also sets out the minimum numbers required in each area.

Public Constituency Area	Minimum Membership Per Area
Adur	90
Arun	220
Brighton & Hove	600
Chichester	160
East Sussex	75
Horsham	130
Mid Sussex	140
Worthing	150
Out of Area	75

THE STAFF CONSTITUENCY

The staff constituency is divided into a number of classes. Trust staff shall be eligible for membership of the class within the staff constituency as shown below.

Staff Class	Minimum Number of Members Per Class
Peripatetic	100
Princess Royal Hospital	100
Royal Sussex County Hospital	100
St Richards Hospital	100
Worthing & Southlands Hospital	100

ANNEX 2 – COMPOSITION OF COUNCIL OF GOVERNORS

Table 1 - Elected Governors

For the period from the Acquisition Date until new governor elections are held and new governors are elected on around August 2021 (Post Acquisition Elections) the Elected Governors shall comprise:

Constituency	Area/Class	Number
Public	Adur	1
Public	Arun	1
Public	Brighton & Hove	0
Public	Chichester	2
Public	Horsham	1
Public	Mid Sussex	0
Public	Worthing	1
Public	Out of Area	1
Staff	Peripatetic	1
Staff	Princess Royal Hospital	0
Staff	Royal Sussex County Hospital	0
Staff	St Richards Hospital	1
Staff	Worthing and Southlands Hospitals	1
Total Number of Elected Governors		10

Table 2 – Elected Governors

Following the Post Acquisition Elections the Elected Governors shall comprise:

Constituency	Area/Class	Number
Public	Adur	1
Public	Arun	1

Public	Brighton & Hove	2
Public	Chichester	2
Public	Horsham	1
Public	Mid Sussex	2
Public	Worthing	1
Public	East Sussex and Out of Area	1
Staff	Peripatetic	1
Staff	Princess Royal Hospital	1
Staff	Royal Sussex County Hospital	1
Staff	St Richards Hospital	1
Staff	Worthing and Southlands Hospitals	1
Total Number of Elected Governors		16

Table 3 - Appointed Governors

Type	Governor Appointed By:	Number
Local Authority*	Brighton and Hove City Council	1
	West Sussex County Council	1
Brighton & Sussex Medical School *	A governor would be appointed by agreement between Brighton & Sussex Universities.	1
Voluntary Sector	A governor shall be appointed, by agreement of the Council of Voluntary Services	1
Inclusion	A governor shall be appointed from the three Trust inclusion staff networks covering BAME, LGBT+ and Disability	1
Total Number of Appointed Governors		5
Total Number of Governors		21

**Note: These Governors must be appointed under paragraphs 9(4) and 9(6) of Schedule 7 of the National Health Service Act 2006 (as amended from time to time).*

In summary, the total number of Governors:

On the Acquisition Date there shall be 10 elected governors plus 5 appointed governors (15 in total) (composed as set out above); and

From on or around August 2021 there shall be 21 Governors (composed as set out above).

Annex 3 - Model Election Rules

MODEL ELECTION RULES 2014

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
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PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope

26. E-voting systems

The poll

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

Procedure for receipt of envelopes, internet votes, telephone vote and text message votes

36. Receipt of voting documents
37. Validity of votes
38. Declaration of identity but no ballot (public and patient constituency)
39. De-duplication of votes
40. Sealing of packets

PART 6: COUNTING THE VOTES

41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
44. Rejected ballot papers and rejected text voting records
45. Equality of votes

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

46. Declaration of result for contested elections
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PART 8: DISPOSAL OF DOCUMENTS

48. Sealing up of documents relating to the poll
49. Delivery of documents
50. Forwarding of documents received after close of the poll
51. Retention and public inspection of documents
52. Application for inspection of certain documents relating to election

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

- 53. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

- 54. Election expenses
- 55. Expenses and payments by candidates
- 56. Expenses incurred by other persons

Publicity

- 57. Publicity about election by the corporation
- 58. Information about candidates for inclusion with voting information
- 59. Meaning of “for the purposes of an election”

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

- 60. Application to question an election

PART 12: MISCELLANEOUS

- 61. Secrecy
- 62. Prohibition of disclosure of vote
- 63. Disqualification
- 64. Delay in postal service through industrial action or unforeseen event

65. Interpretation

65.1. In these rules, unless the context otherwise requires:

“*2006 Act*” means the National Health Service Act 2006;

“*corporation*” means the public benefit corporation subject to this constitution;

“*council of governors*” means the council of governors of the corporation;

“*declaration of identity*” has the meaning set out in rule 21.1;

“*election*” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the council of governors;

“*e-voting*” means voting using either the internet, telephone or text message;

“*e-voting information*” has the meaning set out in rule 24.2;

“*ID declaration form*” has the meaning set out in Rule 21.1; “*internet voting record*” has the meaning set out in rule 26.4(d);

“*internet voting system*” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (published by Monitor in December 2013) or any later version of such code.

“*list of eligible voters*” means the list referred to in rule 22.1, containing the information in rule 22.2;

“*method of polling*” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act and reference in these Model Election Rules to “*Monitor*” shall be read as reference to its statutory successor, “*NHS Improvement*”;

“*NHS Improvement*” is the operational name for the organisation which consists of (inter alia) Monitor and the NHS Trust Development Authority;

“numerical voting code” has the meaning set out in rule 64.2(b)

“polling website” has the meaning set out in rule 26.1;

“postal voting information” has the meaning set out in rule 24.1;

“telephone short code” means a short telephone number used for the purposes of submitting a vote by text message;

“telephone voting facility” has the meaning set out in rule 26.2;

“telephone voting record” has the meaning set out in rule 26.5 (d);

“text message voting facility” has the meaning set out in rule 26.3;

“text voting record” has the meaning set out in rule 26.6 (d);

“the telephone voting system” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

“the text message voting system” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

“voter ID number” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,

“voting information” means postal voting information and/or e-voting information

65.2. Other expressions used in these rules and in Schedule 7 to the NHS Act 2006 have the same meaning in these rules as in that Schedule.

PART 2: TIMETABLE FOR ELECTIONS

66. Timetable

66.1. The proceedings at an election shall be conducted in accordance with the following timetable:

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

67. Computation of time

67.1. In computing any period of time for the purposes of the timetable:

- (d) a Saturday or Sunday;
- (e) Christmas Day, Good Friday, or a bank holiday, or
- (f) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

67.2. In this rule, "bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

68. Returning Officer

68.1. Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

68.2. Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

69. Staff

69.1. Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

70. Expenditure

70.1. The corporation is to pay the returning officer:

- (c) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (d) such remuneration and other expenses as the corporation may determine.

71. Duty of co-operation

71.1. The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

72. Notice of election

- 72.1. The returning officer is to publish a notice of the election stating:
- (i) the constituency, or class within a constituency, for which the election is being held,
 - (j) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (k) the details of any nomination committee that has been established by the corporation,
 - (l) the address and times at which nomination forms may be obtained;
 - (m) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
 - (n) the date and time by which any notice of withdrawal must be received by the returning officer
 - (o) the contact details of the returning officer
 - (p) the date and time of the close of the poll in the event of a contest.

73. Nomination of candidates

73.1. Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

73.2. The returning officer:

- (c) is to supply any member of the corporation with a nomination form, and
- (d) is to prepare a nomination form for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

74. Candidate's particulars

74.1. The nomination form must state the candidate's:

- (d) full name,
- (e) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
- (f) constituency, or class within a constituency, of which the candidate is a member.

75. Declaration of interests

75.1. The nomination form must state:

- (c) any financial interest that the candidate has in the corporation, and
- (d) whether the candidate is a member of a political party, and if so, which party,
and if the candidate has no such interests, the paper must include a statement to that effect.

76. Declaration of eligibility

76.1. The nomination form must include a declaration made by the candidate:

- (c) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (d) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

77. Signature of candidate

77.1. The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:

- (d) they wish to stand as a candidate,
- (e) their declaration of interests as required under rule 11, is true and correct, and
- (f) their declaration of eligibility, as required under rule 12, is true and correct.

77.2. Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

78. Decisions as to the validity of nomination

78.1. Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

- (e) decides that the candidate is not eligible to stand,
- (f) decides that the nomination form is invalid,
- (g) receives satisfactory proof that the candidate has died, or
- (h) receives a written request by the candidate of their withdrawal from candidacy.

78.2. The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

- (f) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (g) that the paper does not contain the candidate's particulars, as required by rule 10;
- (h) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (i) that the paper does not include a declaration of eligibility as required by rule 12, or
- (j) that the paper is not signed and dated by the candidate, if required by rule 13.

78.3. The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

78.4. Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.

78.5. The returning officer is to send notice of the decision as to whether a

nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

79. Publication of statement of candidates

79.1. The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

79.2. The statement must show:

- (c) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- (d) the declared interests of each candidate standing,

as given in their nomination form.

79.3. The statement must list the candidates standing for election in alphabetical order by surname.

79.4. The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

80. Inspection of statement of nominated candidates and nomination forms

80.1. The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

80.2. If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

81. Withdrawal of candidates

81.1. A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of

withdrawal which is signed by the candidate and attested by a witness.

82. Method of election

82.1. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

82.2. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

82.3. If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:

- (c) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (d) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

83. Poll to be taken by ballot

- 83.1. The votes at the poll must be given by secret ballot.
- 83.2. The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 83.3. The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 83.4. The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 83.5. Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (d) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (iii) configured in accordance with these rules; and
 - (iv) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - (e) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (iii) configured in accordance with these rules; and
 - (iv) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (f) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (iii) configured in accordance with these rules; and
 - (iv) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

84. The ballot paper

84.1. The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

84.2. Every ballot paper must specify:

- (h) the name of the corporation,
- (i) the constituency, or class within a constituency, for which the election is being held,
- (j) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (k) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (l) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
- (m) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (n) the contact details of the returning officer.

84.3. Each ballot paper must have a unique identifier.

84.4. Each ballot paper must have features incorporated into it to prevent it from being reproduced.

85. The declaration of identity (public and patient constituencies)

85.1. The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- (d) that the voter is the person:
 - (iii) to whom the ballot paper was addressed, and/or
 - (iv) to whom the voter ID number contained within the e-voting information was allocated,
- (e) that he or she has not marked or returned any other voting information

in the election, and

- (f) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,
("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.

- 85.2. The voter must be required to return his or her declaration of identity with his or her ballot.
- 85.3. The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

86. List of eligible voters

- 86.1. The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 86.2. The list is to include, for each member:
 - (c) a postal address; and,
 - (d) the member's e-mail address, if this has been providedto which his or her voting information may, subject to rule 22.3, be sent.
- 86.3. The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

87. Notice of poll

87.1. The returning officer is to publish a notice of the poll stating:

- (n) the name of the corporation,
- (o) the constituency, or class within a constituency, for which the election is being held,
- (p) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (q) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (r) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (s) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (t) the address for return of the ballot papers,
- (u) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (v) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (w) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (x) the date and time of the close of the poll,
- (y) the address and final dates for applications for replacement voting information, and
- (z) the contact details of the returning officer.

88. Issue of voting information by returning officer

88.1. Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (e) a ballot paper and ballot paper envelope,
- (f) the ID declaration form (if required),
- (g) information about each candidate standing for election, pursuant to rule 61 of these rules, and
- (h) a covering envelope;

("postal voting information").

88.2. Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- (e) instructions on how to vote and how to make a declaration of identity (if required),
- (f) the voter's voter ID number,
- (g) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
- (h) contact details of the returning officer,

("e-voting information").

88.3. The corporation may determine that any member of the corporation shall:

- (d) only be sent postal voting information; or
- (e) only be sent e-voting information; or
- (f) be sent both postal voting information and e-voting information;

for the purposes of the poll.

88.4. If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

88.5. The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

89. Ballot paper envelope and covering envelope

89.1. The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

89.2. The covering envelope is to have:

- (c) the address for return of the ballot paper printed on it, and
- (d) pre-paid postage for return to that address.

89.3. There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (c) the completed ID declaration form if required, and
- (d) the ballot paper envelope, with the ballot paper sealed inside it.

90. E-voting systems

90.1. If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

90.2. If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

90.3. If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

90.4. The returning officer shall ensure that the polling website and internet voting system provided will:

- (g) require a voter to:
 - (iii) enter his or her voter ID number; and
 - (iv) where the election is for a public or patient constituency, make a declaration of identity;
in order to be able to cast his or her vote;
- (h) specify:
 - (viii) the name of the corporation,
 - (ix) the constituency, or class within a constituency, for which the election is being held,

- (x) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (xi) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (xii) instructions on how to vote and how to make a declaration of identity,
 - (xiii) the date and time of the close of the poll, and
 - (xiv) the contact details of the returning officer;
- (i) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (j) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (v) the voter's voter ID number;
 - (vi) the voter's declaration of identity (where required);
 - (vii) the candidate or candidates for whom the voter has voted; and
 - (viii) (the date and time of the voter's vote,
 - (k) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
 - (l) prevent any voter from voting after the close of poll.

90.5. The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- (g) require a voter to
 - (iii) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (iv) where the election is for a public or patient constituency, make a declaration of identity;
- (h) specify:
 - (vii) the name of the corporation,
 - (viii) the constituency, or class within a constituency, for which the election is being held,
 - (ix) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (x) instructions on how to vote and how to make a declaration of identity,

- (xi) the date and time of the close of the poll, and
 - (xii) the contact details of the returning officer;
- (i) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (j) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - (v) the voter's voter ID number;
 - (vi) the voter's declaration of identity (where required);
 - (vii) the candidate or candidates for whom the voter has voted; and
 - (viii) the date and time of the voter's vote
 - (k) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
 - (l) prevent any voter from voting after the close of poll.

90.6. The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:

- (f) require a voter to:
 - (iii) provide his or her voter ID number; and
 - (iv) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
- (g) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (h) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (v) the voter's voter ID number;
 - (vi) the voter's declaration of identity (where required);
 - (vii) the candidate or candidates for whom the voter has voted; and
 - (viii) the date and time of the voter's vote
- (i) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (j) prevent any voter from voting after the close of poll.

The poll

91. Eligibility to vote

- 91.1. An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

92. Voting by persons who require assistance

- 92.1. The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 92.2. Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

93. Spoilt ballot papers and spoilt text message votes

- 93.1. If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 93.2. On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 93.3. The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (c) is satisfied as to the voter’s identity; and
 - (d) has ensured that the completed ID declaration form, if required, has not been returned.
- 93.4. After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
- (d) the name of the voter, and
 - (e) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (f) the details of the unique identifier of the replacement ballot paper.

- 93.5. If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 93.6. On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 93.7. The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 93.8. After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):
- (d) the name of the voter, and
 - (e) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (f) the details of the replacement voter ID number issued to the voter.

94. Lost voting information

- 94.1. Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 94.2. The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (d) is satisfied as to the voter’s identity,
 - (e) has no reason to doubt that the voter did not receive the original voting information,
 - (f) has ensured that no declaration of identity, if required, has been returned.
- 94.3. After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):

- (d) the name of the voter
- (e) the details of the unique identifier of the replacement ballot paper, if applicable, and
- (f) the voter ID number of the voter.

95. Issue of replacement voting information

95.1. If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

95.2. After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):

- (d) the name of the voter,
- (e) the unique identifier of any replacement ballot paper issued under this rule;
- (f) the voter ID number of the voter.

96. ID declaration form for replacement ballot papers (public and patient constituencies)

96.1. In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

Polling by internet, telephone or text

97. Procedure for remote voting by internet

97.1. To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

97.2. When prompted to do so, the voter will need to enter his or her voter ID number.

97.3. If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

97.4. To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

97.5. The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

98. Voting procedure for remote voting by telephone

98.1. To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

98.2. When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

98.3. If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

98.4. When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

98.5. The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

99. Voting procedure for remote voting by text message

99.1. To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

99.2. The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

- 99.3. The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

Procedure for receipt of envelopes, internet votes, telephone votes and text message votes

100. Receipt of voting documents

- 100.1. Where the returning officer receives:

- (c) a covering envelope, or
- (d) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

- 100.2. The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

- (c) the candidate for whom a voter has voted, or
- (d) the unique identifier on a ballot paper.

- 100.3. The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

101. Validity of votes

- 101.1. A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.

- 101.2. Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

- (c) put the ID declaration form if required in a separate packet, and

(d) put the ballot paper aside for counting after the close of the poll.

101.3. Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

- (e) mark the ballot paper “disqualified”,
- (f) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (g) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
- (h) place the document or documents in a separate packet.

101.4. An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

101.5. Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

101.6. Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

- (d) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (e) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- (f) place the document or documents in a separate packet.

102. Declaration of identity but no ballot paper (public and patient constituency)¹⁵

102.1. Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (d) mark the ID declaration form “disqualified”,

¹⁵ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

- (e) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
- (f) place the ID declaration form in a separate packet.

103. De-duplication of votes

103.1. Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

103.2. If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (c) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (d) mark as “disqualified” all other votes that were cast using the relevant voter ID number

103.3. Where a ballot paper is disqualified under this rule the returning officer shall:

- (f) mark the ballot paper “disqualified”,
- (g) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (h) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (i) place the document or documents in a separate packet; and
- (j) disregard the ballot paper when counting the votes in accordance with these rules.

103.4. Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (e) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (f) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (g) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and

- (h) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

104. Sealing of packets

104.1. As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

- (g) the disqualified documents, together with the list of disqualified documents inside it,
- (h) the ID declaration forms, if required,
- (i) the list of spoiled ballot papers and the list of spoiled text message votes,
- (j) the list of lost ballot documents,
- (k) the list of eligible voters, and
- (l) the list of tendered voting information

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

105. Interpretation of Part 6

105.1. In Part 6 of these rules:

“ballot document” means a ballot paper, internet voting record, telephone voting record or text voting record.

“continuing candidate” means any candidate not deemed to be elected, and not excluded,

“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot document:

(c) on which no second or subsequent preference is recorded for a continuing candidate,

or

(d) which is excluded by the returning officer under rule STV49,

“preference” as used in the following contexts has the meaning assigned below:

(d) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(e) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(f) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“*quota*” means the number calculated in accordance with rule STV46,

“*surplus*” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,

“*stage of the count*” means:

- (d) the determination of the first preference vote of each candidate,
- (e) the transfer of a surplus of a candidate deemed to be elected, or
- (f) the exclusion of one or more candidates at any given time,

“*transferable vote*” means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“*transferred vote*” means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred, and

106. Arrangements for counting of the votes

106.1. The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

106.2. The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (c) the board of directors and the council of governors of the corporation have approved:
 - (iii) the use of such software for the purpose of counting votes in the relevant election, and
 - (iv) a policy governing the use of such software, and
- (d) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

107. The count

107.1. The returning officer is to:

- (c) count and record the number of:
 - (iii) ballot papers that have been returned; and
 - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- (d) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

107.2. The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

107.3. The returning officer is to proceed continuously with counting the votes as far as is practicable.

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

- (e) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (f) on which votes are given for more candidates than the voter is entitled to vote,
- (g) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (h) which is unmarked or rejected because of uncertainty,

shall, subject to rules 44.2 and 44.3, be rejected and not counted.

