
**UNIVERSITY HOSPITALS BIRMINGHAM¹
NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

CONSTITUTION²

Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.

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

References to legislation include all regulations, statutory guidance or directions.

References to sections and annexes are references to sections of and annexes to this Constitution, save where the context provides otherwise.

Headings are for ease of reference only and are not to affect interpretation.

1. DEFINITIONS

1.1 In this Constitution:

"the 2012 Act"	means the Health and Social Care Act 2012
"the 2006 Act"	means the National Health Service Act 2006;
"the 1977 Act"	means the National Health Service Act 1977;
"Annual Members' Meeting"	means a meeting held in accordance with section 6.10;
"Areas of the Trust"	means the Birmingham Area and the Rest of England Area;
"Birmingham Area"	means those areas specified in Annex 1 as an area of the Birmingham Area of the Public Constituency;

¹ Name changed from UNIVERSITY HOSPITAL BIRMINGHAM NHS FOUNDATION TRUST by resolution of the Council of Governors dated 5 June 2008

² (As amended by resolutions of the Governors dated 11 November 2005, 13 March 2007, 27 June 2007, 25 September 2008, 17 June 2011, 24 September 2012, 16 November 2012 and resolutions of the Governors and the Directors dated 28 March, 22 and 23 May 2013 and 13 and 23 November 2014)

7.13.4 Removal under section 7.13.3 shall be at the recommendation of the Chairman or the recommendation of a Governor with the support of a further 30% of the Governors and in each case approved by a vote of at least 75% of those Governors present either in person or by proxy at a properly constituted meeting of the Council of Governors.

7.14 Disqualification

7.14.1 A person may not become or continue as a Governor of the Trust if:

- a) that person is or would be disqualified from membership under section 6.5.1;
- b) that person has been removed as a Governor under section 7.13.3;
- c) in the case of a Staff Governor, Patient Governor or Public Governor, that person ceases to be a Member of the constituency or area/class of the constituency s/he represents;
- d) in the case of a Stakeholder Governor, Birmingham City Council, the University of Birmingham or one of the organisations set out in section 7.5 remove them as a Stakeholder Governor which they appointed;
- e) that person has been adjudged bankrupt or his/her estate has been sequestrated and in either case that person has not been discharged;
- f) that person has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- g) that person has within the preceding five years been convicted in the UK of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him/her;
- h) that person has within the preceding two years been dismissed, from any paid employment of the Trust, any of its Subcontractors or any other NHS Organisation, save where such dismissal is on the grounds of redundancy or is determined to have been unfair by a competent tribunal;
- i) that person is a person whose tenure of office as the chairman or as a member or director of an NHS Organisation has been terminated on the grounds that his appointment is not in the interests of the health service, for ~~non-attendance~~non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- j) that person is an Executive or Non-Executive Director of the Trust, or a governor, director, chairman or chief executive of another NHS Foundation Trust;

8.2.3 5 or (subject to the provisions of section 8.2.3) more other Non-Executive Directors;

8.2.4 the following Executive Directors provided that one is a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and another is a registered nurse or a registered midwife:

- a) a Chief Executive;
- b) a Finance Director; and
- c) a minimum of 3 or (subject to the provisions of section 8.2.3) more other Executive Directors.

8.2.5 The total number of Non-Executive Directors shall exceed by at least 1 but no more than 2 the total number of Executive Directors.

8.3 Only a Member of the Public Constituency or the Patients' Constituency or an individual exercising functions for the University of Birmingham is eligible for appointment as a Non-Executive director.

8.4 Non-Executive Directors shall be appointed in accordance with a process to be established from time to time by the Nomination & Remuneration Committee for Non-Executive Directors. In carrying out the appointment process, the Nomination & Remuneration Committee for Non-Executive Directors shall have regard to best practice in corporate governance and shall take into account the level or range of skill and experience required in the Board of Directors.

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

8.6 Terms of office

8.6.1 The Chairman and the Non-Executive Directors shall be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting.

8.6.2 The Chief Executive, Finance Director and other Executive Directors shall hold office for a period in accordance with the terms and conditions of office set out by the Executive Appointments and Remuneration Committee (as defined in section 8.8.5).

8.7 Disqualification

8.7.1 A person may not become a Director of the Trust or shall be disqualified as a Director of the Trust if that person:

- a) Is not considered to be a fit and proper person, that is, they do not satisfy all the requirements set out in paragraph (3) of Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;

- a) ~~has been adjudged bankrupt or his/her estate has been sequestrated and in either case s/he has not been discharged;~~
- b) ~~has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;~~
- c) ~~has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not for a period of 3 months or more (without the option of a fine) was imposed on him;~~
- d)b) ~~in the case of a Non-Executive Director, no longer satisfies section 8.3;~~
~~or~~
- e)c) ~~is a person whose tenure of office as a chairman or as a member or director of an NHS Organisation has been terminated on the grounds that his appointment is not in the interests of public service, for non attendance/non-attendance at meetings, or for non-disclosure of a pecuniary interest.;~~
- f) ~~has been dismissed from the employment of the Trust, any of its Subcontractors or any other NHS Organisation, save where such dismissal is on the grounds of redundancy or is determined to have been unfair by a competent tribunal.~~

8.7.2 Where a person has been appointed to be a Director and that person becomes disqualified for appointment under section 8.7.1 or circumstances arise whereby that person may no longer be considered to meet all the requirements set out in paragraph (3) of Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, s/he shall notify the Foundation Secretary in writing of such disqualification or circumstances.

