

# **CUMBRIA, NORTHUMBERLAND, TYNE AND WEAR NHS FOUNDATION TRUST**

## **CONSTITUTION**

**1 July 2022**

# Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust

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## **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**

**Annual Members' Meeting is defined in paragraph 11 of the constitution**

**Constitution means this constitution and all annexes to it**

**Council of Governors – Means** The Council of Governors of the trust as constituted in accordance with the constitution and which has the same meaning as the “Board of Governors” in The 2006 Act

**Monitor – Is** the body corporate known as “monitor”, as provided by 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 2006 Act

## **2. Name**

The name of the foundation trust is Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust (The Trust)

## **3. Principle purpose**

The principle purpose of the trust is the provision of goods and services for the purposes of the health service in England.

**14.3** The trust does not fulfil its principle 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.

The trust may provide goods and services for any purposes related to

**14.3.2** The provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness

**14.3.2** The promotion and protection of public health

**14.3** The trust may also carry activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principle purpose

#### **4. Powers**

**14.3** The powers of the trust are set out in the 2006 Act, subject to any restrictions in the Trust's Provider License

**14.3** All the powers of the trust shall be exercised by The Board of Directors on behalf of the trust

**14.3** Subject to the provisions of The Mental Health Act 2007 any of these powers may be delegated to a committee of directors or to an executive director

#### **5. Membership and constituencies**

The trust shall have members, each of whom shall be a member of one of the following constituencies

**14.3** A Public Constituency

**14.3** A Staff Constituency

**14.3** A service User and Carer Constituency

#### **6. Application for membership**

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

#### **7. Public Constituency**

- 14.3** 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 aligned to the electoral area in which they live.
- 14.3** Those individuals who live in an area specified for a Public Constituency are referred to collectively as a Public Constituency
- 14.3** The minimum number of members in each Public Constituency is specified as Annex 1.
- 14.3** In addition an individual who lives outside the electoral wards within the Trusts boundaries but within England and Wales may become a public member of the Newcastle and the rest of England and Wales Public Constituency.

## **8. Staff Constituency**

- 14.3** 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
- 14.3** He/she 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
  - 14.3.2** He/she has been continuously employed by the trust under a contract of employment for at least 12 months
- 14.3** Individuals who exercise functions for the purposes of the trust (which for the avoidance of doubt shall not include Non-Executive Directors) 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.
- 14.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency
- 14.3** The Staff Constituency shall be divided into three descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency
- 14.3** The minimum number of members in each class of the Staff Constituency is specified in Annex 2

## **Automatic membership by default- staff**

**14.3** An individual who is:

**14.3.2** Eligible to become a member of the Staff Constituency

**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 he/she informs the trust that he/she does not wish to do so

## **9. Service User and Carer Constituency**

**14.3** An individual who has within the period specified below attended any of the trusts premises as a service user or as the carer of a service user may become a member of the trust

**14.3** The period referred to above shall be the period of six years immediately preceding the date of an application by the service user or carer of a service user to become a member of the trust

**14.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Service User and Carer Constituency

**14.3** The Service User and Carer Constituency shall be divided into two classes descriptions of individuals who are eligible for membership of the Service User and Carer Constituency, a description of individuals being specified within Annex 3 and being referred to as a class within the Service User and Carer Constituency

**14.3** Anyone providing care under or by virtue of a contract or as voluntary work, does not come within the category of those who qualify for membership of the Service User and Carer Constituency unless that person has been recognised by the relevant local authority as being a carer under section 10 (10) of the Care Act 2014

**14.3** the minimum number of members in each class of the Service User and Carer Constituency is specified In Annex 3

**10. Restriction on membership**

- 14.3** An individual who is a member of a constituency, or a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class
- 14.3** 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
- 14.3** An individual must be at least 14 years old to become a member of the trust
- 14.3** 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 6 – Further Provisions

**14. Annual Members' Meeting**

- 11.1** 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.

