

<b>TRUST BOARD IN PUBLIC</b>	<b>Date: 30 January 2014</b>	
	<b>Agenda Item: 4.2</b>	
<b>REPORT TITLE:</b>	Foundation Trust Governance Rationale and Constitution	
<b>EXECUTIVE SPONSOR: LEAD DIRECTOR:</b>	Michael Wilson, Chief Executive Gillian Francis-Musanu, Director of Corporate Affairs	
<b>REPORT AUTHOR:</b>	Val Thompson, Interim FT Programme Manager	
<b>REPORT DISCUSSED PREVIOUSLY: (name of sub-committee/group &amp; date)</b>	Trust Board 19.12.13 and FT Project Board (16.1.14) . key elements of each document	
<b>Purpose of the Report and Action Required:</b> (√)		
This report provides the Board with further analysis to inform discussion regarding the public and patient constituencies of the Foundation Trust. The Board is asked to discuss the report and advise on the approach to be adopted.	<b>Approval</b>	½
	<b>Discussion</b>	
	<b>Information</b>	½
<b>Summary of Key Issues</b>		
<p>NHS Foundation Trusts are required to have a Constitution setting out the governance arrangements for the foundation trust.</p> <p>As part of the FT application process the Trust is also required to submit a Governance Rationale explaining the rationale for each element of the proposed governance arrangements.</p> <p>Both documents remain in draft until after the end of public consultation but are required as draft for the TDA Readiness Review in March. The TDA process requires that prior to submission they have been reviewed and approved by the Trust Board.</p>		
<b>Relationship to Trust Corporate Objectives &amp; Assurance Framework:</b>		
Objective 4 . Become a sustainable, effective organisation.		
<b>Corporate Impact Assessment:</b>		
<b>Legal and regulatory implications</b>	NHS Foundation Trusts must be legally constituted and are required to have a constitution setting out the governance arrangements for the Foundation Trust.	
<b>Financial implications</b>	N/A	
<b>Patient Experience/Engagement</b>	The proposed governance arrangements of the Foundation Trust require statutory public consultation	
<b>Risk &amp; Performance Management</b>	N/A	
<b>NHS Constitution/Equality &amp; Diversity/Communication</b>	The Health Acts 2006 and 2012 require the public constituencies of the Foundation Trust to be representative of the population served by the Trust.	

**Attachments:**

1. Draft Governance Rationale
2. Draft Constitution

## TRUST BOARD REPORT – 30<sup>th</sup> JANUARY 2014 FOUNDATION TRUST GOVERNANCE RATIONALE AND CONSTITUTION

### 1. Introduction

NHS foundation trusts have to be legally constituted and to have a constitution setting out their governance arrangements which complies with the 2006 Health Act as amended by the 2012 Health and Social Care Act.

The Department of Health and Monitor, the independent regulator of NHS foundation trusts, have issued a model constitution which has to form the basis of the Trust's constitution. The Governance Rationale is a template provided by Monitor which requires the Trust to provide the rationale underpinning each element of the constitution.

As the proposed governance arrangements may change as a result of the public consultation both documents remain in draft form until the response to consultation has been completed. Following this the constitution will be subject to legal review to ensure the Foundation Trust will be legally constituted.

Both documents are required submissions for the TDA Readiness Review.

### 2. Governance Rationale

The Governance Rationale is a template that covers all the required elements of the proposed governance arrangements for the Foundation Trust, including:

- Definition of the public, patient and staff constituencies
- Arrangements for recruiting and growing the membership and ensuring it is representative of the constituencies
- The size and composition of the Council of Governors
- The role of the Council of Governors and the part it will play in the FT
- The process for nominating elected governors and the election process
- The process(es) for appointing partner governors
- Process for handling vacancies on the Council of Governors
- The overall size and composition of the Board of Directors
- The relationship between the Council of Governors and the Board of Directors
- Terms of office for both Governors and Non Executives on the Board of Directors
- Details of any indemnity clause in the constitution (optional)
- Details of any dispute resolution procedures in the constitution e.g. how any disputes relating to the constitution or between the Council of Governors and the Board of Directors will be resolved
- The procedure for amending the constitution

In developing its governance rationale and constitution for FT status the Trust is required to take account of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) and the model core constitution for NHS foundation trusts issued by Monitor and DH.

The Trust Board and FT Project Board have previously discussed key elements of the proposed governance arrangements including the definition of the public constituencies, the decision to have a patient constituency, the processes for electing and appointing

governors and the relationship between the Council of Governors and the Board of Directors. These proposed governance arrangements relating to the public, patient and staff constituencies and the composition of the Council of Governors are part of the statutory consultation which started in November and continues until the end of February.

Other elements of the Governance Rationale, such as the terms of office, are based on the Trust's Standing Orders and the best practice guidance issued by Monitor and the Foundation Trust Network.

### **3. Constitution**

The constitution is based on the Model Constitution provided by DH and Monitor and covers all the proposed governance arrangements. It should be read in conjunction with the Governance Rationale which provides the explanation for the Trust specific requirements.

There are a few minor elements that still require completion including

- The role of the Council of Governors in approving a merger or significant transaction
- Any indemnity arrangements for Governors . this is optional as unlike Directors the responsibilities and accountability of Governors is collective and not individual

These are not required at this stage and will be finalised at the same time as making any changes that arise from consultation and prior to legal review.

### **4. Next Steps**

Both documents remain in draft until after the end of the public consultation which is currently taking place as the consultation responses may lead to changes to the proposed governance arrangements. Once any changes arising from the consultation have been made the constitution will be reviewed by the Trust's lawyers to ensure it complies with the requirements of the 2006 Health Act as amended by the 2012 Health and Social Care Act so that the foundation trust will be legally constituted.

The TDA, as part of its Readiness Review, will review the draft documents, especially the Governance Rationale, to ensure the proposals are legally compliant and also that the process for determining the proposals has been robust and considered.

### **5. Recommendation**

The Trust Board is asked to note progress with the development of these documents and approve their submission to TDA as part of the Readiness Review.

**Val Thompson**  
**Interim Foundation Trust Programme Manager**

**January 2014**