8.7.3 If it comes to the notice of the Foundation Secretary at the time of appointment of a Director or later that a Director is so disqualified, on the instructions of the Chairman (or, if the Director in question is the Chairman, the Senior Independent Director), the Foundation Secretary shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect.

8.7.4 If it comes to the notice of the Foundation Secretary, at the time of appointment of a Director or later, that circumstances have arisen whereby that person may no longer be considered to meet all the requirements set out in paragraph (3) of Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Foundation Secretary shall inform the Chairman (or, if the Director in question is the Chairman, the Senior Independent Director) who shall, acting reasonably, determine whether the Director in question continues to meet the said requirements. If the Chairman (or, if applicable, the Senior Independent Director) determines that the Director in question does not or no longer meets the said requirements, on the instructions of the Chairman (or, if applicable, the Senior Independent Director), the Foundation Secretary shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect.

8.7.5 Upon the issue of any such notification, that person's tenure of office, if any, shall be terminated and that person shall cease to act as a Director.

8.7.6 If a Director is disqualified for ineligibility to be a Director under this section 8, all votes which that Director participated in, before notification under section 8.7.2 or section 8.7.3 or determination under section 8.7.4 that the said Director is no longer considered to meet all the requirements set out in paragraph (3) of Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 occurred, shall be valid.

8.8 General duty, roles and responsibilities

8.8.1 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.

8.8.2 The powers of the Trust are to be exercised by the Board of Directors on its behalf.

8.8.3 Any of those powers may be delegated to a committee of Directors or to an Executive Director. A committee appointed under this section may appoint a sub-committee.

8.8.4 Any committees or sub-committee established in accordance with section 8.8.2 may appoint advisors who are not Directors to help them in their tasks.

8.8.5 A committee consisting of the Chairman and at least 2 Non-Executive Directors shall be established to decide the remuneration and allowances and other terms and conditions of office of the Executive Directors (the "Executive Appointments and Remuneration Committee").

8.8.6 A committee of the Non-Executive Directors shall be established as an audit committee (the "Audit Committee") to perform such monitoring, reviewing and other functions as appropriate.

8.8.7 The Non-Executive Directors shall appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.

8.8.8 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the Executive Directors.

8.8.9 The Directors, having regard to the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.

8.8.10 The Directors shall present the annual accounts, any report of the auditor on them, and the annual report to the Council of Governors.

8.8.11 The functions of the Trust under sections 13.5 to 13.7 below are delegated to the Chief Executive as accounting officer.

- 14.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency and the Patients' constituency is representative of those eligible for such membership; and
- 14.2.2 any other information Monitor requires.
- 14.3 The Trust shall comply with any decision Monitor makes as to:
 - 14.3.1 the form of the reports;
 - 14.3.2 when the reports are to be sent to him;
 - 14.3.3 the periods to which the reports are to relate.
- 14.4 The Trust shall give information as to its forward planning in respect of each financial year to Monitor. This information shall be prepared by the Directors, who must have regard to the views of the Council of Governors (section 8.8.98-8-9 above).
- 14.5 Each forward plan must include information about:
 - 14.5.1 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
 - 14.5.2 the income it expects to receive from doing so.
- 14.6 Where a forward plan contains a proposal that the Trust will carry on an activity of a kind mentioned in sub-section 14.5.144.5.1 the Council of Governors must:
 - 14.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the ~~fulfillment~~fulfilment by the Trust of its principal purpose or the performance of its other functions; and
 - 14.6.2 notify the Board of Directors of its determination.
- 14.7 Any proposal to increase the proportion of the Trust's total income by 5% or more in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England may only be implemented if more than half of the members of the Council of Governors voting approving its implementation.
- 14.8 The annual report shall also be held at the Trust headquarters for public inspection and shall be made available via the Trust's website.
- 14.9 Presentation of the annual accounts and reports to the governors and members
 - 14.9.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - a) the annual accounts;

- b) any report of the auditor on them; and
- c) the annual report.

14.9.2 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.

14.9.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of section 14.9.1 with the Annual Members' Meeting.

15. INDEMNITY

15.1 If proceedings for negligence, default, breach of duty or breach of trust are brought against a member of the Council of Governors or the Board of Directors, and that member has acted honestly, in good faith, reasonably and in execution or purported execution of their Board functions, or judgment is given in the Member's favour or the Member is acquitted, then that Member shall not have to meet out of their personal resources any personal, civil or criminal costs or liabilities which arise from such proceedings.

15.2 The Trust may purchase and maintain for a member of the Council of Governors or a Member of the Board of Directors insurance against any such costs or liabilities.

16. INSTRUMENTS ETC.

16.1 Any 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 so executed or signed.

16.2 The Trust shall have a seal which shall only be used by the authority of a minimum of two officers of the Trust designated by the Board of Directors.

16.3 Unless otherwise determined by the Board of Directors, any instrument to which the seal is affixed shall be signed by a Director and the Foundation Secretary or by two Directors.

16.4 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by the persons who have attested the seal.

16.5 A report of all sealings shall be made to the Board of Directors at least annually. This report is to contain details of the seal number, the description of the document and the date of the sealing.