**14. Council of Governors – composition**

- 12.1** The trust is to have a Council of Governors, which shall comprise both elected and appointed governors
- 12.2** The composition of the Council of Governors is specified in Annex 4
- 12.3** The members of the Council of Governors , other than the appointed members, shall be chosen by election by their constituency or where there are classes within a constituency, by their class within that constituency the number of governors to be elected by each constituency, or where appropriate by each class of each constituency is specified in Annex 4

**13. Council of Governors- election of governors**

- 13.1** 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 current at the time of publication of this constitution are attached as Annex 10



**13.2** The Model Election Rules as published from time to time form part of this constitution. The Model Election Rules current at the time of publication of this constitution as attached as Annex 9

**13.3** a subsequent variation of the Model Election Rules shall not constitute a variation of the terms of this constitution for the purposes of paragraph 44 of the constitution (amendments of the constitution)

**13.2** an election, if contested, shall be by secret ballot.

#### **14. Council of Governors- tenure**

**14.1** an elected governor may hold office for a period of up to 3 years

**14.2** an elected governor is eligible for re-election at the end of their term of office

**14.3** an elected governor shall cease to hold office if he/she ceases to be a member of the constituency or class by which he/she was elected.

**14.4** An appointed governor may hold office for an initial period of up to 3 years;

**14.4** an appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her. Further provisions relating to a governors tenure of office are set out in Annex 6.

**14.5** an appointed governor shall be eligible for re-appointment at the end of his/her term

**14.6** an elected or appointed governor may not hold office for longer than a continuous period of nine consecutive years and may not stand for another constituency. Different to their current constituency, if they have served for nine consecutive years on the Council of Governors.

#### **15. Council of Governors- disqualification and removal**

**15.1** The following may not become or continue as a member of the Council of Governors

**15.1.1** A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged

**15.1.2** A person who has made a composition or arrangement with or granted a deed for his/her creditors and has not been discharged in respect of it

**15.1.3** 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 an option of a fine) was imposed on him/her

**15.1.4** A person who within the preceding five years has been convicted in the British Islands of any offence if he/she was detained under a court order made pursuant to the Mental Health Act 1983 for a period of not less than three months

**15.1.5** A person who within the preceding five years has been subject to an Anti-Social Behaviour order made under the Crime and Disorder Act 1998 as amended

**15.1.6** A person who is included in any barred list established under Safeguarding Vulnerable Adults Act 2006 or any equivalent list. A person who has at any time been subject to the notification requirements under part 2 of the Sexual Offences Act 2003 or a Sex Offenders Order made under the Crime and Disorder Act 1998 as amended

**15.1.7** An 'unfit person' as defined in the trust's provider license (as may be amended from time to time).

**15.1.8** A person who is a spouse, partner, parent or child of a member of the Council of Governors or Board of Directors.

## **16. Council of Governors- duties of governors**

### **16.1** The general duties of the Council of Governors

**16.1.1** To hold the non-executive directors individually and collectively to account for the performance of the Board of Directors

**16.1.2** To represent the interests of the members of the trust as a whole and the interests of the public

**16.2** The trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such

## **17. Council of Governors- meetings of governors**

**17.1** The chair of the trust (i.e. The Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25 below) or, in his/her absence, The Vice Chair (appointed in accordance with the provisions of paragraph 28 below) shall preside at meetings of The Council of Governors.

**17.2** Meetings of The Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons

**17.3** 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 trusts or directors' performance) The Council of Governors may require one or more directors' to attend a meeting.

## **18. Council of Governors- standing orders**

The standing orders for the practice and procedure of The Council of Governors are attached at Annex 7.

## **19. Council of Governors- referral to the panel**

**19.1** 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

**19.1.1** To act in accordance with its constitution

**19.1.2** To act in accordance with provision made by or under chapter 5 of the 2006 Act

**19.2** 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

## **20. Council of Governors- conflicts of interest of governors**

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/she 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.

## **21. Council of Governors- travel expenses**

The trust may pay travelling and other expenses to members of The Council of Governors at rates determined by the trust

## **22. Council of Governors- further provisions**

Further provisions with respect to The Council of Governors are set out in Annex 5

## **23. Board of Directors- composition**

**23.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors'

**23.2** The Board of Directors is to comprise:

**23.2.1** A non-executive Chair

**23.2.2** A minimum of 6 other non-executive directors

**23.2.3** 6 executive directors

**23.3** One of the executive directors shall be The Chief Executive

**23.4** The Chief Executive shall be The Accounting Officer

**23.5** One of the executive directors shall be The Finance Director

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

**23.7** One of the executive directors is to be a registered nurse or a registered midwife

**23.8** The Board of Directors shall at all times be constituted so that at least half of the board excluding the chair, shall be independent non-executive directors