44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

44.3 A ballot paper on which a vote is marked:

- (d) elsewhere than in the proper place,

- (e) otherwise than by means of a clear mark,
- (f) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

44.4 The returning officer is to:

- (c) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (d) in the case of a ballot paper on which any vote is counted under rules 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- (e) does not bear proper features that have been incorporated into the ballot paper,
- (f) voting for more candidates than the voter is entitled to,
- (g) writing or mark by which voter could be identified, and
- (h) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

44.6 Any text voting record:

- (d) on which votes are given for more candidates than the voter is entitled to vote,
- (e) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (f) which is unmarked or rejected because of uncertainty,

shall, subject to rules 44.7 and 44.8, be rejected and not counted.

44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

44.8 A text voting record on which a vote is marked:

- (c) otherwise than by means of a clear mark,
- (d) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

44.9 The returning officer is to:

- (c) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (d) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

- (d) voting for more candidates than the voter is entitled to,
- (e) writing or mark by which voter could be identified, and
- (f) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

45. Equality of votes

45.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

**PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED
ELECTIONS**

46. Declaration of result for contested elections

46.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

46.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

47 Declaration of result for uncontested elections

47.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

- (d) declare the candidate or candidates remaining validly nominated to be elected,

- (e) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and
- (f) give public notice of the name of each candidate who he or she has declared elected.

108. Sealing up of documents relating to the poll

108.1. On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:

- (e) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- (f) the ballot papers and text voting records endorsed with “rejected in part”,
- (g) the rejected ballot papers and text voting records, and
- (h) the statement of rejected ballot papers and the statement of rejected text voting records,

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

108.2. The returning officer must not open the sealed packets of:

- (e) the disqualified documents, with the list of disqualified documents inside it,
- (f) the list of spoilt ballot papers and the list of spoilt text message votes,
- (g) the list of lost ballot documents, and
- (h) the list of eligible voters,

or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.

108.3. The returning officer must endorse on each packet a description of:

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

109. Delivery of documents

109.1. Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

110. Forwarding of documents received after close of the poll

110.1. Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

111. Retention and public inspection of documents

111.1. The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

111.2. With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

111.3. A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

112. Application for inspection of certain documents relating to an election

112.1. The corporation may not allow:

- (b) the inspection of, or the opening of any sealed packet containing –

- (vi) any rejected ballot papers, including ballot papers rejected in part,
 - (vii) any rejected text voting records, including text voting records rejected in part,
 - (viii) any disqualified documents, or the list of disqualified documents,
 - (ix) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (x) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.

112.2. A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

112.3. The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

112.4. On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

- (a) in giving its consent, and
- (b) in making the documents available for inspection

ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

- (i) that his or her vote was given, and

(ii) that Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

53. Countermand or abandonment of poll on death of candidate

- 53.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- 53.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- 53.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- 53.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- 53.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
 - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 53.6 The returning officer is to endorse on each packet a description of:

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

53.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

113. Election expenses

113.1. Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to Monitor under Part 11 of these rules.

114. Expenses and payments by candidates

114.1. A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

115. Election expenses incurred by other persons

115.1. No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

115.2. Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

116. Publicity about election by the corporation

116.1. The corporation may:

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

116.2. Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

116.3. Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

117. Information about candidates for inclusion with voting information

117.1. The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

117.2. The information must consist of:

- (c) a statement submitted by the candidate of no more than 250 words,
- (d) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and

(c) a photograph of the candidate.

118. Meaning of “for the purposes of an election”

118.1. In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

118.2. The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

**PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF
IRREGULARITIES**

119. Application to question an election

- 119.1. An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 119.2. An application may only be made once the outcome of the election has been declared by the returning officer.
- 119.3. An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 119.4. The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the independent panel may require.
- 119.5. The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 119.6. If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 119.7. Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 119.8. The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

119.9. The IEAP may prescribe rules of procedure for the determination of an application including costs.

120. Secrecy

120.1. The following persons:

- (a) the returning officer,
- (b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:

- (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv) the candidate(s) for whom any member has voted.

120.2. No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter or the voter ID number allocated to a voter.

120.3. The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

121. Prohibition of disclosure of vote

121.1. No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

122. Disqualification

122.1. A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

123. Delay in postal service through industrial action or unforeseen event

123.1. If industrial action, or some other unforeseen event, results in a delay in:

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

ANNEX 4 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

10. INTERPRETATION

- 10.1 In these Provisions, the clauses relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

11. APPLICATION OF THESE PROVISIONS

- 11.1 These Provisions apply to all meetings of the Council of Governors (“the **Council**”) and all other relevant activities of the Governors. All Governors are required to abide by these Provisions, which also apply to any persons attending meetings of the Council.
- 11.2 Except where required by law or the Constitution, at any meeting of the Council, the Chairman (or in his absence, the Deputy Chairman or a person deputising for him) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).
- 11.3 Whilst the Secretary shall be responsible for ensuring that Governors are made aware of these Provisions, Governors are expected to familiarise themselves with the Provisions.
- 11.4 In the event of any actual or suspected non-compliance with these Provisions by a Governor, another Governor or member of staff identifying such actual/suspected non-compliance shall report it to the Chairman or Secretary and the Chairman/ Secretary shall be responsible for taking such action as is necessary in accordance with the Code of Conduct for Governors set out in Annex 9 (specifically paragraph 7).

12. APPOINTMENT AND REMOVAL OF GOVERNORS

Election and Appointment to Office

- 12.1 Governors shall be elected or appointed by the means and on terms of office as prescribed by this Constitution.
- 12.2 A Governor shall, within 21 days of election or appointment, sign and deliver to the Secretary a declaration in the form prescribed at Appendix A. No Governor shall be entitled to vote or count in the quorum at a meeting of the Council of Governors until his declaration has been received by the Secretary. Such a declaration shall be valid for the Governor’s term of office.

- 12.3 A person shall not be eligible to become or continue in office as a Governor if:
- 12.3.1 any of the grounds contained in paragraph 14 of the Constitution apply to him; or
 - 12.3.2 in the case of an elected Governor, he ceases to be eligible to be a member of the Trust or constituency. For the avoidance of doubt and in accordance with paragraph 13.3 of the Constitution, a Public Governor who ceases to be eligible to be a member of that Public Constituency by virtue of moving to another area, shall cease to hold office. Subject to the Provisions set out in this Annex 4 and the Constitutional provisions in respect of eligibility for holding office as a Governor, a person ceasing to hold office by the means described in this clause shall be eligible to stand for election in the area to which he has moved; or
 - 12.3.3 he is a member of a Staff Class and any professional registration relevant to his eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months; or
 - 12.3.4 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him or the organisation ceases to exist; or
 - 12.3.5 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body; or
 - 12.3.6 he is a person whose term of office as the chair or as a member or director of a health service body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest; or
 - 12.3.7 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list; or
 - 12.3.8 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act; or
 - 12.3.9 has spoken or voted in a meeting on a matter in which he has a direct or indirect pecuniary or non-pecuniary interest and he is judged to have acted so by a majority of not less than three quarters of the Council; or

- 12.3.10 NHS Improvement has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or NHS Improvement has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust; or
- 12.3.11 he has received a written warning from the Trust for verbal and/or physical abuse towards any person; or
- 12.3.12 he does not agree to (or, having agreed, fails to) abide by the values as published by the Trust; or
- 12.3.13 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended) and his conviction is not spent under the Rehabilitation of Offenders Act 1974; or
- 12.3.14 he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs; or
- 12.3.15 he is a member of the UK Parliament; or
- 12.3.16 he is a Director of the Trust or a Governor of another NHS Foundation Trust; or
- 12.3.17 he is a member of a relevant local authority Overview and Scrutiny Committee; or
- 12.3.18 he is not 16 years of age, or older, at the closing date for nominations for election or appointment; or
- 12.3.19 he has contravened any other provision of this Constitution; or
- 12.3.20 his term of office is terminated pursuant to paragraph 3.4 below;

Termination of Office

12.4 A Governor's term of office shall be terminated:

- 12.4.1 by the Governor giving notice in writing to the Secretary of his resignation from office at any time during that term of office;
- 12.4.2 by a majority of the Governors present and voting at a meeting of

the Council if any grounds exist under paragraph 3.3 above

12.4.3 if the Council resolves to terminate his term of office on the grounds that in the reasonable opinion of over half of the Council of Governors voting at a meeting of the Council convened for that purpose that his continuing as a Governor would or would be likely to:

- (a) prejudice the ability of the Trust to fulfill its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
- (b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
- (c) adversely affect public confidence in the goods and services provided by the Trust; or
- (d) otherwise bring the Trust into disrepute or be detrimental to the interests of the Trust.

12.4.4 if over half of the Council of Governors of the Council resolve that:

- (a) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
- (b) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust; or
- (c) the Governor has failed to or refused to undertake and/or satisfactorily complete any training which the Council has required him to undertake in his capacity as a Governor by a date six months from the date of his election or appointment; or
- (d) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, the Constitution, and/or the Trust's Terms of Authorisation; or
- (e) he has committed a material breach of any Role Description or Code of Conduct applicable to Governors of the Trust and/or these Provisions.

- 12.5 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered him disqualified, and the Secretary shall report the matter to the Council and the Board.
- 12.6 Upon a Governor resigning or ceasing to be eligible to continue in office that person shall cease to be a Governor and his name shall be removed from the Register of Governors.

Vacancies

- 12.7 Where a Governor resigns or his office is terminated, elected Governors shall be replaced in accordance with paragraphs 3.8 and 3.9 below and, in the case of appointed Governors, the Trust shall within 30 days of the vacancy having arisen invite the appointing body to appoint a new Governor to hold office for the remainder of the term of office.
- 12.8 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chairman and Chief Executive of the Trust, who shall use their reasonable endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chairman and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.
- 12.9 Where an elected Governor ceases to hold office during the first six months of his term of office, the Trust shall offer the unsuccessful candidate who secured the highest number of votes in the last election for the area or class in which the vacancy has arisen, the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that candidate is unwilling, or unable, to fill the vacancy it will then be offered to that unsuccessful candidate who secured the next highest number of votes.
- 12.10 If there is no reserve candidate, or the reserve candidate is unable or unwilling to fill the vacancy, the Council may seek to co-opt a non-voting associate governor from that constituency or agree to allow that office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are public [to be less than half the total membership of the Council. In that event an election will be held in accordance with the election scheme as soon as reasonably practicable.
- 12.11 No defect in the election or appointment of a Governor or any deficiency in the composition of the Council shall affect the validity of any act or decision of the Council.

13. DECLARATIONS AND REGISTER OF GOVERNORS' INTERESTS

- 13.1 In accordance with the Constitution, Governors are required to declare on election or appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.
- 13.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Provisions and delivering it to the Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.
- 13.3 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.
- 13.4 The term "relevant and material interests" may include (but may not be limited to) the following:
- 13.4.1 directorships, including non-executive directorships held in private or public limited companies (with the exception of those of dormant companies);
 - 13.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;
 - 13.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;
 - 13.4.4 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;
 - 13.4.5 research funding/grants that may be received by an individual or their department;
- 13.5 Any traveling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.

13.6 Subject to any other provision of this Constitution, a Governor shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:

13.6.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

13.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.

13.7 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

13.7.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;

13.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

13.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.

13.9 If a Governor has any doubt about the relevance of an interest, he must take advice from the Secretary.

14. STANDARDS OF CONDUCT

14.1 Governors shall comply with the terms of the Role Description for Governors which shall be approved by the Council and the Board, and which the Secretary shall issue to Governors upon election or appointment to the Council. The Governors shall also comply with any codes of conduct or other standards referenced in the Role Description.

14.2 In the event that there are concerns about a Governor's performance or conduct, the Chairman, with the support of the Lead Governor and Secretary where necessary, will address these directly with the Governor concerned. Where necessary, the Chairman will make recommendations to the Council, including in respect of any proposal that the Council should

remove the Governor from office in which case the Provisions of section 3 of these Provisions shall apply.

5.3 For further information see Annex 9.

15. REMUNERATION AND BUSINESS EXPENSES

- 15.1 Governors shall not receive remuneration.
- 15.2 The Trust is permitted to reimburse traveling expenses to Governors for attendance at meetings of the Council, or for any other business authorised by the Chairman as being reasonably within the role and duties of a Governor, at a rate and in accordance with a policy to be determined by the Board of Directors.
- 15.3 Expenses will be reimbursed by the Secretary on receipt of a completed and signed expenses form provided by the Secretary.
- 15.4 A summary of expenses paid to Governors will be published in the Annual Report.

16. COMPOSITION AND ROLE OF COUNCIL OF GOVERNORS

- 16.1 The composition of the Council shall be as set out in Annex 2 of the Constitution.
- 16.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Council is defined in its Terms of Reference which shall be approved by the Council and the Board.
- 16.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 16.4 The role of the Deputy Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 16.5 The role of the Lead Governor and Deputy Lead Governor shall be as defined in a Role Description which shall be approved by the Council and the Board, this is contained within Annex 8.

17. COMMITTEES OF THE COUNCIL

- 17.1 Subject to the Constitution, the Terms of Authorisation and such binding guidance as may be given by NHS Improvement, the Council may and, if so required by NHS Improvement, shall appoint committees of the Council consisting wholly or partly of members of the Trust (whether or not they include Governors) or wholly of persons who are not members of the Trust (whether or not they include Governors). The Council shall not delegate any of its powers to a committee but committees may act in an advisory capacity to assist the Council in carrying out its functions.
- 17.2 These Provisions of the Council shall apply with appropriate alteration to any committees established by the Council.
- 17.3 Each such committee or sub-committee shall have such terms of reference. Such terms of reference and the membership of committees or sub-committees shall be subject to approval by the Council.
- 17.4 The Council shall approve the appointment of the Chairman and members for each of the committees which it has formally constituted. Where the Council determines that persons who are neither Governors nor staff shall be appointed to a committee, the terms of such appointment shall be determined by the Council. The Council may request that external advisers assist them or any committee they appoint in carrying out its duties.
- 8.5 Elected and Appointed governors may form a sub-committee – the Pre-Council of Governors Committee – to prepare for forthcoming Council meetings.

18. SUSPENSION, AMENDMENT AND REVIEW OF THESE PROVISIONS

Suspension

- 18.1 These Provisions shall not be suspended except:
- 18.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Provisions, he may do so subject to such action being reported to the next meeting of the Council
- 18.1.2 at a meeting of the Council, where at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors
- 18.2 Any decision to waive Provisions shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

- 18.3 These Provisions shall be reviewed one year after approval by the Council

and then at least every three years thereafter.

18.4 These Provisions shall be amended only if:

18.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and

9.4.5 at least half of the Governors of the Council, including one staff Governor, one public Governor and one appointed Governor are in favour of amendment.

9.4.6 The proposed amendment(s) has/have been discussed the Board.

9.5 All amendments to these Provisions shall be subject to approval through any process prescribed by NHS Improvement.

APPENDIX A

DECLARATION BY GOVERNOR

NEW NAME NHS FOUNDATION TRUST

(the "Trust")

I, (insert full name)

of
.....
.....
.....(insert address)

Hereby declare that I am entitled to:-

(c) be elected to the Council of Governors as a Governor elected by one of the public constituencies/ the staff constituencies* because I am a member of one of the public constituencies/ /staff constituencies *; or

(d) be appointed to the Council of Governors as a governor because I have been appointed by a nominating organisation

and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under the Constitution of the Trust and that I am entitled to vote at meetings of the Council of Governors as a governor pursuant to such appointment or election.

Signed

Print
Name.....

Date of Declaration

ANNEX 5 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

3. MEETINGS OF THE COUNCIL OF GOVERNORS

Frequency of Meetings

- 3.1 The Council of Governors (“the Council”) shall decide the frequency of and calendar for its meetings, subject to the Council holding a minimum of four general meetings per year. The Secretary shall ensure that within the meeting cycle of the Council, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 3.2 Notwithstanding clause 1.1 above, the Chairman may at any time call a meeting of the Council. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the total number of Governors including at least two elected and two appointed Governors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more Governors may forthwith agree to call a meeting of the Council.

Admission of the Public

- 3.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Council unless the Council decides otherwise in relation to all or part of any particular meeting. The public shall be excluded from meetings of the Council only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.
- 3.4 The Chairman may exclude any member of the public from a meeting of the Council if the person is interfering with or preventing the proper conduct of the Council's business. The Chairman's decision in this respect shall be final.
- 3.5 The Chairman shall decide the arrangements through which any questions from members of the public will be asked and answered.

Admission of Directors

- 3.6 Subject to Provisions in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council and, subject to the decision of the Chairman, to speak to any item under consideration.

- 3.7 Subject to clause 1.9 below, the Chairman of the Trust, or in his absence, the Deputy Chairman shall preside at meetings of the Council. Neither the Chairman nor any person deputising for him shall be a member of the Council and he shall not have a vote on matters considered by the Council.
- 3.8 The Deputy Chairman may preside at meetings of the Council in the following circumstances:
- 3.8.1 when there is a need for someone to have the authority to chair any meeting of the Council when the Chairman is not present
 - 3.8.2 when the remuneration, allowance and other terms and conditions of the Chairman are being considered.
 - 3.8.3 when the appointment of the Chairman is being considered, should the current Chairman be a candidate for re-appointment.
 - 3.8.4 on occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council.
- 3.9 If it would not be appropriate for the Chairman or the Deputy Chairman to preside, one of the other Non-Executive Directors shall preside. If in exceptional circumstances it would not be appropriate for any Non-Executive Director to preside, the Council shall appoint one of its members to preside at that meeting. This shall normally be the Lead Governor.
- 3.10 Statements made by Governors at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

- 3.11 Before each meeting of the Council, a notice of the meeting agreed by the Chairman or by an officer of the Trust authorised by the Chairman to approve on his/her behalf shall be published on the Trust website no less than five clear days in advance of the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.
- 3.12 Except in the case of emergencies or in case of a need to conduct urgent

business, the Secretary shall give to all Governors at least five clear days written notice of the date and place of every meeting of the Council. Written notice shall be deemed to include communication by email. The notice shall be published on the Trust's website and otherwise made available to members of the public as considered appropriate by the Trust.

- 3.13 In the case of a meeting called by the Governors in default of the Chairman, the notice shall be signed by those respective Governors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Governors shall not affect the validity of a meeting.