## **24. Board of Directors- General duty**

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

## **25. Board of Directors – appointment and removal of chair and other non-executive directors**

**25.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chair of the trust and the other non-executive directors.

**25.2** Removal of the chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

## **26. Board of Directors- qualification for appointment as a non-executive director**

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

**26.1** He/she is a member of a Public Constituency

**26.2** He/she is a member of The Service User and Carer Constituency

**26.3** Where any of the trusts' hospitals includes a medical or dental school provided by a university, he/she exercises functions for the purposes of that university

**26.4** He/she is not disqualified by virtue of paragraph 29 below

## **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 Chair, The Chief Executive and the other non-executive directors shall appoint or remove the other executive directors

## **28. Board of Directors- appointment of vice chair**

The Council of Governors at a general meeting of The Council of Governors shall appoint one of the non-executive directors as a vice chair, having taken the advice of The Chairman

## **29. Board of Directors – disqualification**

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

**29.1** A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged

**29.2** A person who has made a composition or arrangement with or granted a trust deed for. His/her creditors and has not been discharged in respect of it

**29.3** 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/her

**29.4** A person who is the subject of an order under The Sexual Offences Act 2003

**29.5** A person who is included in any barred list established under The Safeguarding Vulnerable Adults Act 2006 or any equivalent list

**29.6** A person who within the preceding five years has been convicted in The British Islands of any offence if he/ she was detained under a court order made pursuant to The Mental Health Act 1983 for a period of not less than three months

**29.7** A person who within the preceding five years has been subject to an Anti-Social Behaviour Order made under The Crime and Disorder Act 1998 as amended

**29.8** A person who has at any time been subject to the notification requirements of The Sexual Offences Act 2003 or a Sex Offenders Order made under The Crime and Disorder Act 1998 as amended

**29.9** An 'unfit person' as defined in the trust's provider license (as may be amended from time to time)

**29.10** In the case of a Non-Executive Director, a person who is no longer a member of The Public Constituency

**29.11** A person who is a Director, Governor or Governing Body member or equivalent of another NHS body except with the approval of The Board of Directors for Executive Directors and Council of Governors for Non-Executive Directors

**29.12** A person who does not comply with the CQC guidance regarding appointments to senior positions in organisations subject to CQC regulations i.e. The CQC's Fit and Proper Person Test.

**29.13** They are the subject of a disqualification order made under The Company Directors Disqualifications Act 1986

**29.14** They are the spouse, partner, parent or child of a member of The Board of Directors or The Council of Governors

**29.15** They are a person whose tenure of office as a Chairman or as a member of Director of health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings or non-disclosure of a pecuniary interest

**29.16** They have within the preceding two years been dismissed, otherwise than by reason of redundancy from any paid employment with a public body

**29.17** They are a member of The Local Authority's Health Overview and Scrutiny Committee or Health and Wellbeing Board

**29.18** They are a person who is a medical practitioner and who has been removed from the register of medical practitioners held by The General Medical Council, in accordance with The Medical Act or has been suspended from that register and not subsequently had their name returned to the register

### **30. Board of Directors – meetings**

**30.1** 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

**30.2** 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

### **31. Board of Directors – standing orders**

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8.

### **32. Board of Directors - conflicts of interest of directors**

**32.1** The duties that a director of the trust has by virtue of being a director include in particular

**32.1.1** 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.

**32.1.2** 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.

**32.2** The duty referred to in sub-paragraph 32.1.1 is not infringed if

**32.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

**32.2.2** The matter has been authorized in accordance with the constitution.

**32.3** The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

**32.4** In sub-paragraph 32.1.2, “third party” means a person other than

**32.4.1** The trust

**32.4.2** A person acting on its behalf.

**32.5** 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.

**32.6** If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.



- 32.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 32.8** 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.
- 32.9** A director need not declare an interest
- 32.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest
- 32.9.2** If or to the extent that, the directors are already aware of it;
- 32.9.3** If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
- 32.9.3.1** By a meeting of the Board of Directors, or
- 32.9.3.2** By a committee of the directors appointed for the purpose under the constitution.

### **33. Board of Directors – remuneration and terms of office**

- 33.1** 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 Chair and the other non-executive directors.
- 33.2** 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.