Agenda and Notification of Business

- 3.14 At the direction of the Council, the Secretary shall draw up and maintain an agenda plan for the Council's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Council, which it will agree with the Board of Directors ("the Board"). The agenda plan shall be approved by the Council at least once in each calendar year.
- 3.15 The Council may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.
- 3.16 A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chairman or the Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chairman.
- 3.17 Before each meeting of the Council, an agenda setting out the business of the meeting, approved by the Chairman or by an officer of the Trust authorised by the Chairman on his/her behalf agreed by the Lead or Deputy Lead Governor, shall be posted online or delivered electronically to the membership of the Council of Governors, specifying the business proposed to be transacted at it at least five clear days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Council has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Governors and approved by the Chairman. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

- 3.18 The Secretary shall be responsible for compiling and distributing to Governors (and, where their attendance is permitted, members of the public) papers for meetings of the Council. Papers shall be issued at least five clear days prior to each meeting of the Council. Papers will only be tabled at the Council's meetings in exceptional circumstances and then only with the prior approval of the Chairman.

Quorum for Meetings

- 3.19 A meeting of the Council shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that the following requirements are all satisfied:

- 3.19.1 there shall be present at the meeting at least one third of all
Governors
3.19.2 of those present, at least 51% shall be publically elected Governors

A Governor shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Governors present at the meeting.

If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chairman.

- 3.20 If a Governor has declared a direct pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.

- 3.21 Where a Governor:

3.21.1 has declared an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and

3.21.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

3.21.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does

not exceed one-hundredth of the total issued share capital of that class;

3.21.4 the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.

- 1.22. A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting.
- 1.33 The minutes shall record any declarations of interests on the part of Governors and any action taken in respect of them.

Conduct of Business

- 1.34 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the Chairman shall have a casting vote.
- 1.35 All questions put to the vote shall, at the discretion of the person presiding, 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.
- 1.36 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 1.37 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 1.38 In no circumstances may an absent Governor vote by proxy.

Minutes of Meetings

- 1.39 The minutes of the meeting, which shall include the names of the Governors present, shall be drawn up and submitted by Secretary for the Council's approval at its next meeting. Subject to the Chairman's approval, the minutes may be circulated in draft form to Governors prior to the Council's next meeting and made available to the public (including through the Trust's website).

- 1.40 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chairman considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

- 1.41 Where the Council so decides in respect of any matter or, where it is necessary, at the discretion of the Chairman, the Council may take decisions by means of a written resolution.
- 1.42 A resolution in writing sent to all Governors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Council duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governor.

4. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

- 4.1 These Standing Orders shall not be suspended except:
- 4.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Council
 - 4.1.2 at a meeting of the Council, at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors
- 4.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

- 4.3 These Standing Orders shall be reviewed one year after approval by the Council and then at least annually thereafter.
- 4.4 These Standing Orders shall be amended only if:

- 4.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 2.4.5 at least three quarters of the Governors present and voting at a meeting of the Council, including one Staff Governor, one Public Governor and one Appointed Governor are in favour of amendment.
 - 2.4.6 The proposed amendment(s) has/have been discussed the Board.
- 2.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by NHS Improvement.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

5. INTERPRETATION

- 5.1 In these Standing Orders, the provisions relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

6. APPLICATION OF STANDING ORDERS

- 6.1 These Standing Orders apply to all meetings of the Board of Directors (“the Board”) and all other relevant activities of the Directors. All Directors are required to abide by these Standing Orders, which also apply to any persons attending meetings of the Board.
- 6.2 Except where required by law or the Constitution, at any meeting of the Board, the Chairman (or in his absence, the Deputy Chairman) shall be the final authority on the interpretation of these Standing Orders (on which he should be advised by the Chief Executive and the Secretary).
- 6.3 Whilst the Secretary shall be responsible for ensuring that Directors are made aware of these Standing Orders, Directors are expected to familiarise themselves with the provisions.
- 6.4 In the event of any actual or suspected non-compliance with these Standing Orders by a Director, the person identifying such actual/ suspected non-compliance shall report it to the Chairman or Secretary and the Chairman/ Secretary shall be responsible for taking such action as is necessary, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

7. MEETINGS OF THE BOARD OF DIRECTORS

Frequency of Meetings

- 7.1 The Board shall decide the frequency of and calendar for its meetings, subject to the Board holding not less than four per year. The Secretary shall ensure that within the meeting cycle of the Board, meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 7.2 Notwithstanding clause 3.1 above, the Chairman may at any time call a meeting of the Board. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the total number of Directors, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has

been presented to him/her, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting of the Board.

Admission of the Public and Observers

- 7.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Board unless the Board decides otherwise in relation to all or part of any particular meeting. The Board may also invite observers to attend its meetings.
- 7.4 The public shall be excluded from meetings of the Board only where the business under discussion is commercially sensitive or is otherwise considered to be confidential. The Chairman may exclude any member of the public from a meeting of the Board if the person is interfering with or preventing the proper conduct of the Board's business. The Chairman's decision in this respect shall be final.
- 7.5 The Chairman shall decide the arrangements through which any questions from members of the public will be asked and answered.

Chairman for Meetings of the Board

- 7.6 The Chairman of the Trust, or in his absence, the Deputy Chairman shall preside at meetings of the Board.
- 7.7 The Deputy Chairman may preside at meetings of the Board in the following circumstances:
- 7.7.1 when there is a need for someone to have the authority to chair any meeting of the Board when the Chairman is not present;
 - 7.7.2 on occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Board.
- 7.8 If it would not be appropriate for the Chairman or the Deputy Chairman to preside, then the remaining Non-Executive Directors shall choose one of the other Non-Executive Directors to preside.
- 7.9 Statements made by Directors at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

- 7.10 Before each meeting of the Board, a notice of the meeting signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every member of the Board, or sent by post to the usual place of residence of such Director, no less than five clear working days before the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.
- 7.11 Except in the case of emergencies or in case of a need to conduct urgent business, the Secretary shall give to all Directors at least 10 clear working days' written notice of the date and place of every meeting of the Board.

Written notice shall be deemed to include communication by email. Notice will also be published on the Trust's website.

- 7.12 In the case of a meeting called by the Directors in default of the Chairman, the notice shall be signed by those respective Directors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Directors shall not affect the validity of a meeting.

Agenda and Notification of Business

- 7.13 At the direction of the Board, the Secretary shall draw up and maintain a plan for the agenda of the Board's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Board, which it will agree with the Council. The agenda plan shall be approved by the Board at least once in each calendar year.
- 7.14 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 7.15 A Director desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chairman or the Secretary at least three clear business days before notice of the meeting is given. Requests made less than three days before the notice is given may be included on the agenda at the discretion of the Chairman.
- 7.16 Before each meeting of the Board, an agenda setting out the business of the meeting, approved by the Chairman or by an officer of the Trust authorised by the Chairman on his behalf shall be delivered electronically to every member

of the Board, specifying the business proposed to be transacted at it at least five clear days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Board has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Directors and approved by the Chairman. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

- 7.17 The Secretary shall be responsible for compiling and distributing to Directors (and, where their attendance is permitted, members of the public) papers for meetings of the Board. Papers shall be issued at least five clear days prior to each meeting of the Board. Papers will only be tabled at the Board's meetings in exceptional circumstances and then only with the prior approval of the Chairman.

Quorum for Meetings

- 7.18 A meeting of the Board shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that at least half of the Board must be present, including two Non-executive Directors and two Executive Directors. A Director shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Directors present at the meeting.
- 7.19 If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chairman.

Declaring interests

- 7.20 If a Director has declared a direct pecuniary interest in any matter, the Director must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.
- 7.21 Where a Director:
- 7.21.1 has declared an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
 - 7.21.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share

capital of the company or body, whichever is the less, and

7.21.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;

7.21.4 the Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.

7.22 A Director who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Director will count towards the quorum of the meeting.

7.23 The minutes shall record any declarations of interests on the part of Directors and any action taken in respect of them.

7.24 See further paragraph 4 (declarations and register of directors' interests) of Annex 7 (further provisions).

Conduct of Business

7.25 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Director requests, a question at a meeting shall be determined by a majority of the votes of the Director present and voting on the question and, in the case of any equality of votes, the Chairman shall have a casting vote.

7.26 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

7.27 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

7.28 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

7.29 An officer who has been formally appointed to act for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director, and shall therefore count towards the quorum. An officer attending the Board to

represent an Executive Director during a period of incapacity or temporary absence in the absence of a formal acting arrangement (i.e. a proxy) shall not exercise the voting rights of the Executive Director or count towards the quorum. The minutes shall record the status of Directors attending to represent Executive Directors.

- 7.30 For the avoidance of doubt, in no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

Minutes of Meetings

- 7.31 The minutes of the meeting, which shall include the names of the Directors present, shall be drawn up and submitted by Secretary for the Board's approval at its next meeting. Subject to the Chairman's approval, the minutes may be circulated in draft form to Directors prior to the Board's next meeting and made available to the public (including through the Trust's website)..

- 7.32 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chairman considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

- 7.33 Where the Board so decides in respect of any matter or, where it is necessary, at the discretion of the Chairman, the Board may take decisions by means of a written resolution.
- 7.34 A resolution in writing sent to all Directors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.

8. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

- 8.1 These Standing Orders shall not be suspended except:
- 8.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Board
 - 8.1.2 at a meeting of the Board, at least half of the total number of Directors are present, such number to include at least one Non-executive Director
- 8.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Board and shall be reported to the Audit Committee.

Amendment and Review

- 8.3 These Standing Orders shall be reviewed one year after approval by the Board and then at least annually thereafter.
- 8.4 These Standing Orders shall be amended only if:
- 8.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 4.4.5 at least three quarters of the Board present and voting at a meeting of the Board are in favour of amendment.
 - 4.4.6 The proposed amendment(s) has/have been discussed with the Council.
- 4.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by NHS Improvement.

ANNEX 7 – FURTHER PROVISIONS RELATING TO THE BOARD OF DIRECTORS

20. INTERPRETATION

- 20.1 In these Provisions, the clauses relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

PART A – PROVISIONS RELATING TO THE BOARD OF DIRECTORS

21. APPLICATION OF PROVISIONS

- 21.1 These Provisions apply to all meetings of the Board of Directors (“the Board”) and all other relevant activities of the Directors. All Directors are required to abide by these Provisions, which also apply to any persons attending meetings of the Board.
- 21.2 Except where required by law or the Constitution, at any meeting of the Board, the Chairman (or in his absence, the Deputy Chairman) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).
- 21.3 Whilst the Secretary shall be responsible for ensuring that Directors are made aware of these Provisions, Directors are expected to familiarise themselves with the provisions.
- 21.4 In the event of any actual or suspected non-compliance with these Provisions by a Director, the person identifying such actual/ suspected non-compliance shall report it to the Chairman or Secretary and the Chairman or Secretary shall be responsible for taking such action as is necessary, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

22. APPOINTMENT AND REMOVAL OF DIRECTORS

The provisions of this Section 3 shall be subject always to paragraphs 21 to 31 (inclusive) of the Constitution.

Chief Executive

- 22.1 There shall be a Nominations & Remuneration Committee of the Board which shall be responsible for appointing the Chief Executive. When the Committee is considering the appointment of the Chief Executive, it shall comprise of the Chairman and as many of the Non-Executive Directors as the Board decides.

The Committee shall make a recommendation to the Chairman and the other Non-Executive Directors, and their decision shall be subject to approval by the Council.

Executive Directors

- 22.2 The Board shall establish a Committee to appoint the Executive Directors. The Committee shall comprise of the Chairman, the Non-Executive Directors and the Chief Executive. The Committee's decision shall be final.

Terms of Office and Process

- 22.3 There shall be written policies and processes, approved by the Board, to set out the process by which the Chairman, Non-Executive Directors, Chief Executive and Executive Directors shall be appointed, and through which their terms and conditions of appointment shall be decided. In the case of the appointment of the Chairman, Non-Executive Directors and the Chief Executive, these policies and processes shall be subject to the approval of the Council.
- 22.4 Save for the initial Chairman and initial Non-Executive Directors who shall be appointed for a term in accordance with their letters of appointment, the Chairman and the Non-Executive Directors appointed after the Acquisition Date shall be appointed for a term of three years. Subject to other relevant provisions in the Constitution, Non-Executive Directors shall be subject to re-appointment thereafter at intervals of no more than 3 years. Non-executive Directors may serve for a term beyond 6 years subject to annual re-appointment. Non-Executive Directors may not serve for a term of more than nine years in aggregate.

Appointments – Other Matters

- 22.5 No defect in the appointment of a Director nor any deficiency in the composition of the Board shall affect the validity of any act or decision of the Board.
- 22.6 The Trust may confer on a person the title "Director" as an indication of his seniority and/or the corporate nature of his responsibilities within the Trust but such a person shall not be an Executive Director or Non-Executive Director of the Trust for the purposes of the 2006 Act unless he is a member of the Board of Directors as defined by the Constitution and, therefore, subject to Section 3.29 of Annex 6, he will have no right to vote at meetings of the Board.

Removal or Resignation from Office

- 22.7 A person shall not be eligible to become or continue in office as a Director if:

- 22.7.1 in respect of a Non-Executive Director, he does not meet the criteria for eligibility in paragraph 24 of the Constitution;
- 22.7.2 in respect of any Director, any of the grounds contained in paragraph 28 apply to him;
- 22.7.3 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
- 22.7.4 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list;
- 22.7.5 NHS Improvement has exercised its powers to remove him as a Director of the Trust or has suspended him from office or has disqualified him from holding office as a Director of the Trust for a specified period or NHS Improvement has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
- 22.7.6 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended) and his conviction is not spent under the Rehabilitation of Offenders Act 1974;
- 22.7.7 he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs;
- 22.7.8 he is a Governor of the Trust or a director of another NHS Foundation Trust;

Termination of Tenure

22.8 A Director's term of office shall be terminated:

- 22.8.1 if he is a Non-Executive Director if he gives notice in writing to the Secretary of his resignation from office at any time during that term of office or under paragraph 25.2 of the Constitution;
- 22.8.2 if he is an Executive Director if he gives notice in writing to the Chief Executive of his resignation from office at any time or under paragraph 27.3 of the Constitution.

- 22.9 Where a person has been appointed to the Board and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered him disqualified.
- 22.10 A Director whose tenure of office is terminated shall not be eligible for re-appointment for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a majority of the Board present and voting at a meeting.
- 22.11 Upon a Director resigning or ceasing to be eligible to continue in office that person shall cease to be a Director and his name shall be removed from the Register of Directors.

Vacancies

- 22.12 Where a Director resigns or his office is terminated, the vacancy shall be filled through the processes agreed as set out in Section 3.4 above.

23. DECLARATIONS AND REGISTER OF DIRECTORS' INTERESTS

- 23.1 In accordance with the Constitution, Directors are required to declare on appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust.
- 23.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Provisions and delivering it to the Secretary within 28 days of a Director's appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.
- 23.3 If a Director is present at a meeting of the Board and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.
- 23.4 The term "relevant and material interests" may include (but may not be limited to) the following:

- 23.4.1 directorships, including non-executive directorships held in private or

public limited companies (with the exception of those of dormant companies);

23.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;

23.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;

23.4.4 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;

23.4.5 research funding/grants that may be received by an individual or their department;

23.5 Any traveling or other expenses or allowances payable to a Director in accordance with this Constitution shall not be treated as a pecuniary interest.

23.6 Subject to any other provision of this Constitution, a Director shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:

23.6.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

23.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.

23.7 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

23.7.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;

23.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

- 23.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.
- 23.9 If a Director has any doubt about the relevance of an interest, he must take advice from the Secretary.

24. STANDARDS OF CONDUCT

- 24.1 Subject to the 2006 Act (as amended and/or replaced from time to time), Directors shall comply with the terms of their relevant Role Descriptions which shall be approved by the Board and, as set out in these Provisions, the Council, and which the Secretary shall issue to Directors upon appointment to the Board. The Directors shall comply with any codes of conduct or other standards referenced in their Role Descriptions.
- 24.2 In the event that there are concerns about a Non-Executive Director's performance or conduct, the Chairman, with the support of the Secretary where necessary, will address these directly with the Non-Executive Director concerned. Where necessary, the Chairman will make recommendations to the Board, including in respect of any proposal that the Board should remove the Non-Executive Director from office in which case the provisions of Section 3 of these Provisions shall apply.
- 24.3 In the event that there are concerns about an Executive Director's performance or conduct, the Chief Executive, with the support of the Secretary and others where necessary, will address these directly with the Executive Director concerned. Where necessary, the Chief Executive will make recommendations and/or reports to the Board, including in respect of any proposal that the Board should remove the Executive Director from office in which case the provisions of Section 3 of this Annex 7 shall apply.

25. REMUNERATION AND BUSINESS EXPENSES

- 25.1 The Trust is permitted to reimburse traveling expenses to Non-Executive Directors for attendance at meetings of the Board, or for any other business authorised by the Chairman as being reasonably within the role and duties of a Non-Executive Director, at a rate to be determined by the Council of Governors. The Chief Executive shall be responsible for authorising expenses incurred by Executive Directors, to be paid at a rate to be determined by the Chairman and Non-Executive Directors.
- 25.2 A summary of expenses paid to Directors will be published in the Annual Report.

26. COMPOSITION AND ROLE OF BOARD OF DIRECTORS

- 26.1 All of the Board's business shall be conducted in the name of the Trust.
- 26.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Board is defined in its Terms of Reference which shall be approved by the Board of Governors and the Board of Directors.
- 26.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the composition of the Board shall be as set out in the Constitution.
- 26.4 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chairman and the role of Non-Executive Director shall be as defined in Role Descriptions which shall be approved by the Council and the Board.
- 26.5 The Council shall appoint one of the Non-Executive Directors to be Deputy Chairman. The role of the Deputy Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 26.6 The Board shall appoint one of the Non-Executive Directors to be the Senior Independent Director ("SID"). The role of Senior Independent Director shall be as defined in the Role Description which shall be approved by the Board.

27. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 27.1 Subject to the Constitution, Terms of Authorisation or any relevant statutory provision, the Board may make arrangements for the delegation, on behalf of the Board, of any of its powers to a committee of directors or to an executive director.
- 27.2 The Board shall delegate responsibility and authority on any terms which it considers to be appropriate, such terms to be defined in written terms of reference approved by the Board.
- 27.3 The Board's arrangements for the exercise of functions through delegation shall be set out within a Scheme of Delegation to be approved by the Board. This shall include delegation to Committees and to Directors, and shall specify those matters which are reserved to the Board to decide.

28. COMMITTEES OF THE BOARD

- 28.1 Subject to the 2006 Act (as amended and/or replaced from time to time), the Board shall establish an Audit Committee and a Nominations & Remuneration Committee, whose role, responsibilities and authority shall be defined in terms of reference to be approved by the Board in accordance with paragraphs 32 and 38 of the Constitution. The Board shall appoint the Chairmen and the

Members of the Committees.

28.2 Subject to the Constitution, the Terms of Authorisation and such binding guidance as may be given by NHS Improvement, the Board may and, if so required by NHS Improvement, shall appoint other committees of the Board consisting wholly or partly of Directors or wholly of persons who are not Directors. The Board shall not delegate any of its powers to such committees but committees may act in an advisory capacity to assist the Board in carrying out its functions.

28.3 These Provisions of the Board shall as far as they are applicable apply with appropriate alteration to any committees established by the Board.

29. PROFESSIONAL ADVICE

29.1 The Board shall have direct access to any independent advice which it considers necessary for the proper discharge of its functions, such advice normally being obtained by the Secretary. Such advice shall be commissioned through terms of reference to be agreed by the Board and may be presented in written form and/or by advisors attending meetings of the Board. The Trust shall meet the cost of any such advice commissioned by the Board. The Board shall establish a policy to set out the circumstances in which and the arrangements through which advice shall be taken and reported to the Board.

30. DIRECTORS AND GOVERNORS: WORKING ARRANGEMENTS

Engagement, Collaboration and Consultation

30.1 The Board and the Council shall agree work-plans for their meetings and activities, which shall be complementary and integrated. The work-plans shall identify the matters on which and, where possible, the timetable over which the Board and the Council shall consult each other about the business which they deal with. The work-plans shall take account of the Trust's strategy and business plans.

30.2 As a minimum, the Board shall consult the Council on the following matters:

30.2.1 proposals for the Trust's strategy and its annual Business Plan;

30.2.2 proposals for significant service developments;

30.2.3 the Trust's operational performance and delivery against plans generally;

30.2.4 service reviews and evaluations in respect of the Trust's services;
and

30.2.5 development of the Trust's membership and plans for engagement with patients and the public generally.

30.3 The Board shall present to the Council the Trust's Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.

30.4 The Board and the Council shall hold at least one joint meeting per year.

30.5 Directors and Governors may agree to attend each other's' meetings through a schedule to be agreed by the Board and the Council.

Informal Communication

30.6 The Chairman shall use his reasonable endeavours to promote communication between the Board and the Council, including through:

30.6.1 participation of the Board in the induction, orientation and training of Governors;

30.6.2 development of special interest relationships between Non-Executive Directors and Governors;

30.6.3 discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer;

30.6.4 involvement in membership recruitment and briefings at events organised by the Trust.

Formal Communication

30.7 Where it is otherwise necessary, such as where it is prescribed by the Constitution, these Provisions, Terms of Authorisation or elsewhere, the Board and the Council shall communicate formally by the means set out below:

30.7.1 the Council may and, where required, shall at any time ask for matters to be referred to the Board. Any such referrals shall be made through the Chairman who shall arrange for the matter to be added to the agenda for the next scheduled meeting of the Board;

30.7.2 in the absence of the Council agreeing to refer a matter to the Board, any Governor may through the Chairman refer a matter to the Board of Directors but if the Chairman declines to refer

any such issue the said Governor may refer it provided that two thirds of the Governors present approve his request to do so. The Chairman shall then refer the matter to the Board and provide the response to the Council.

31. RESOLUTION OF DISPUTES

- 31.1 In the event of dispute between the Council and the Board then the dispute resolution procedure set out below shall be followed in order to resolve the matters concerned. The Council and the Board shall at all times recognise their roles and responsibilities as defined in the Constitution, these Provisions, Terms of Reference and any other documents approved.
- 31.2 The Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall endeavour through discussion with Governors and Directors or, if it is considered to be more expedient, appointed representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 31.3 In the event that it is not possible to resolve the dispute through the process described in 12.2 above, the Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to clearly and concisely produce a recommendation statement to the Council and to the Board with a view to resolving the dispute (the "Recommendation Statement").
- 31.4 The Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall ensure that the Recommendation Statement, without amendment or abbreviation in any way, shall be considered at the next scheduled meeting of both the Council and the Board. Where it is considered necessary or expedient to convene a meeting of the Council or of the Board earlier than is otherwise scheduled then the Chairman shall do so and in this event the relevant provisions of these Provisions shall apply.
- 31.5 If in the opinion of the Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, and following the further discussions prescribed in 12.4 there is no further prospect of a full resolution or, if at any stage in the process, in the opinion of the Chairman or the Senior Independent Director (as the case may be) there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly. In the event that the dispute cannot be resolved, the decisions of the Board shall prevail. In the event that the dispute is resolved to the satisfaction of the Council and the Board, the Board shall implement the decisions taken.
- 31.6 Nothing in this procedure shall prevent the Council, through the Lead

Governor, from informing NHS Improvement that in the Council's reasonable opinion its concerns are such that if they remain unresolved, the Trust will be at risk of breaching the terms of its Authorisation.

PART B – MEMBERSHIP OF THE TRUST

32. ELIGIBILITY FOR MEMBERSHIP

General

- 32.1 An individual shall not be eligible for membership of the Trust if he:
- 32.1.1 fails or ceases to fulfill the criteria for membership of any of the constituencies;
 - 32.1.2 was formerly employed by the Trust or any health service body and in the preceding two years was lawfully dismissed other than by reason of redundancy;
 - 32.1.3 has been involved as a perpetrator in a serious incident of violence or abuse in the last five years at any of the Trust's hospitals or against any of the Trust's Governors, Directors, staff members or patients;
 - 32.1.4 has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person's Acts 1933 to 1969 (as amended) and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 32.1.5 does not agree to abide by the Trust values as published by the Trust;
 - 32.1.6 has been identified as a vexatious complainant or has been excluded from treatment at any of the Trust's hospitals due to unacceptable behaviour;
 - 32.1.7 is deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust; or
 - 32.1.8 is under the age of sixteen years.
- 32.2 It is the responsibility of members to ensure that they are eligible for membership but if the Trust is on notice that a member may be disqualified from membership, the Trust shall carry out all reasonable enquiries to establish whether or not this is the case.
- 32.3 Where an individual is held by the Trust to be ineligible and/or disqualified from membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Secretary (or such other officer of

the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

32.4 The Secretary (or his nominated representative) shall:

- (d) review the decision having regard to any representations made by the individual concerned and such other material, if any, as the Secretary considers appropriate;
- (e) either confirm the decision or make some other decision as appropriate based on the evidence which he has considered; and
- (f) communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

32.5 If the member is aggrieved of the decision of the Secretary he may appeal in writing to the Council of Governors ("the Council") within 14 days of the Secretary's decision. The Council shall consider the matter at its next meeting and its decision shall be final

Public Membership

32.6 For the purposes of determining whether an individual lives in a public constituency, an individual shall be deemed to do so if;

32.6.1 his name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or

32.6.2 the Trust is otherwise satisfied that the individual lives within the said area.

Staff Membership

32.7 An individual shall be deemed to be eligible for membership of the staff constituency if he meets the eligibility criteria set out in the Constitution.

33. APPLICATION FOR MEMBERSHIP

33.1 Where a person wishes to apply to become a member of the Trust, the following procedure shall apply

33.1.1 the Trust shall upon request supply him with a form of application

for membership in a form determined by the Trust;

33.1.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonably practicable and in any event within 28 working days of receipt of the duly completed form consider the same;

33.1.3 unless the applicant is ineligible for membership or is disqualified from membership, the Trust shall cause his name to be entered on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;

33.1.4 upon the applicant's name being entered on the Trust's Register of Members he shall become a member;

33.1.5 the information to be included in the Trust's Register of Members shall include the following details relating to that member:

- (a) his/her full name and title;
- (b) his/her date of birth;
- (c) his/her full postal address;
- (d) his/her home telephone number (if any);
- (e) his/her email address (if any);
- (f) the constituency and, where relevant, the area or class of which he/she is a member;
- (g) the date upon which he/she became a member; and
- (h) his/her gender and ethnicity.

33.2 For the avoidance of doubt and subject to the restrictions on making the Trust's registers available in accordance with paragraph 35.2 of the Constitution, where a member of the public makes a request to inspect the Register of Members, pursuant to paragraph 35 of the Constitution (Registers – inspection of copies), the Trust shall disclose only those parts of the Register that detail the members' names, constituency, and, where relevant, their area or class within that constituency in accordance with paragraph 20 and paragraph 22(3) of Schedule 7 of the 2006 Act and subject always to compliance with data protection requirements.

34. REGISTER OF MEMBERS

34.1 For the avoidance of doubt, an individual shall become a member on the date upon which his/her name is entered on the Trust's Register of Members and shall cease to be a member upon the date on which his/her name is removed from the Register of Members as provided for in this Constitution.

34.2 The Register of Members and all other Registers shall be maintained in accordance with this Constitution and in accordance with the 2006 Act. The

Registers shall be reviewed and updated regularly and, in the case of the Register of Members, within 14 days of receipt of any new or amended information about members.

- 34.3 Where in the reasonable opinion of the Trust a member is no longer eligible or is disqualified from Membership of the Trust, the Trust shall be entitled to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member provided always that this power shall not be exercised until the Trust has given not less than fourteen days written notice to the member addressed to him at the address given in the Register of Members of its intention to remove him from the Register and that member has not within that period notified the Trust of his wish to continue as member and provided proof satisfactorily to the Trust of his continued eligibility.

35. TERMINATION OF MEMBERSHIP

- 35.1 A person shall cease to be a member if:

- 1.16.5 he resigns by notice in writing to the Trust;
- 1.16.6 he ceases to be entitled under this Constitution to be a member of any area within the Public Constituency or of any of the classes of the Staff Constituency;
- 1.16.7 he is expelled from membership in accordance with the provisions of this Constitution;
- 1.16.8 he dies.

- 35.2 An individual who is a member of the Public Constituency shall cease to be eligible to continue as a member if he ceases to live in the area of the Public Constituency of which he is a member save as provided elsewhere in these rules. In the event that a member moves to another Public Constituency area and requests to be a member in that area, if the Trust is satisfied that the individual concerned lives in such other area, that individual shall thereafter be treated as a member of that other area within the Public Constituency.

- 35.3 Where an individual is a member by virtue of their eligibility to be a member of a Staff Class and they cease to be eligible for membership of that Staff Class but are eligible for membership of some other Staff Class, then the Trust may give notice to that member of its intention to transfer him to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

PART C – OTHER PROVISIONS

36. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 36.1 The Common Seal of the Trust shall be kept by the Trust Secretary on behalf of the Chief Executive or designated officer in a secure place.
- 36.2 The seal of the Trust shall not be affixed to any documents unless the sealing has been authorised by a resolution of the Board, a committee, or, where the Board so decides, one or more Directors. The seal shall only be affixed in the presence of two Directors.
- 36.3 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by those who attested the seal. A report of all sealings shall be made to the Board at least quarterly. (The report shall contain details of the seal number, a description of the document and the date of sealing).

37. SIGNATURE OF DOCUMENTS

- 37.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 37.2 The Chief Executive or nominated Director(s) shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee, sub-committee or standing committee with delegated authority.

38. SECRETARY

- 38.1 The Trust shall have a Secretary, who may be an employee. The Secretary shall not be a Governor, or the Chief Executive or the Finance Director.
- 38.2 The Secretary shall be appointed and, where necessary, removed only by the Chairman and Chief Executive acting jointly, who shall report their actions to the Board and the Council.
- 38.3 The Secretary's functions shall be set out within a job description which shall be approved by the Chairman and the Chief Executive.

20.0 INDEMNITY FOR GOVERNORS, DIRECTORS AND THE SECRETARY

- 20.1 Members of the Council; and the Board; and the Secretary, who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their duties, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Resolution to cover such costs.

ANNEX 8 Lead & Deputy Lead Governor Role Description

Role Description

Accountability:

The Lead and Deputy Lead Governors are accountable to the Council of Governors collectively as a serving Member of the Council.

The Role:

- To be an external point of contact for NHS Improvement (formerly Monitor) where it may be considered inappropriate for the Chairman or the Deputy Chairman, or for the Secretary to deal with a particular matter.
- To facilitate communications and a good working relationship between the Governors and the Executive Board and Trust Board including acting as the principle independent channel for communications between the Governors and Executive Board and Trust Board through the Chairman, the Chief Executive, the Secretary or the Senior Independent Director.
- To consult routinely with the Governors, the Chairman and the Secretary regarding the planning and preparation of the Council of Governors agenda.
- To be a member of the Nominations and Remuneration Committee.
- To contribute to the appraisal of the Chairman by the Senior Independent Director, supported by the Secretary, in accordance with the process determined by the Council of Governors including the collation of input from other Governors and the Nominations and Remuneration Committee on the performance of the Chairman.
- Contribute to the determination of the appraisal process of the Non-Executive Directors to be undertaken by the Chairman and supported by the Nominations and Remuneration Committee.
- To recommend to the Council of Governors on behalf of the Nominations and Remuneration Committee any appointments/reappointments of Chair; Non-Executive Directors and/or the Chief Executive.

- To take an active role in the activities of the Council of Governors and to meet with the Chairman and the Secretary on a regular basis to discuss relevant issues.
- Support the Chairman and the Secretary in any action to remove a Governor due to unconstitutional behaviour in accordance with the Code of Conduct.
- To be involved in the induction process for any newly appointed Public Governor.
- The Lead Governor may call upon the support of the other Governors, the Chairman, the Secretary and the Senior Independent Director to carry out their role effectively to the benefit of the Council of Governors.
- In liaison with the Chairman and the Secretary, support the development of the skills and strengths of the Council of Governors and raise public awareness of all Governors.
- To chair meetings of Council of Governors where the Chairman, Deputy Chairman or other Non-Executive Director cannot chair the meeting due to a conflict of interest.
- Where approved by the Council and/or the Chairman speak for and represent the Council at the AGM and on other occasions
- Other duties as requested by the Council of Governors or the Chairman.
- Chair the Pre-Council of Governors meeting and any informal meetings.

The Person:

To fulfil this role effectively, the Lead Governor will need to:

- Be a publically elected Governor
- Have the confidence of Governor colleagues and members of the Executive Board and Trust Board
- Be able to forge constructive working relationships with colleagues
- Understand NHSI's role, the available guidance and the basis upon which NHSI may take regulatory action
- Be committed to the success of the Trust and understand the Trust's Constitution

- Have the ability to influence and negotiate
- Be able to present a well-reasoned, unbiased argument
- Demonstrate ability to maintain confidentiality of information.

The Appointment:

The tenure is two financial years with the option for re-election in accordance with due process, for up to the full tenure period of the elected Governor's 'appointment'.

In accordance with a process agreed by the Council of Governors, the Secretary will administer a bi annual nomination and election/re-election procedure that will require: -

- Submission of an expression of interest (for re-election and for new election candidates)
- Submission of a statement for support of no more than 250 words supporting candidature (only for NEW nominations and/or contested elections);
- Election by 'show of hands' or by secret ballot as determined by the relevant Council meeting.

Additional:

The Lead Governor will work closely with and be supported and deputised for by a Deputy Lead Governor whose appointment will follow the same procedure above. It is anticipated, where terms of office accord, that the Deputy Lead Governor will put themselves forward for Lead Governor position when that position becomes vacant, remaining subject to the appointment process above.

ANNEX 9

Code of Conduct for Governors

1.00 INTRODUCTION

- 1.01 The Council of Governors (the Council) in support of the individual governors has established a Code of Conduct for Governors which codifies the expectations of its individual Governors and the process which will be followed should there be a need to consider if a Governor has deviated from this Code.

2.00 FRAMEWORK FOR COUNCIL OF GOVERNORS

- 2.01 The Trust operates within a legal, regulatory and governance framework established by the NHS Act 2006, the Health and Social Care Act 2012, the NHS Foundation Trust Code of Governance published by Monitor in 2013 and updated in 2014 (**Code of Governance**) and Monitor's Risk Assessment Framework updated in August 2015 (**Risk Assessment Framework**) and other regulatory requirements and the Trust's Constitution. The Constitution defines the membership of the Council and defines the arrangements for appointing (and where necessary, removing) Governors.

- 2.02 The Trust's regulatory and governance framework is supplemented by this Code of Conduct for Governors and the Role Description for Governors set out in Annex 8 of the Constitution, both of which reflect the statutory responsibilities for the Council. It should be noted that nothing within this Code of Conduct shall take precedence over or in any way amend the Constitution or any regulatory requirements.

3.00 ROLE OF THE COUNCIL OF GOVERNORS

- 3.01 The role of the Council is defined in law and in Monitor's reference guide for NHS foundation trust governors dated October 2009 and updated in August 2013, including the Constitution. Although the role is not repeated here it is important as context for this Code of Conduct to recognise that it is essential for the good governance of the Trust for the Council and the Board of Directors (the Board) to engage actively and constructively. Such an approach will ensure that the Council is able to contribute to the development of the Trust's strategy and plans, approve transactions where appropriate, hold the Non-Executive Directors to account (for the performance of the Board), and represent to the Board the views of members and the public. This approach will also ensure that the Board takes into account the views of the Council – for example, in relation to the Trust's strategy - and that it seeks the Council's timely approval for transactions and other proposals as defined in the Constitution.

4.00 BOARD OF DIRECTORS/COUNCIL OF GOVERNORS ENGAGEMENT

- 4.01 The Terms of Reference for the Board and for the Council (and relevant Role Descriptions) state that the Board and Council will engage actively and constructively, recognising the Board's responsibility for determining the Trust's strategy and for directing and controlling the organisation. The Terms of Reference and the Constitution commit to a jointly-agreed work-plan to set out for each financial year the way in which the Board and the Council will work together. This will ensure that the Board and the Council consider business in a co-ordinated way, ensuring that the Council has the opportunity to comment on or approve (as appropriate by reference to the Constitution) proposals at the correct time.
- 4.02 This Code of Conduct commits the Council as a whole and Governors individually to engaging proactively and constructively with the Board, acting through the Chairman, the Senior Independent Director and any Lead Governor where appropriate according to their roles. The Council will work with the Board for the best interests of the Trust as a whole, taking into account all relevant advice and information presented to or requested by the Council. The Council will not unduly delay responses to proposals from the Board, acting proactively to agree with the Board the information which the Council will need in order properly to consider proposals.

5.00 CONDUCT OF GOVERNORS

- 5.01 This section of the Code sets out the conduct which all Governors agree to abide by. These commitments are in addition to compliance with regulatory requirements, the Code of Governance, the Constitution, the Terms of Reference for the Council and the Role Description for Governors.

Personal Conduct

- 5.02 Governors agree that they will:
- p) act in the best interests of patients and the Trust as a whole in the delivery of services within relevant financial and operational parameters;
 - q) be honest and act with integrity and probity at all times;
 - r) respect and treat with dignity and fairness, the public; patients; relatives; carers; NHS staff and partners in other agencies;

- s) not seek to profit from their position as a Governor or in any way use their position to gain advantage for any person;
- t) respect and value their fellow Governors as colleagues;
- u) ensure that no person is discriminated against on grounds of religion or belief; ethnic origin; gender; marital status; age; disability; sexual orientation or socio-economic status;
- v) show their commitment to team working by working constructively with their fellow Governors and the Board as well as with their colleagues in the NHS and the wider community;
- w) accept responsibility for their actions and generally take seriously the responsibilities which are commensurate with the decision-making rights assigned to the Council through the legal and regulatory framework;
- x) seek to ensure that the best interests of the public; patients; carers and staff are upheld in decision making and that those decisions are not influenced by gifts or inducements or any interests outside the Trust;
- y) not make, permit or knowingly allow to be made any untrue, misleading or misrepresentative statement either relating to their own role or to the functions or business of the Trust;
- z) at all times, uphold the values and core principles of the NHS and the Trust as set out in its Constitution;
- aa) conduct themselves in a manner which reflects positively on the Trust and not in any manner which could be regarded as bringing it into disrepute, whether they are on Trust property or fulfilling their public function in the wider community;
- bb) seek to ensure that the membership of the constituency from which they are elected is both properly informed and represented, or if they are appointed, then the body from which they are appointed is both properly informed and represented;
- cc) at all times, uphold the seven principles of public life as set out by the Committee on Standards in Public Life (also known as the Nolan Committee and the Wicks Committee) as below:

Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves; their family or friends or other interested parties.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments; awarding contracts or recommending individuals for awards or benefits, holders of public office should make choices on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all the decision and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office shall promote and support these principles by leadership and example.

dd) seek advice from the Chairman or the Secretary on matters relating the Constitution, governance requirements or conduct, and have regard to the advice given to them.

Confidentiality

- 5.03 Governors will respect the confidentiality of the information to which they are made privy to as a result of their membership of the Council, except where information is made available in the public domain.

- 5.04 Governors will understand, endorse and promote the Trust's Information Governance and Security Policy in every aspect of their work.

- 5.05 Governors will make no public statements on behalf of the Trust or communicate in any way with the media without the prior consent of the Chairman or a designated officer from the Trust's Communications department.

Declaration of Interests

- 5.06 It is essential for good corporate governance and to maintain public confidence in the Trust that all decision making is robust and transparent. To support this, the Constitution and the Trust's Policy on Declaration of Interests set out requirements for Governors to declare relevant interests (as defined in the Constitution). Governors have a statutory responsibility to avoid interests which may conflict with the interests of the Trust.
- 5.07 Governors will declare interests on request from the Secretary or, as required by the Constitution, whenever they become aware of a potential conflict of interest in respect of a matter being considered by the Council. Governors should seek advice from the Secretary or the Chairman where they are unsure as to whether an interest needs to be declared. Declared interests will be included in a Register of Interests, which will be published.

6.00 PARTICIPATION IN MEETINGS AND IN TRAINING AND DEVELOPMENT

- 6.01 The Council is required by the Constitution to hold meetings as required each year. The schedule for these meetings and for other activities will be proposed by the Secretary and is subject to approval by the Council. Governors will attend meetings of the Council, and of any committees or working groups to which they are appointed, or they will give apologies for absence where they are not able to attend.
- 6.02 The Trust has a statutory duty to support the Council to discharge its responsibilities, including through training and development for Governors. A programme of development and information seminars will be developed each year and it is expected that Governors will participate in such activities.

7.00 UPHOLDING THIS CODE OF CONDUCT

- 7.01 The Constitution provides that where there are concerns as to the conduct or performance of a Governor these are to be addressed in the first instance by the Chairman, with support from the Secretary, to include training and development where is considered relevant and necessary. Where such concerns exist the

Chairman will write to the Governor concerned to set out the concerns and the action agreed to rectify or otherwise address them.

- 7.02 The Constitution provides for the circumstances in which a Governor can be removed from office, including where any Governor fails to comply with this Code of Conduct. It is for the Chairman to propose removal from office if this is necessary after all other course of action, including training and development where relevant, have been exhausted. As required by the Constitution, it is for the Council to determine (in accordance with rules set out in the Constitution) whether any Governor should be removed from office following a proposal from the Chairman.

Process for investigating potential non-compliance with this Code

- 7.03 The process outlined below is to provide a framework for reviewing any alleged non-compliance together with key principles to be followed. It should be noted that this process applies to all Governors irrespective of category (Public, Staff or Appointed).
- 7.04 Should a member of the Trust or a member of the Council of Governors be made aware that the behavior of a Governor is such that there may be a breach of the Code of Conduct they should inform the Chairman or the Secretary as soon as possible. Upon receipt of such a notification the Chairman will determine within 7 working days whether there is a prima facie case to address.
- 7.05 If the Chairman in consultation with the Lead Governor (except if the referral is about the Lead Governor and in this case this would be in consultation with the Deputy Lead Governor) believes there is a case, the Governor concerned will be notified and an initial investigation will be undertaken by a Governors' Compliance Committee which will be convened for the purpose of investigating the complaint. The Governors Compliance Committee will consist of the Chair, 1 Staff Governor, 1 Public and 1 Appointed Governor (a total of 3 Governors). The Governors' Compliance Committee will not include any person who has already been involved in the complaint process.
- 7.06 An initial investigation will be conducted this will be undertaken by the Secretary or an appropriate member of their team. The initial investigation will seek to gather appropriate statements from the 'complainant' and/or witnesses. This should normally be completed within 15 working days.
- 7.07 Once information has been gathered the Governor concerned will be invited to meet with the Governors' Compliance Committee to respond to the issues. For personal support, on a non-professional basis, the Governor may choose at all times to be accompanied. The Committee should meet within 10 working days of the completion of the investigation.
- 7.08 The purpose of Governors' Compliance Committee meeting will be to establish whether there is sufficient information upon which a complaint could be upheld. At the conclusion of the meeting the Committee will decide if the matter should be

referred to the Council and the Governors' Compliance Committee will make a recommendation to the Council in respect of the Governor. The recommendation to the Council of Governors will include the sanctions they deem appropriate. Such sanctions may range from the issuing of a written warning as to the Governor's future conduct and consequences, a requirement to undertake training, the suspension and/or removal of the Governor from office.

- 7.09 Following the Governors' Compliance Committee meeting the Governor under investigation will be formally written to within 5 working days setting out the recommendation prior to presentation to the Council.
- 7.10 The Council will in considering the most serious of sanctions (suspension or removal), require the approval of at least two-thirds of the total Council in order to implement. For all other sanctions a simple majority of those Governors in attendance will suffice.
- 7.11 Where there is any disagreement as to whether the proposal for removal of a Governor is justified, the Code of Governance, P34 para B.6.6 will apply. i.e. " , an independent assessor agreeable to both parties shall be requested to consider the evidence and determine whether the proposed removal is reasonable or otherwise."
- 7.12 All statements and reports to the Governors' Compliance Committee and the Council will be held by the Secretary's team.

Appendix C: Summary of Principal Changes to WSHFT Constitution

Below is a table summarising the main changes from the current WSHFT Constitution to the proposed Constitution for the enlarged FT following the planned acquisition of BSUH on 1st April 2021.

Page / Section	Nature of the change	Rationale for the change
1, (front cover) 2, (contents) 4,(section 2) 65 (election form)	New entity's name post-acquisition to be inserted.	Mandatory requirement following the acquisition of BSUH by WSHFT (i.e. WSHFT's name will need to be updated to reflect the amalgamation of the two entities).
4 (section 1)	A new definition of: <ul style="list-style-type: none"> - 'Acquisition Date'; - 'Initial Public Governors'; and - 'Initial Public Governors' has been added into Section 1 (interpretation and definitions)..	The Acquisition Date has been inserted to reference the date of the acquisition of BSUH by WSHFT (defined as the date of the approval of the grant of the application by NHSI). The definitions of 'Initial Public Governor' and 'Initial Staff Governor' have been added to define those governors who hold office with WSHFT immediately prior to the Acquisition Date.
5,7,8 (para 8.4 and section 13)	Public and Staff Governors Any references to patient constituency/ patient governors have been removed. The public constituency has been amended to reflect the revised public areas (see Annex 1). The staff constituency is now split according to geographical location (see Annex 1). Section 13 sets out the tenure and appointment for the new public and staff elected governors covering the new constituencies and describes how the initial term of office will be staggered (i.e. some governors will be appointed for two years initially whereas others will be appointed for three years – as set out below) to ensure that not all new governors are re-elected at the same time The first election to the Council for new constituencies shall be conducted in such a way as to result in the initial terms of office for Governors to be as follows:	Updated constituencies to reflect the expanded public constituencies and staff classes of governor. Sections 13.2 – 13.7 set out the process for the transfer of the WSHFT governors to the new FT. Where the number of governors is greater than the number of posts available the process set out in Section 13.4 and 13.6 will apply i.e. first in first out for the Initial Public Governors and last in first out for the Initial Staff Governors. Section 13.8 sets out how the new FT will smooth governor re-election timings and stagger the new governors terms of office to ensure that the 4 new governors elected in 2021 do not all vacate office at

Page / Section	Nature of the change	Rationale for the change
	<p>Public governors:</p> <ul style="list-style-type: none"> • Brighton and Hove and Mid Sussex : one 3 year term (member with highest number of votes) and one 2 year term (second highest number of votes) • Mid Sussex: One 2 year term (Highest number of votes) <p>Staff governors:</p> <ul style="list-style-type: none"> • RSCH: One 3 year term. • PRH: One 2 year term 	<p>the same time. Re-elections can therefore take place at the end of the two year term and three year term.</p> <p>Section 13.9 confirms that the initial governors that transfer across to the new FT will cease to hold office in accordance with the terms of their original appointment (i.e. if appointed for an initial term of three years, they will continue in post until that term expires).</p>
10 (para 13.13)	A governor whose tenure is terminated for any reason is not eligible to re-stand for a period of one year (reduced from three years) from the date of his/her removal. We have moved this from the annex to Section 13.3.	This gives a period of one year for a gap and allows where changes in circumstances occur for a governor to re-stand for election should circumstances and council vacancies allow (three years was thought to be too long, particularly where a governor may have left for health reasons and is fit and able to re-stand after 12 months).
Para 16.2	Section 16.2 identifies that the new FT will have a Lead Governor.	A role and description for the lead governor is set out in Annex 8 but was not cross referenced in the main body of the constitution and so we made reference to this in section 16.2.
12/13 (section 22) Page 14 (para 25.1)	<p>Board Composition</p> <p>8 Voting Executive Director Positions</p> <p>Retaining having no less than 8 NEDs (in addition to the Chair)</p> <p>Section 25.1 allows for the CoG Nominations Committee to identify and recommend suitable candidate's to fill NED vacancies and requires the CoG to appoint one NED who exercises functions for Brighton and Sussex Medical School which supports our ambition to make the most of our university hospital status. The CoG Nomination Committee is free to accept or reject any such nomination.</p>	<p>There is an addition of three new voting Executive Directors which increases the overall number of voting executives to eight (noting this is clear it is the voting position allowing that position to be held by more than one person).</p> <p>The increase of Voting Executives must be matched by an increase in NEDs to ensure that there is always a majority of NEDs. The previous constitution allowed for up to 6 NEDs. The number of NEDs has been adjusted to be no less than eight but one of the</p>

Page / Section	Nature of the change	Rationale for the change
		eight will be a NED recommended to the Council by the CoG Nominations Committee being an individual that exercises functions for Brighton and Sussex Medical School. This brings across the BSUH appointed NED and supports the new FT's university and teaching status.
13 (para 22.9)	<p>Board Composition</p> <p>Section 22.9 makes clear that where an executive position is held by more than one eligible person (e.g. job share), there is only one vote for that one post. In the case of disagreement between the two individuals they must abstain and no vote may be cast.</p>	As WSHFT envisages that for the chief nurse position this will be filled by two people this addition makes clear that both people must be in agreement in order to vote otherwise the chief nurse decision will be recorded as an abstention. To be clear, there is still only one post but the role is undertaken by two people.
Para 25.2	Removal of the Chairman and other NEDs have been updated from a majority of the voting CoG to $\frac{3}{4}$ of the total membership of the CoG.	Paragraph 17(2) of Schedule 7 of the NHS Act 2006 states that removal of the NEDs can only be done with the approval of $\frac{3}{4}$ of the members of the CoG (i.e. not just those present and voting).
21/22 (paras 43.1 & 44.2)	<p>Voting majority</p> <p>Sections 43.1.1 and 43.1.2 make clear that amendments to the constitution must be approved by more than 50% of the voting CoG and voting BoD (i.e. those in attendance).</p> <p>Similarly, section 44.2 requires over half of the membership of the CoG voting to approve a significant transaction.</p> <p>However, a merger, acquisition, separation and dissolution requires over 50% of the total CoG to approve i.e. not just those in attendance and voting. This is reflected in section 44.1.</p> <p>Previously two thirds was needed for approval in for these matters.</p>	<p>This has been updated in line with the requirements under the NHS Act 2006.</p> <p>More than 50% of the <u>voting</u> CoG and more than 50% of the <u>voting</u> BoD must approve amendments to the Trust's constitution (section 37 of the NHS Act).</p> <p>More than 50% of the voting CoG must also approve a significant transaction (section 51A of the NHS Act).</p> <p>An application made under s56(1A) or 56A(2) requires approval by more than 50% of the total CoG (i.e. not just those in attendance and voting).</p>

Page / Section	Nature of the change	Rationale for the change
Standing Orders for the CoG Page 81 (para 1.19.2)	In order for a CoG meeting to be quorate, at least 1/3 of the membership must be present and of those 1/3, there must be a majority of public governors.	We have made clear that the quoracy for CoG meetings must have a public governor majority
Annex 1 (Constituency Details) and Annex 2 (Composition of CoG) 24, 25 (Annex 1 & 2)	<p>Public and Staff Constituencies</p> <p>Within Annex 1 we have described the addition of 2 new public constituencies to cover Brighton & Hove, and Mid Sussex and the expanded constituency covering East Sussex and out of Area along with the minimum amount of members required for each area for the new constituencies. As Horsham covers BSUH which is within the enlarged FT their minimum number of members has been set at a comparable level (0.2% of the 16+ population) to the other constituencies, excluding East Sussex and Out of Area which has been set at 75 for each element.</p> <p>Table 1 of Annex 2 identifies the number of elected governors that will be in post (transferring from WSHFT) as at the Acquisition Date and Table 2 of Annex 2 identifies the updated number of elected governors following the first round of elections in or around April 2021.</p>	For the new constituencies the minimum number of members has been set. This has been set at the same level of 0.2% of the 16+ ONS population at 2018, this is consistent to the method for determining the minimum members per constituency when WSHFT became an FT in 2013.
24 (Annex 1)	<p>Staff Constituency</p> <p>Annex 1 identifies the new staff classes moving from traditional professional representation of staff backgrounds to a site based representation model. These sites include Community, PRH, Southlands and Worthing, RSCH, and St Richards. The minimum number of members at each of these sites will be 100.</p>	<p>Following feedback from the governor reference group it was felt moving to site specific governor representation would encourage both clinical and non-clinical staff to stand for these seats and ensure a balance across the enlarged FT was maintained.</p> <p>The change was also agreed by the governors as allowing an efficient process for BSUH staff to have representation on the Council without having to run elections across each staff class.</p>
26 (Annex 2)	<p>Council of Governors – local authority appointed governors</p> <p>Table 3 in Annex 2 identifies the new structure of the appointed governors. The Local Authorities will have one appointed governor each. Meaning two new Local Authority governors will now be appointed from each of Brighton & Hove City Council, and West</p>	Following feedback from the governor reference group it was felt key that the input of the upper tier authorities is maintained and thus extended to B&H City Council and East Sussex CC as they link to the public health agenda and district

Page / Section	Nature of the change	Rationale for the change
	Sussex County Councils Originally, they were Arun District Council, Chichester District Council, Worthing Borough Council, and West Sussex County Council.	and borough council representation can be accommodated within the public elected governors.
26 (Annex 2)	<p>Council of Governors – appointed governors</p> <p>Table 3 identifies that in addition to the above mentioned local authority governors, the new FT will also have 1 governor appointed by Brighton & Sussex Medical School drawn from Brighton & Sussex universities.</p> <p>We have removed the second specific appointed governor from Brighton University.</p> <p>There will be 1 appointed governor for the voluntary sector which will be agreed by the Council of Voluntary services.</p> <p>There will be 1 appointed governor from the Trusts inclusion networks. The three networks covering BAME, LGBT+ and Disability will elect one governor.</p> <p>There will therefore be 5 appointed governors in total</p>	<p>The NHS Act 2006 requires FTs with a medical/ dental school provided by a university to have at least 1 appointed governor by that university.</p> <p>Following feedback from the governor reference group it was felt that the representation linked to the medical school added value and should be retained, but having a wider university representation was not needed.</p> <p>The reference group felt that the voluntary sector appointed governor should not be drawn solely from the league of friends.</p> <p>Also that the Council would value an appointed member to help with the inclusion agenda. This will be nominated from WSHFT's three networks covering BAME, LGBT+ and Disability. This will also support the Council to pursue a more representative membership to facilitate a more diverse council membership.</p>

Note: The update has also removed text from the current WSHFT constitution that was included covering the appointment of the initial chairman, deputy chairman, NEDs and chief executive when the WSHFT was established.

Appendix D: Summary of Board Experience

Below is a table summarising the merger and acquisition and major organisational/transformational change experience of Board members.

Position (current)	Person	Experience of merger/acquisition and or major organisational/transformational change
Chair	Alan McCarthy MBE	Member of the Senior Management Team who created the new Unitary Authority by merging Brighton and Hove and East Sussex services.
NED (Deputy Chair WHSFT)	Mike Rymer	Medical Director during the merger of Worthing and St Richards Hospitals, creating Western Sussex Hospitals NHS Trust (2009).
NED (Deputy Chair BSUH)	Patrick Boyle	Strong background and skills in transformational change management and organisation development. This includes substantial experience leading mergers and acquisitions in the public service including leading <ul style="list-style-type: none"> - Establishment of the South East London NHS Shared Services Partnership bringing together the staff and support functions of the former Lambeth, Southwark and Lewisham Health Authority and local Community Trusts to support the newly formed PCTs - Establishment of the GB Equality and Human Rights Commission merging the former Equality Commission, Commission for Race Equality and the Disability Rights Commission (Central Government) - Closure of The Rent Service and merger of its residual functions with the Valuation Office Agency in HMRC.
NED	Joanna Crane	Career in Financial Services has provided her with a wealth of experience of mergers and acquisitions as well as of large scale organisational change, in particular Credit Suisse's UNO project where she led the team designing the global organisation for HR and at Morgan Stanley, where she led the global reorganisation of Talent Management to create the Morgan Stanley University.
NED	Jon Furnston	At Redcare, Jon had experience of mergers and acquisitions when he acquired and integrated another technology business. He has also been involved in synergy realisation projects when BT acquired EE. Involved in the "demerger" of Openreach from BT to create the arms-length Openreach Ltd business. In addition he has been involved in several organisational change programmes from both a business and a cultural and behavioural perspective
NED	Lizzie Peers	Experience of mergers and acquisitions whilst working at the Audit Commission - involved in the transfer from PCTs to CCGs, having advisory and audit roles. Has worked with a wide range of organisations who were involved in change programmes.
NED	Jackie Cassell	There are many sensitivities and complexities which are highly relevant when looking at how to enable the planned

Position (current)	Person	Experience of merger/acquisition and or major organisational/transformational change
		merger of two very different hospital Trusts to work for everyone. Experience at the medical school is relevant to this where the medical school is a "joint entity", meaning various functions are led by Brighton and Sussex Universities, which are very different institutions.
NED	Kirstin Baker	Kirstin is an Inquiry Chair and NED at the Competition and Markets Authority and chairs investigation into complex mergers.
Associate NED	Lillian Philip	Involved in several restructures and the cultural change that comes with that as part of the EFT Leading for Change initiative. Was manager of a large settlements team which she outsourced to India and was then involved in the subsequent restructure and transformation of the remaining part of the department
Chief Executive	Dame Marianne Griffiths	Chief Exec of WSHFT and for BSUH since the beginning of the Management Contract in place. CEO for the merger of Worthing and St Richards Hospitals, creating Western Sussex Hospitals NHS Trust (2009).
Chief Medical Officer	Dr George Findlay	Medical Director of WSHFT and BSUH since the beginning of the Management Contract. Led the National Confidential Enquiry into Patient Outcome and Death (CEPOD) over a ten year period.
Chief Financial Officer	Karen Geoghegan	Chief Financial Officer of WSHFT and BSUH since the beginning of the Management Contract.
Chief Workforce & OD Director	Denise Farmer	Involved in the merger of Worthing and St Richards Hospitals, creating Western Sussex Hospitals NHS Trust (2009) and involved in establishment and operation of the Management Contract between WSHFT and BSUH. Involved in significant changes within PCT, Community, Mental Health, Learning Disability and Primary Care Services in Hampshire. HRD lead for the CPLNHS and Hampshire restructure which saw her lead on the development of new SHAs and support PCTs and Ambulance Trusts.
Chief Delivery & Strategy Officer	Pete Landstrom	Chief Operating Officer and part of the Executive team for WSHFT and BSUH since the beginning of the Management Contract. Head of Operations at the University Hospital of Wales in Cardiff, responsible for the delivery of a number of significant service changes, including the centralisation of tertiary Neurosciences services across Wales and the expansion and reconfiguration of other national and local services.
Chief Nurse (WSHFT)	Maggie Davies	N/A
Chief Nurse (BSUH)	Carolyn Morrice	At BHT part of a team driving rapid improvements in performance, quality and engagement that accelerated the organisation from special measures to becoming one of the first eight Integrated Care Systems in England.

Appendix F: Approach to Efficiency

The PMO at both Trusts operate the same processes in the identification, development and delivery of efficiencies, as summarised in Figure 1 below:

Figure 1 Approach to Efficiency



Project Management Approach

There are two main approaches used across the Trusts that underpin how deliver quality-led efficiency and productivity improvements are delivered.

The first is based on Prince2 methodologies, where deliverables are known and projects are developed based on required actions to deliver the identified benefits.

The second is utilisation of a lean methodology – DMAIC – which focusses on articulation of the business ‘problem’ or challenge before moving through stages to understand what is driving the issue and therefore what can be done to improve.

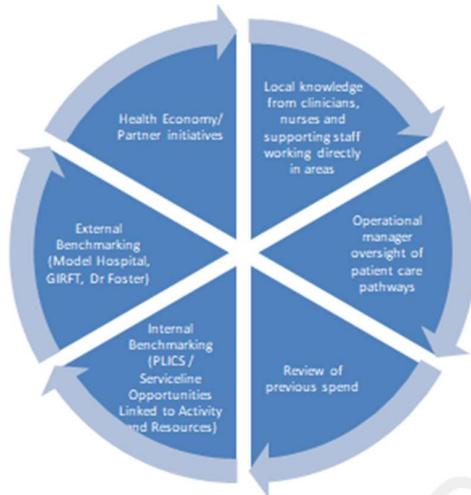
Both approaches follow a data driven methodology that takes the Trusts through the onward process of identification, development, delivery and review.

Efficiency Identification

Both Trusts have been keen to identify and deliver quality-led improvements, which focus on the improvement of productivity, the removal of waste, the reduction of spend and/or improvements to income opportunities – whilst at the same time deliver patient benefits.

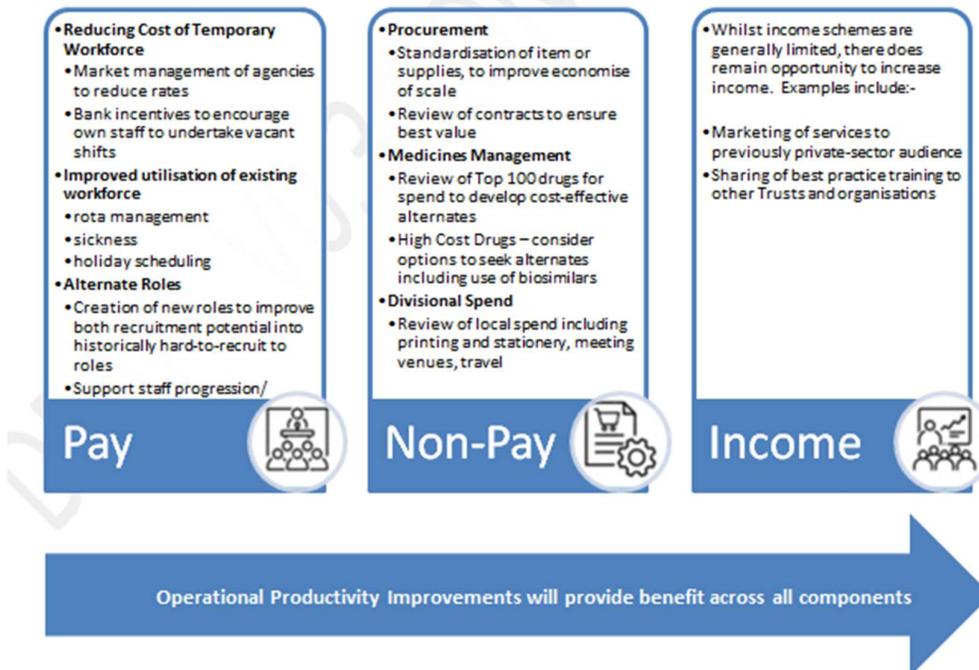
Opportunities are identified using a broad range of qualitative and quantitative data sources which provide a pipeline of efficiency opportunities of varying delivery complexity.

Figure 2 Identification of Efficiencies



The annual Efficiency Programme is typically made up of the following components:-

Figure 3 Components of Annual Efficiency Programme



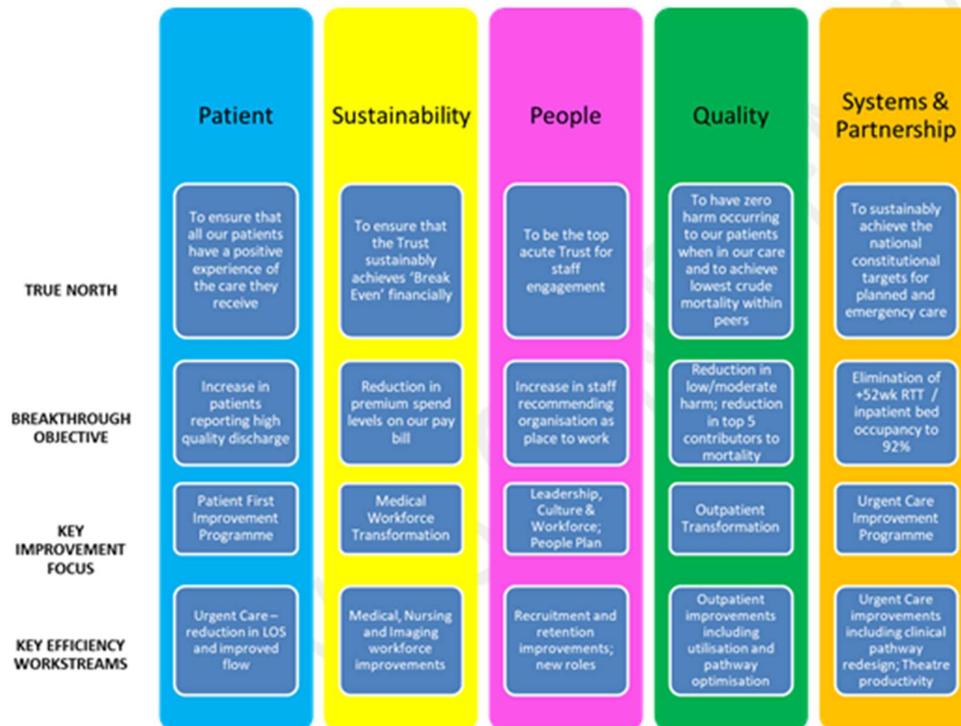
Once the efficiency requirement is set by the Trusts, efficiency targets are assigned to individual planning units and types of efficiencies in order to spread risk across the Programme. Learning from previous year programmes has indicated that the most successful programmes are ones where there is an equal cost reduction for each Division and where the overall risk profile is no more than 40% high risk.

Efficiency Development

The Trust Efficiency Programme is firmly aligned to its Patient First improvement methodology. Structurally, this ensures efficiency and improvement are strategically deployed throughout the entirety of both organisations – from board to ward. It also means that transformational, cross-cutting and divisional-led schemes are built into both organisations' integrated improvement focus through business-as-usual activities,

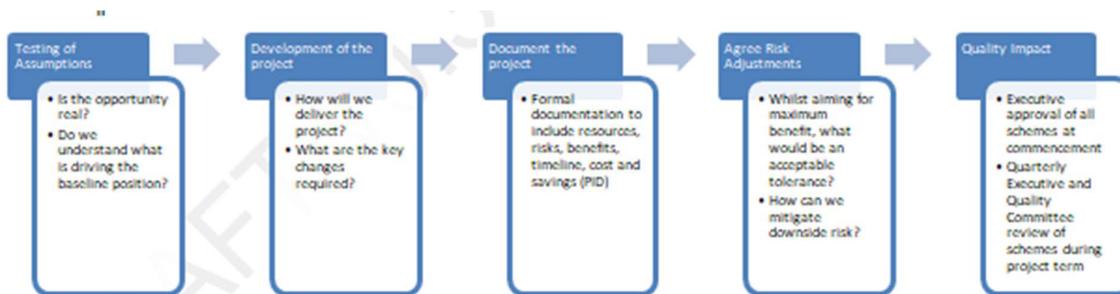
which include delivery of breakthrough objectives, strategic initiatives and corporate projects.

Figure 4 Strategy Deployment Approach



To ensure robustness of improvements and understand the impact to quality and people, a number of formal processes are undertaken when developing the individual elements of the efficiency programme

Figure 5 Development of the Efficiency Programme



Efficiency Delivery & Assurance

To support efficiency delivery, an assurance framework is in place

Figure 6 Efficiency Programme Assurance Framework



Post-Project Review

As with any project methodology post project review and benefits realisation is undertaken to ensure desired benefits are achieved and sustained and to identify learning for future improvement plans. This is applied to individual projects in the programme and the programme overall.

Any opportunities that either do not deliver anticipated value in year or require a longer period to mature are reviewed, to ensure learnings are captured and applied to future scheme deliveries. Remaining or extended opportunities are then re-submitted to pipeline trackers for onward development.

Benefits - both financial and non-financial - are detailed in PIDs which allows for detailed benefit realisation tracking to be undertaken. These are also reflected in the quality impact assessment of each scheme.

A full post project evaluation of the whole Efficiency Programme is also undertaken and lessons learned shared with the Finance and Performance Committee. The assurance system and the types of projects will be updated based on this continuous learning.

Appendix I: Communication and Engagement Strategy

Merger of Western Sussex Hospitals with Brighton and Sussex University Hospitals

Communications and Engagement Strategy – August 2020

Introduction

The formation of a new acute trust for West Sussex and Brighton and Hove is supported by a comprehensive communications and engagement plan, helping ensure staff, patients and stakeholders feel informed and involved in the future organisational arrangements. Each phase of the programme – Full Business Case, Transaction, Post Transaction Implementation - require contributions from the Communications and Engagement workstream as outlined below.

Context

Western Sussex Hospitals has been providing leadership support to BSUH since April 2017. As the three-year management contract formalising this arrangement entered its final year, the two Trust Boards agreed it was in the best interests of patients, the local community and staff to continue working together to improve services and the experience of all those who are cared for or employed in our hospitals.

The contract was extended for another year to allow time to design how best this collaboration could work. During this period the response to the COVID pandemic was strengthened by even closer collaboration and pooling of resources. At the same time, the regulatory and financial landscape of the NHS changed significantly, with a simplified merger process

Last year the Trust Boards' decision was to create a group structure, in which the two trusts operated independently alongside each other while remaining under a single leadership. However, as a result of the regulatory and financial changes that have subsequently taken place within the NHS and the recent successful joint-working between the trusts it became clear the best interests of patients and staff would be better served by pursuing a full merger.

Throughout this period staff, stakeholders and public have been kept informed of the decisions taken by the board, using all existing channels of communication. Staff have also been surveyed to understand their views on proposals.

Organisational goal

To successfully merge Western Sussex Hospitals with Brighton and Sussex University Hospitals on April 1, 2021 and so create a new acute provider of acute care in West Sussex and Brighton and Hove.

Overall communications objectives

- More than 75% of staff surveyed understand the rationale for merger before April 2021

- More than 50% of staff have been engaged in the process around the creation of the new organisation by December 2020
- More than 50% of staff surveyed are positive about opportunities the merger will create by March 2021
- Stakeholders, including patients, support the rationale for merger expressed in the Full Business Case by February 2021
- Media coverage of the merger and social media sentiment around merger is positive by March 2021 and during the first two quarters of 2021/22
- New digital platforms improve staff and patient experience, reinforce the new trust's brand and culture, and support organisational objectives

Strategy

We are using established communications channels to engage with the widest possible audiences to reassure, involve and excite staff, patients, partners and the public about the opportunities that exist as the new organisation is formed.

The benefits of merger inform the narrative of the period leading up to and beyond April 1, identifying and sharing examples of teams working together to find solutions to problems.

Our staff, patients, partners and public continue to receive consistent messages relating to the arrangement both in terms of content and timing, written in plain English and presented in an accessible way.

Key messages

By merging we will:

1. Deliver outstanding, compassionate care locally
2. Grow our clinical expertise and make Sussex a leader in health excellence
3. Bring together the very best of both organisations to innovate and improve the health of our communities
4. Continue to empower our people to improve services for patients through Patient First
5. Make the best use of our resources

Under each of these headlines we can then broaden the messages. For example:

1. Build and develop services at our local hospital to support our local communities – down into the detail of what that will mean at different sites.
2. Grow our dedicated, skilled workforce and attract the very best staff by creating exciting opportunities for professional development – examples of what this will mean for staff.
3. Working together to restore services better and faster, sharing knowledge and learning – and then down into examples.

4. Staff are working together with shared Patient First objectives to deliver service improvements for the people of Sussex.

We are using a campaign strapline of *Better for everyone* to inform and engage different audiences. Specific examples are targeted to specific audiences, for instance, to explain how merger will be *better for patients, better for staff, better for Sussex, better for specialties, better for finances* or *better for the environment*.

Workstream structure

The communications and engagement workstream is made up of four main parts, each with their own areas of focus as follows:

- Communications:**
- Build on and improve the reputation of each organisation in the period leading up to merger
 - Develop the new organisation's reputation as a provider of outstanding care
 - Minimise uncertainty
 - Support other workstreams to provide information in a timely and accessible way
- Engagement:**
- Build understanding and support for the new organisation among staff and stakeholders
 - Enable staff to help shape the new organisation and its clinical strategy, identifying areas for specific engagement
 - Support other workstreams in engaging with stakeholders
 - Enable the patient voice to be heard and responded to
- Brand**
- Support development of common vision, values and culture
 - Create new brand identity
 - Create new brand guidelines
 - Create new templates for patient information
 - Templates for wayfinding and signage
- Digital comms**
- Audit current digital presence
 - Develop new digital assets including intranet and website

Create roadmap for new digital platforms post-merger

Each of the four plans is aligned to the three phases (Full Business Case, Transaction, First year) of the overall programme governance to ensure the output required is provided on time and to the appropriate standard.

Each of the other programme workstreams has been approached to provide key deadlines and engagement requirements to inform the message calendar and ensure all programmes receive the required communications support.

Name

NHSE/I guidance requires trusts proposing a new name to:

- Check with NHS stakeholders that the new name won't conflict or cause local confusion with other NHS trusts/foundation trusts in the area, the local authority, and the local Healthwatch organisations
- Engage with patients and the public to check the proposed new NHS name is clear and understandable.

While staff engagement is not stipulated in the guidance, it is essential that they are engaged as well as patients and the public.

The necessary timing for the approval of the name required engagement to take place during October. This was done in the context of wider engagement about the rationale and benefits of the merger to avoid creating the mistaken impression that the merger is a superficial exercise.

The communications team developed a survey asking for staff and public to comment on the vision and values of the future trust, share their hopes and concerns and select preferred options on the future trust name.

To support the engagement on the name, we:

- Developed a user-friendly survey with a dedicated landing page on each of the Trust websites and on the Engagement HQ platform
- Provided feedback mechanisms (email, etc)
- Articulated the rationale, benefits and process
- Explained the naming process and criteria and reasons for timescale

Audiences

To enable genuine co-production of the new trust's priorities, we are communicating and engaging with a wide range of audiences, including staff, patients, partners, interest groups and the general public. These include, but are not limited to, the following:

BSUH	WSHT
Internal	Internal
Ambassadors BAME network Brighton Medical School BSUH Charity BSUH staff Clinical Directors Disability network HONs/Matrons/Sisters Leaders Network LGBTQ+ networks Staffside Trust Executive Committee	Ambassadors Clinical Directors Governors (staff) HONs/Matrons/Sisters Leaders Network LGBTQ+ networks Love Your Hospital Charity Diversity Matters WSHT staff Staffside Trust Executive Committee
External	
38 degrees CCG leadership Care Quality Commission Disability networks ESHT External Charities Friends General public Governors (Public and Elected) GP leads GPs Health Service Journal Healthwatch HOSCs ICS leadership LGBTQ+ networks Local authorities Local media groups Members MPs NHS E/I Patient with chronic/ongoing conditions PPGs Queen Victoria Hospital Surrey and Sussex Hospitals NHS Trust Sussex Community Trust South East Coast Ambulance Trust Sussex Partnership Trust Unions Voluntary sector organisations	

Evaluation and monitoring

In addition to the survey, run during October, we are using a number of metrics to monitor the reach of our communications and engagement work, including website and intranet page hits, social media engagement, meeting and briefing attendance and participation in decision-making engagement events.

In addition, during the period between FBC and April 1, we will introduce pulse surveys (three to five questions) each month and an online focus group to track sentiment

among staff groups and identify gaps in messaging. This is likely to be supported by our Ambassador groups.

The ultimate measure of success will be approval of the merger without significant objection from staff or public interest groups.

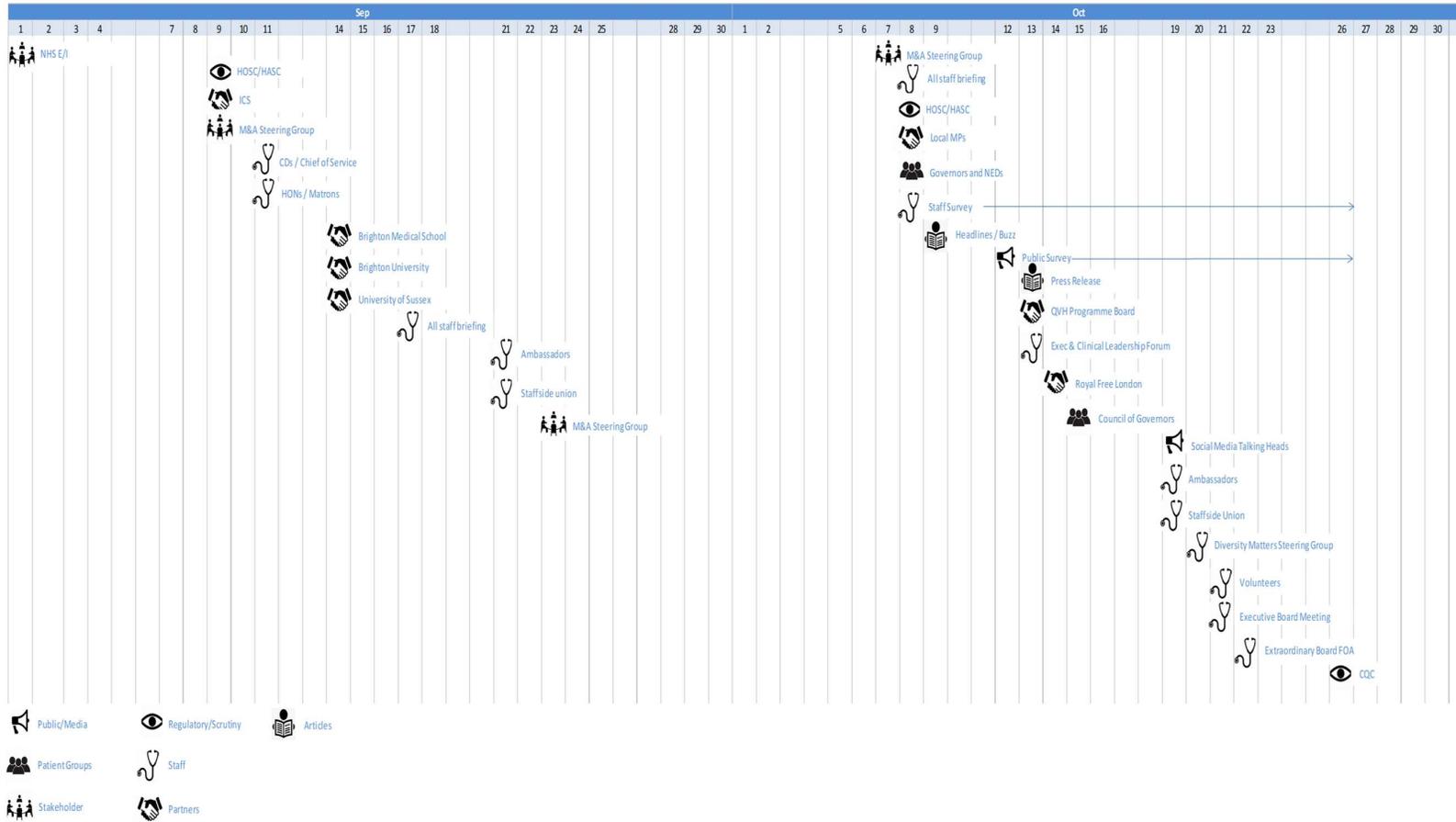
Risks and mitigations

The following communications risks relate to the period leading up to November 30 and are informed by the experience of the past three years' management contract. They are countered by a series of proposed mitigations:

	Risks	Mitigations
1.	Covid 19 will dominate operationally and make securing coverage and/or airtime for anything else difficult	Covid 19 is used as an example of how closer working can benefit both trusts, particularly when the wider healthcare system is under extreme pressure
2.	Merger seen as a distraction from the provision of services at a time when waiting times have increased significantly, prompting criticism we are not prioritising patient care	Describe the work to restore and improve services
3.	Potential feeling of loss of identity among staff, Governors and local communities	Recognise the loss, celebrate the achievements of each organisation and enable staff and local communities to play their part in shaping the identity of the new organisation
4.	Capacity: The communications resource required to support the period will be significant	Additional resource is made available to support the implementation of this plan
5.	Staff at BSUH feel they are being taken over by a DGH, while WSHT staff believe resources are being redirected to BSUH impacting investment there	Staff concerns are addressed clearly in all communications and staff are given an opportunity to have their questions answered
6.	Public fears that merger will lead to downgrading of services	Clear commitment to future service provision in supporting communications
7.	NHS history of mergers means slips in timetable leads to lack of credibility and buy-in.	Effective governance system in place with clear reporting, roles and responsibilities, with any delays shared appropriately with relevant audiences.

Appendix J: Stakeholder Engagement Activities

Start Date 01/09/2020



Strategic Case Summary of Stakeholder Activities

Stakeholder	Engagement during development of Strategic Case
Non-Executive Directors	<ul style="list-style-type: none"> • A series of workshops during 2019 and early 2020 to identify strategic aims and objectives and consider Group options • Agreed in June to progress to develop Strategic Case
Executive directors	<ul style="list-style-type: none"> • Involved in strategic options assessment working groups and plenary session to identify preferred option • Away day to consider potential impacts for Board
Governors	<ul style="list-style-type: none"> • CEO met with governors in June (14 governors were present in total of which 3 were appointed, 2 were staff and 9 public) • Consulted regarding the consideration being given to M&A • Chair suggested establishment of a Governors advisory panel on impacts to and revamping of constitution
NHSEI	<ul style="list-style-type: none"> • CEO met with Anne Eden • CEO met with Baroness Dido Harding
System partners	<ul style="list-style-type: none"> • CEO met with CEOs from: <ul style="list-style-type: none"> ○ Sussex NHS Commissioners ○ SCFT ○ SPFT • QVHFT and ESHT not available to meet • A letter been sent to all partners advising them of initial options and seeking views.
Trust Executive Committee	<ul style="list-style-type: none"> • Trust Executive Committee briefings w/b 13 July 2020 to be held by CEO with both organisations to provide outline to senior leaders in addition to those already involved in the more detailed options assessments and development
MPs	<ul style="list-style-type: none"> • A letter sent to local MPs advising them of initial thinking

Appendix K: Full Survey Results

Merger survey – results, analysis and recommendations

The staff merger survey launched on Thursday 8 October. It opened to the public on Monday 12 October. The survey closed to all respondents on Monday 27 October.

Each of the two existing trusts were able to access a unique version of the survey, enabling us to compare the results.

Survey completions:

BSUH staff	1,621
Western staff	1,538
Public	747

Values

Survey respondents were asked to vote for the four values they felt were most important. They were also asked to nominate additional values that weren't listed.

For each of the cohorts (BSUH staff, WSHT staff, public), we have analysed which were the most popular choices and have analysed the responses in the free text boxes.

Value	BSUH		WSHT		Public		Total
	%	No	%	No	%	No	
Communication	60.77	976	59.50	902	67.71	499	2,377
Respect	51.62	829	55.08	835	44.23	326	1,990
Teamwork	53.05	852	58.38	885	32.97	243	1,980
Compassion	48.63	781	52.57	797	46.40	342	1,920
Professionalism	43.28	695	51.98	788	61.19	451	1,934
Excellence	43.96	706	43.67	662	53.19	392	1,760
Transparency	35.24	566	28.89	438	38.67	285	1,289
Kindness	30.76	494	37.66	571	23.47	173	1,238
Fairness	31.44	505	23.22	352	13.57	100	957
Understanding	14.94	422	15.96	242	22.25	164	828
Friendship	5.67	91	6.46	98	2.71	20	209

The table above has the values ranked in order of preference.

There is one anomaly. The patient cohort identified “professionalism” as the second most popular value whereas staff at BSUH and WSHT both ranked it fifth. The high number of patient votes skew the results to put professionalism ahead of compassion, despite two of the three cohorts voting that compassion should come ahead of professionalism. We have adjusted the order in the table accordingly.

The free text boxes included a further 876 responses. While many nominated values already in the list, there were several not included in the list that were popular among all cohorts of respondents. The most frequently cited additional values are as follows:

Inclusion	341
Collaboration	167
Empowerment	129
Honesty	32
Innovation	27
Empathy	15

Suggestion – Values

Based on the feedback from the survey, the following values are the most popular among staff and public: Communication, Respect, Teamwork, Compassion and Professionalism

The most popular additional value, not previously featured in the current organisations, was Inclusion. While it is implicit under Respect, this could be added as a sixth explicit value

Vision

This section of the survey summarised the ambitions defined by the executive team around each of Patient First’s strategic themes and asks respondents to think about what these mean to them and tell us what they think would do most to achieve them. To do so participants were asked to rank a series of statements in order of preference from one to five (one as most important, five as least important).

Patient Experience - What are the biggest contributors to positive patient experiences and consistent quality of care?

BSUH staff – 1,341 responses				
	1	2	3	Total

Caring staff	330	311	271	912
Feeling safe	365	278	247	890
Good communication	327	252	267	846
Feeling heard	156	230	261	647
Privacy and dignity	116	188	223	527

WSHT staff – 1,368 responses				
	1	2	3	Total
Caring staff	365	318	284	967
Feeling safe	424	263	219	906
Good communication	298	295	252	845
Privacy and dignity	114	206	274	594
Feeling heard	129	205	246	580

Public – 652 responses				
	1	2	3	Total
Caring staff	236	183	109	528
Good communication	222	160	136	518
Privacy and dignity	66	119	160	345
Protection of the vulnerable	71	98	144	313
Safe discharge	44	64	73	181

Analysis and suggested statement – Patient Experience

Caring staff was consistently the highest ranked statement in the patient experience question among all three cohorts. Staff at both trusts identified feeling safe as the second most important statement, while the public voted good communication into second place. Communication is already identified as one of the recommended values, but as it's the patient experience category, feedback from the public should receive extra weighting.

Sustainability - How can we minimise waste and make best use of our resources?

BSUH staff – 1274 responses				
	1	2	3	Total
Develop a resilient workforce	453	218	194	865
Innovation and greater use of technology	276	284	262	822
Environmentally responsible decision making	288	240	260	788
Support remote and virtual working	123	208	245	576
Accessible information about the cost of services and effectiveness	107	176	272	555

WSHT staff – 1,296 responses				
	1	2	3	Total
Innovation and greater use of technology	258	390	306	954
Develop a resilient workforce	421	240	194	855
Environmentally responsible decision making	359	241	248	848
Accessible information about the cost of services and effectiveness	131	196	228	555
Support remote and virtual working	107	177	268	552

Public – 623 responses				
	1	2	3	Total
Investing in people	191	153	127	471
Better use of technology	160	163	136	459
Environmental responsibility	98	98	119	315
Living within our means	95	92	122	309
Making our own investment decisions	71	103	105	279

Analysis and suggested statement – Sustainability

All three cohorts voted for innovation and greater use of technology in their top two. Both staff groups also voted for develop a resilient workforce, while the public's second choice was investing in people

Our people – what would help our people feel fulfilled and supported at work

BSUH staff – 1,258 responses				
	1	2	3	Total
Supportive colleagues and managers	537	332	198	1,067
Professional development and education	199	271	317	787

Able to make improvements	153	221	287	661
Flexible working	156	229	211	596
Inspiring leaders	188	159	200	547

WSHT staff – 1,273 responses

	1	2	3	Total
Supportive colleagues and managers	586	357	149	1,029
Professional development and education	183	242	328	753
Able to make improvements	130	240	334	704
Flexible working	182	197	232	611
Inspiring leaders	176	189	177	542

Public – 605 responses

	1	2	3	Total
Good work/ life balance	188	129	106	423
Supportive colleagues	99	147	147	393
Professional development and education	112	129	143	384
Inspiring leaders	138	89	93	320
Being able to make changes	60	94	97	251

Analysis and suggested statement – Our People

Staff from both trusts overwhelmingly voted for supportive colleagues and managers as their priority issue, with professional development and education a distant, but significant second. The public voted for good work/ life balance and supportive colleagues as their top rated statements. Because this section is about our people, the votes of staff groups should take priority.

Quality – What are the biggest contributors to achieving the best outcomes for patients and the safest standards of care?

BSUH staff – 1,229 responses				
	1	2	3	Total
Clinical excellence	600	229	170	999
A learning culture	201	280	287	768
Being able to speak up	187	250	282	719
A focus on zero harm	162	252	216	630
Innovation and research	61	177	226	464

WSHT staff – 1,232 responses				
	1	2	3	Total
Clinical excellence	573	242	168	983
A learning culture	223	279	271	773
Being able to speak up	178	242	272	692
A focus on zero harm	180	232	225	637

Innovation and research	64	191	246	501
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Public – 596 responses				
	1	2	3	Total
Clinical excellence	341	129	48	518
A learning culture	51	122	144	317
Being able to speak up	108	118	153	379
A focus on zero harm	63	112	112	287
Innovation and research	102	120	250	464

Analysis and suggested statement – Quality

Both staff groups were once again aligned in their responses to this question, ranking clinical excellence and a learning culture as their most important factors for quality care. Public respondents ranked being able to speak up more highly than a learning culture.

Systems and partnerships – What should the new trust prioritise to build timely, accessible services and more integrated care?

BSUH staff – 1,166 responses				
	1	2	3	Total
Collaborative working	339	276	240	855
Sharing best practice	243	265	228	736
Integrated care	226	236	215	677
Responsive services	242	180	231	653
Learning from others	94	174	212	480

WSHT staff – 1,169 responses				
	1	2	3	Total

Collaborative working	326	295	239	860
Sharing best practice	280	267	219	766
Integrated care	219	215	210	644
Responsive services	244	174	207	625
Learning from others	94	174	212	480

Public – 578 responses				
	1	2	3	Total
Collaborative working	142	142	121	405
Sharing best practice	118	122	120	360
Integrated care	130	117	110	357
Responsive services	147	97	115	359
Learning from others	35	85	93	213

Analysis and suggested statement – Systems and Partnerships

All three cohorts are absolutely aligned that collaborative working and sharing best practice are the most important factors.

Improvements, benefits and concerns

54% of WSHT staff answered the question on concerns, 46% did not.

51.5% of BSUH staff answered the question on concerns, 48.5% did not.

A further 124 staff at BSUH and 102 staff at WSHT wrote no concerns. These are in addition to those who did not answer the question and should be presumed to have no concerns.

The concerns mentioned most often are listed below in combined priority order. The numbers in brackets are the ranking given by each individual staff group. The top two concerns for both trusts are the same (job security and terms and conditions).

Concerns

	BSUH	WSHT	Total

Number who answered the question	786	853	1,639
Number who did not answer the question	836	726	1,562
1. Job security	184 (1)	151 (2)	335
2. Terms and conditions	154 (2)	163 (1)	317
3. New trust will be too big	71 (4)	85 (3)	156
4. Working together/ merged services/ how we rationalise	73 (3)	56 (6)	129
5. Local access for patients	41 (5)	64 (5)	105
6. Falling standards	23 (7)	76 (4)	99
7. Culture/ identity	20 (8)	35 (7)	55
8. Merger is a distraction	32 (6)	10 (10)	42
9. Take-over – not merger	13 (10)	23 (8)– Western staff concerned BSUH will dominate	39
10. Wrong motivation	16 (9)	5 (11)	21
11. SRH will become a “poor relation”	- (-)	14 (9)	15

1. Terms and conditions – Overwhelmingly the feedback here is that colleagues are concerned that they will be expected to work across all five hospitals, particularly to cover staff shortages in particular areas. Interestingly, this was expressed (to a lesser extent) as a hope by some in the following question.
2. Job security – The most commonly expressed concerns here were around rationalising services and how the case could be made for two people where roles were duplicated across both the trusts.

3. Local access for patients – Staff are concerned that as services are rationalised/ centralised patients will be have to travel across Sussex to get the care they need.
4. New trust will be too big – From executive/management time to length of time to make decisions, a number of colleagues expressed concerns that the new trust would be too big to manage.
5. Falling standards – This concern was expressed far more frequently by staff at WSHT who are proud of their current CQC status. The implication would be that the new trust would be inspected and wouldn't attain the ratings across the board.
6. Working together/ merged services/ rationalisation – Colleagues recognise that it will be difficult to make the case for two of the same department across one trust and would like clarity over “which” department will stay. Several expressed a fear that the “other” trust would get the single department, requiring them to travel further for work.
7. Take-over, not merger – While this was expressed more directly by staff at BSUH, who reflected that BSUH had a leadership team from WSHT, colleagues at WSHT fear that as the bigger, teaching hospital, BSUH will have “control” of the new trust.
8. Merger is a distraction – between COVID, 3Ts, winter and general busyness some people feel now is not the time to merge and that the project will be a distraction when we should be concentrating on other things.
9. Culture/ identity – Some colleagues across both trusts are concerned that their hospital/ trust will lose its identity.
10. SRH will become a poor relation – only expressed by WSHT colleagues, there is a fear that as the furthest west hospital, SRH will become an outpost as services are centralised at Worthing and the Royal Sussex County Hospital.
11. Wrong motivation – There are concerns that the merger is financially motivated and being used to shore up budgets instead of for the benefit of patients.

Improvements and benefits

52% of WSHT staff answered the question on improvements and benefits, 48% did not.

51% of BSUH staff answered the question on improvements and benefits, 49% did not. The most commonly raised themes are below.

The improvements and benefits mentioned most often are listed below in combined priority order. The numbers in brackets are the ranking given by each individual staff group. The top two benefits identified by both trusts are the same (continuity of care/ service improvements and career development).

	BSUH	WSHT	Total
Number who answered the question	826	828	1,654
Number who didn't answer the question	796	751	1,547

1. Continuity of care/ improves services	245 (1)	264 (1)	509
2. Career development	148 (2)	146 (2)	294
3. Stronger leadership	147 (3)	85 (5)	232
4. Joined up thinking/ use of resources	139 (4)	97 (4)	146
5. Sharing best practice	37 (6)	102 (3)	139
6. Transparency/ communication	40 (5)	59 (6)	99
7. Investment	15 (7)	19 (7)	34
8. Clear strategic direction	15 (7)	12 (8)	27
9. Better discharge planning	6 (9)	- (-)	6

1. Continuity of Care/ Improved standards – Staff at both trusts recognised the opportunity to improve continuity of care for patients, though were divided between the opportunity being by centralising services and by improved local services.
2. Career development – Many staff across both trusts recognise that there are opportunities to advance their careers within a new trust. Other comments included a desire for better terms and conditions, particularly parity between wages. There is a perception that WSH staff are on higher bandings than BSUH.
3. Joined up thinking/ use of resources – Many reflected on the opportunity to improve staffing levels, reduce duplication and improve waiting lists. Overwhelmingly, colleagues who registered hopes under this category particularly wanted improved IT services that were consistent across all hospitals and gave clinical staff access to patient records and the ability to send referral/ appointment letters.
4. Sharing best practice – Between hospitals, between teams and within the wider health economy, many hope to be able to learn from one another and share best practice to create single, preferred pathways in the best interests of patients.
5. Transparency/ communication – Between departments, between hospitals and between trusts, there is a commonly held hope that there will be more transparency and communication.

6. Stronger leadership – whether visibility of the executive team, clearer management structures or better communication from line managers, several colleagues identified stronger leadership as one of the things they hoped for in the new trust.
7. Investment – Some identified the desire for investment in the hospitals themselves, while others are hoping for more money for research and development. Several expressed a desire for investment in equipment, facilities and tools to support clinical excellence. There is also hope for investment in staff facilities, ward decoration and bathrooms.
8. Clear strategic direction – speaks for itself and was expressed precisely this way by those who identified it as an opportunity for improvement.
9. Better discharge planning – Although not commonly held – and not expressed at all by colleagues at WSHT, it was very specifically identified by five members of staff at BSUH.

Public response to the concerns, improvements and benefits

63% of public respondents answered the improvements and benefits question, 37% did not.

Concerns

63% of public respondents answered the concerns question, 37% did not.

50 respondents replied to say they had no concerns.

1. Travel / Geography of Trust	94
2. Reduction in services / level of care / centralised services	73
3. Size of organisation	52
4. Staffing	46
5. Harder to access services locally	36
6. Concerns with BSUH	34
7. Money	19
8. Communications	15
9. Against merger	15
10. Longer waiting times/ access to services	6
11. COVID	3

1. Concerns with travelling long distances for appointments. Elderly and vulnerable patients being affected mainly. (Parking at BSUH also raised as a concern with more people potentially traveling to this site.)
2. Smaller hospitals being shut and a focus being given to Brighton.
3. The size of the Trust, concerns that people will get lost in the system.
4. There will be staffing cuts / more focus on higher management and admin instead of front line staff.
5. Local services will be removed and put in larger hospitals meaning local services will suffer.
6. Concerns with BSUH level of patient care / finances. This will have an impact on WSHT and the outstanding care provided in the Trust.
7. This will impact the Trust financially / The merger is money driven.
8. Lack of communication between teams and with patients will have an impact on overall care
9. Comments against the merger taking place.
10. Longer waiting times or harder to access services due to the increase in geography.
11. That the merger is happening at a bad time with COVID.

Improvements and benefits

63% of public respondents answered the improvements and benefits question, 37% did not.

30 respondents said that they didn't agree with the merger.

1. Better care/ more provisions and efficient services	142
2. Better access/ reduction of waiting times	111
3. Reduce travel / local care available	42
4. Openness / communication and listening	41
5. Staffing	38
6. More opportunities for development / centres of excellence	16
7. Leadership / management improvements	16
8. Equal care available in all sites	10

1. Better care available with a wider staff force, greater provisions and leading to a more efficient, joined-up service, with more specialist clinics available in local hospitals.
2. Main comments were hoping this allowed better access into services across the Trust meaning shorter waiting times to be seen.
3. Overall better for Sussex with more streamline care.
4. Better communication between sites (notes) and communication to patients (letters).
5. Staffing levels to improve with more retention of staff due to greater opportunities. Possibility to review structures to increase front line clinical staff.
6. Services can develop to become centres of excellence.
7. Better management structures with less middle management.
8. All sites to provide equal services and care to patients to support less travel.

Naming the new Trust

When Western Sussex Hospitals NHS Foundation Trust and Brighton and Sussex University Hospitals NHS Trust merge, they will form a new, single trust, which will require a new name.

Naming principles

NHSE sets out a number of principles and an approval process which must be followed when naming a trust. In summary, the guidance states that:

- Names must be clear, logical, descriptive and understandable so public can identify and locate different organisations
- If an FT the NHS Act 2006 says it must include the words NHS Foundation Trust at the end of the name
- Be written in full –no abbreviations such as &
- Include the letters NHS
- Contain a geographical reference – place, geographical feature or area which is named on a map, a centre of population or compass reference – south, southern etc
- University should be placed at the start of the name or within it – avoid putting it at the end.
- Royal, University or Teaching can only be included with permission
- It is important you engage with patients, the public and NHS stakeholders to test your NHS organisation’s proposed new name to ensure that it is clear and understandable
- Length – more than six words and it will run onto 3 lines which looks cumbersome.

Our approach

In order to engage effectively with staff, patients, public and partners the communications and engagement team developed a survey, hosted on our website and shared with all staff via our

internal communications channels. Proactive media work was also undertaken to increase awareness and encourage participation.

Supporting materials outlined the NHS naming rules and asked participants to state their preferred option from a shortlist of four that meet the criteria. We also asked people to suggest alternative options and made it clear that the final decision would be taken by the board.

Simultaneously, we continued to engage with partners across Sussex and the wider south east to gather additional feedback and broaden the reach of our engagement.

The four suggested name options in the survey were:

- University Hospitals Sussex (UHS)
- Sussex University Hospitals (SUH)
- Brighton and West Sussex University Hospitals (BWSUH)
- University Hospitals Brighton and Sussex (UHBS)

The name we choose will be appended with “NHS Foundation Trust”.

The survey, also included questions relating to the new trust’s vision, values, providing an opportunity to build the merger narrative, our ambition for the new trust and the benefits for staff, patients, communities and stakeholders.

The survey was open between October 8 and 26.

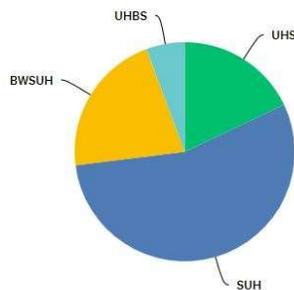
Survey results

Of a total 3,906 survey respondents. The name question in the survey attracted 2,773 responses and 800 free text answers, providing more detailed feedback and further suggestions. 1,133 people who completed the survey did not answer the question (29%). It is safe to assume those people did not feel strongly enough to express a view.

Western Sussex Hospitals:

QUESTION: Which name do you prefer? Click on your favourite

Answered: 1,131 Skipped: 402

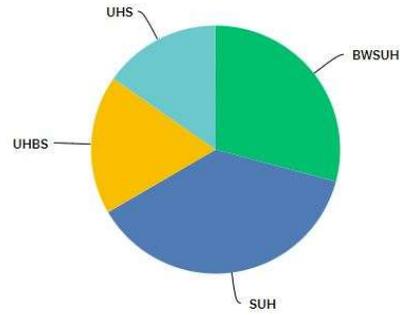


ANSWER CHOICES	RESPONSES	
UHS	17.95%	203
SUH	55.08%	623
BWSUH	21.31%	241
UHBS	5.66%	64
TOTAL		1,131

Brighton and Sussex University Hospitals:

QUESTION: Which name do you prefer? Click on your favourite

Answered: 1,149 Skipped: 472

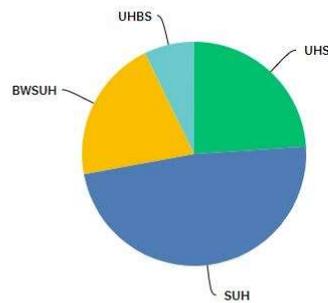


ANSWER CHOICES	RESPONSES	
▼ BWSUH	29.16%	335
▼ SUH	37.42%	430
▼ UHBS	18.10%	208
▼ UHS	15.32%	176
TOTAL		1,149

Public:

QUESTION: Which name do you prefer? Click on your favourite

Answered: 513 Skipped: 234



ANSWER CHOICES	RESPONSES	
▼ UHS	23.98%	123
▼ SUH	48.15%	247
▼ BWSUH	20.66%	106
▼ UHBS	7.21%	37
TOTAL		513

Themes

Across the three surveys, University Hospitals Brighton and Sussex was the least favourite. Common themes in the feedback included concerns around Brighton being seen as more significant hospital and patients in wider Sussex not identifying with it as their local trust.

Of the other options, while the preference for Brighton and West Sussex University Hospitals outranked University Hospitals Sussex among staff, it was only the third choice among the public and still has the issue of appearing to prioritise Brighton over the other four hospitals in the Trust.

When combined, the simple, three word options of University Hospitals Sussex and Sussex University Hospitals far outranked the longer, more complex alternatives with 64.2% of all votes (73% of WSH staff, 52% of BSUH staff and 72% of the public).

Using either UHS or SUH is the clear preference of both staff and the public.

Of these, Sussex University Hospitals attracted the most votes (46% compared to 18% for University Hospitals Sussex).

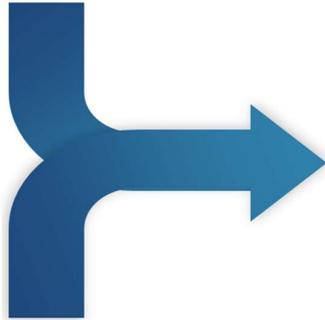
We currently have an established partnership with the University of Sussex and the University of Brighton through the Brighton and Sussex Medical School. Our university status is dependent on this partnership.

As we continued to engage with these organisations and Chichester University throughout the survey period, it became clear that Sussex University Hospitals could lead to a misconception that we were associated with Sussex University at the potential exclusion of both Brighton and Chichester Universities.

Preferred option

Due to the importance of our partnership relationships and based on survey and other feedback, the Trusts propose that the new, merged trust is called University Hospitals Sussex.

Appendix L: Lessons Learnt from other Trusts



Merger & Acquisition

M&A Lessons Learnt 30 September 2020

Version 3, Date 300920

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2

Introduction



The formation of a new acute trust for West Sussex and Brighton & Hove poses potential risks and unknowns. Looking at the lessons learnt by other trusts during their mergers allows knowledge to be shared between Trusts and helps to minimise the same risks recurring elsewhere.

The findings in the following slides were learnt by multiple trusts:

- University Hospitals Bristol and Weston NHS Foundation Trust
- Nottingham University Hospitals NHS Trust
- Western Sussex Hospitals NHS Foundation Trust
- Birmingham Community Healthcare NHS Trust
- Hampshire Hospitals NHS Foundation Trust
- Barts Health NHS Trust
- Central Manchester University Hospitals NHS Foundation Trust

0. Due Diligence



- Acquiring trusts should extract details of all relevant issues from due diligence and use them for post-deal integration planning.
- Clinical due diligence should probe the processes and issues behind any unsatisfactory waiting times, infection control figures, and other performance headlines.
- Merging parties should draw on the experience of other trusts to ensure clinical due diligence is thorough.
- Where possible (from a practical and regulatory perspective) get your own people working inside the target early in the process.
- Generally, where funding was too low, due diligence had missed the real cost of some issues, e.g. necessary estates repair and maintenance of medical devices.

1. Full Business Case



- Ensure the aims of the merger are well understood at the outset by all parties involved, including both financial and clinical benefits.
- Ensure care quality benefits are articulated and funded as well as financial benefits.
- Ensure there are strong links between the business case and PTIP
- Utilise independent review and assessment of key transaction documentation to highlight improvements and ensure NHSEI's standards are met
- Be clear on the benefits the transaction will deliver, document and quantify where possible.

2. Finance



- Generally, where funding was too low, due diligence had missed the real cost of some issues, e.g. necessary estates repair and maintenance of medical devices.
- Be disciplined in assessing transaction funding requirements as well as in spending decisions post transaction.
- Harmonise job roles and salary bands across the merged Trust, harmonising terms and conditions across the merged Trust to reduce expenditure on temporary staff

3. Transaction, Legal and Governance



- Establish from the outset the responsibilities and terms of reference for the governing board and respective work streams.
- Organise regular calls with NHSEI but expect deadlines to frequently change.
- Do not underestimate the relentless demands of reports up through the Trusts governance routes throughout the programme.
- Be clear on the benefits the transaction will deliver, document and quantify where possible.
- Engage your legal advisors early in the process.

4. Change Management and Organisation Development



- Adopt a unified management structure with a single Board, Chief Executive and senior management and consolidating corporate support functions
- Consolidate the management of clinical services, and other support roles
- Overcome any resistance to change, for example, by providing the opportunity for clinicians to work with their colleagues within specialties across sites.
- Change the way in which services are delivered (e.g. through consolidating the delivery of services onto fewer sites or process improvement)
- Run workstreams in parallel with advisors that can work across workstreams to meet tight timescales.
- 'Change champions' should be chosen early on, with the responsibility to influence and motivate their colleagues.
- Ensure resources and skills are managed throughout the process such as mixed work schedules
- Use the available estates more efficiently, allowing for sites or parts of sites to be disposed of
- Harmonise job roles and salary bands across the merged Trust, harmonising terms and conditions across the merged Trust to reduce expenditure on temporary staff

5. Stakeholder Engagement and Communications



- Inform all staff from the outset of strategic rationale behind the merger, the transition process and expected changes.
- Encourage two-way feedback to increase the sense of involvement.
- Identify a new leadership team to offer a neutral platform to remove past loyalties and build cultural alignment
- Give clarity of leadership, early in the process, so new lines of reporting can be created
- Maintain communication with staff throughout the transaction, even when there is nothing to report.
- Engage with staff and clinicians, early in the process and frequently throughout the process and expect challenges
- Understand cultural differences and how to achieve alignment.
- Do not underestimate the challenges of cultural integration.
- Develop and carry out a consistent and comprehensive culture programme.

6. Information Management and Technology (IM&T)



- Delays in the integration of electronic clinical records in one trust were reported to have slowed down the pace of clinical integration
- The delayed implementation of a new electronic patient record was the key delay to delivering synergies in line with planned timelines

7. Operational Readiness



- Identify the target business as quickly as possible and maintain the momentum of integration.
- Create dedicated teams focused on realising the expected benefits and rigorously performance manage these teams.

8. Post Transaction Integration Plan



- Assess the readiness and ease of integrating each function and clinical specialty.
- Develop comprehensive integration plans detailing the level of integration for each function and specialty
- Consider the distance between sites when planning the new organisational structure. Consider creating cross-site organisational structures, joining up services along clinical specialties.
- Factor the likely post-deal dip in productivity into integration plans.
- Make sure plans detail how non-financial benefits will be realised.
- Ensure some of the people who develop the integration plan are implementing it.
- Build all expected benefits into the integration plan and be clear about the specific changes needed to realise these benefits.

9. Next steps



- SROs to review lesson's learnt and ensure that consideration is given to how identified risks can be managed in their workstreams
- SROs to start to build their own sets of lesson's learnt from this transaction, that can be maintained moving through the process for onward sharing as applicable

Appendix N: Equality Impact Assessment

Equality Impact Assessment (EIA)

Programme Name	Acquisition of Brighton & Sussex University Hospitals NHS Trust by Western Sussex Hospitals NHS Foundation Trust
Workstream	Merger & Acquisition Programme
Director/Exec Lead	Pete Landstrom - Executive Lead
Workstream Lead	Jen Procter - Programme Director & SRO
Date Completed	30/11/2020

Clinician Completing EIA	George Findlay (03/12/2020)
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Describe the case in simple terms	<p>Building on the strong working relationship built up between WSHT and BSUH under the 3.5 year Management Contract, there is agreement to proceed to formal acquisition of BSUH by WSHFT into a single NHS Foundation Trust. Building on the Strategic Case approved by both Boards in July 2020 and endorsed by NHSEI in September 2020, the new Trust aims to fully integrate by April 2022, and deliver a range of benefits under its Patient First pillars - Patients, Staff, Sustainability, Quality and Systems & Partnerships.</p> <p>The formal go-live is scheduled to take place 1st April 2021, and from this point both Trusts will operate as one. A number of changes will be required to maintain safe and effective operation from Day One, and these will include a combination of statutory/mandatory changes alongside operationally desirable changes that will improve our ability to operate under the single organisation. Through the development of clinical and corporate operating models, the structure of the Trust will be developed to enable achievement of the Target Operating Model (TOM) that enables us to deliver our vision and values through updates systems and processes.</p> <p>The Full Business Case details the fundamental structure of the new Trust, which will enable development of the Post-Transaction Implementation Plan (PTIP). The PTIP will contain further information on how the Trust will undertake its integration, focussed in three main time periods - Go Live, first 6 months and then first year of operation at a new Trust. This will ensure the Trust can develop and agree changes in a robust and constructive way, engaging with relevant stakeholders and completing additional EIAs as required for changes identified.</p>
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Does the scheme affect any of the following:	Yes / No	If Yes, Detail	Impact	Mitigations - please complete
Gender	No			
Race	Yes		Positive	The new Trust will cover a much larger footprint, thereby the staff and patient ethnic demographic will become greater. This will enable greater knowledge sharing/knowledge base and will increase the diversity of the Trust
Disability	Yes		Positive	The new Trust will cover a much larger footprint, with physical locations across West and East Sussex. Residents of Sussex will have greater input into the delivery of healthcare in their local areas, and shared resources/location may improve access to care
Age	Yes		Positive	
Marriage and Civil Partnership	No			
Pregnancy and Maternity	No			
Sexual Orientation	Yes		Positive	Through the extension of membership to Brighton & Hove geographical area, additional members are being sought and will increase the diversity of the Trust membership and continue LGBTQ+ progress around Staff Networks and inclusion initiatives such as Rainbow Warriors
Gender Reassignment	Yes		Positive	
Religious Beliefs	Yes		Positive	As highlighted above for Race, the ethnic diversity will create a greater diversity of Religious beliefs within the organisation regarding patients and staff - again ensuring greater diversity within the newly formed Trust
Carers Responsibilities or Basic Human Rights	No			

Please use the below space to capture any positive impact this workstream may have on equality at the Trust

As above. Both Trusts have different staffing and membership profiles, which when coming together will give increased diversity and scope to further develop inclusion initiatives. The Transaction has been supported with substantial engagement activities, seeking thoughts from a wide variety of internal and external groups. This has helped shape what the new Trust will look and feel like, from Trust name through to its vision and values.

The combined estate will also enable a review of where services are best placed to be delivered from. Previous fragile services may now be strengthened through increased clinical and corporate support, improving access to all our patients on critical healthcare.

Review and sign-off

	Name	Approve	Date
Equality & Diversity Lead	Barbara Harris	Yes, with Race and Religious Beliefs included	2nd December 2020