### **34. Registers**

The trust shall have:

- 34.1** A register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes within it, the class to which he/she belongs;
- 34.2** A register of members of the Council of Governors;
- 34.3** A register of interests of governors;
- 34.4** A register of directors

**34.5** A register of interests of the directors.

**35. Registers – inspection and copies**

**35.1** The trust shall make the registers specified in paragraph 34 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 Service User and Carer Constituency;

**35.2.2** Any other member of the trust, if he/she 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;

**36.1.3** A copy of the latest annual report;

**36.2** 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 a:

**36.2.1** 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.

**36.2.2** Copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

**36.2.3** Copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

**36.2.4** Copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

**36.2.5** Copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.

**36.2.6** 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.

**36.2.7** Copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;

**36.2.8** Copy of any final report published under section 65I (administrator's final report).

**36.2.9** 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.

**36.2.10** Copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

**36.4** 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.

**37. Auditor**

**37.1** The trust shall have an auditor.

**37.2** The Council of Governors shall appoint or remove the auditor at a general meeting of The Council of Governors.

**38. Audit committee**

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.

**39. Accounts**

**39.1** The Trust must keep proper accounts and proper records in relation to the accounts.

**39.2** Monitor 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 auditor.

**39.4** The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval 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 and forward plans and non NHS work**

**40.1** The trust shall prepare an Annual Report and send it to Monitor.

**40.2** The trust shall give information as to its forward planning in respect of each financial year to Monitor.

**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 42.5.1 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 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 43.1 with the Annual Members' Meeting.

## **42. Indemnity**

**42.1** Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out their personal resources any personal civil liability which in incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

## **43. Instruments**

**43.1** The trust shall have a seal.

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

## **44. Amendment of the constitution**

**44.1** The trust may make amendments of its constitution only if

**44.1.1** More than half of the members of the Council of Governors of the trust present and voting approve the amendments, and

**44.1.2** More than half of the members of the Board of Directors of the trust present and voting approve the amendments.

**44.2** Amendments made under paragraph 44.1 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.

**44.3** Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with

respect to the role that the Council of Governors has as part of the trust) –

**44.3.1** At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment.

**44.3.2** The trust must give the members an opportunity to vote on whether they approve the amendment.

**44.4** If more than half of the members present and 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.

**44.5** Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor'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.

#### **45. Mergers etc. and significant transactions**

**45.1** The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors in post at the time of voting.

**45.2** The trust may enter into a significant transaction only if more than half of the members of the Council of Governors present and voting approve entering into the transaction.

"Significant transaction" means:

**45.2.1** The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the trust's annual turnover before the acquisition; or

**45.2.2** The disposition of, or an agreement to dispose of, whether contingent or not, assets of the trust the value of which is more than 25% of the trust's annual turnover before the disposition; or

**45.2.3** transaction that has or is likely to have the effect of the trust acquiring right or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the trust's annual turnover before the transaction.

**45.3** For the purpose of this paragraph, in assessing the value of any contingent liability for the purposes of paragraph 45.2 the directors:

**45.3.2** Must have regard to all circumstances that the directors know, or ought to know, affect, or may affect, the value of the contingent liability; and

**45.3.3** May rely on estimates of the contingent liability that are reasonable in the circumstances: and

**45.3.4** May take account of the likelihood of the contingency occurring.

**45.4** The views of the Council of Governors will be taken into account before the Trust enters into any proposed transaction which would exceed the threshold of 10% for any of the criteria set out in paragraph 45 above.



## **ANNEX 1 – THE PUBLIC CONSTITUENCY**

- 1.1** Individuals who live in one of the electoral wards, i.e. in one of the Trust's Local Authority boundaries, may become a member of the public constituency aligned to the electoral area in which they live:

<b>Name of the Public Constituency</b>	<b>Area of the Public Constituency by Electoral ward / Council areas</b>	<b>Minimum number of members</b>
Northumberland	Northumberland County Council	250
Newcastle upon Tyne (and the rest of England and Wales)	Newcastle upon Tyne City Council	250
Gateshead	Gateshead Metropolitan Borough Council	250
North Tyneside	North Tyneside Metropolitan Borough Council	250
South Tyneside	South Tyneside Metropolitan Borough Council	250
Sunderland	Sunderland City Council	250
Cumbria	Cumbria County Council	250
<b>Total</b>		<b>1750</b>

- 1.2** In addition an individual who lives outside the boundaries defined in 1.1. But within England and Wales may become a public member of the Newcastle upon Tyne and rest of England and Wales public constituency.
- 1.3** The Membership Development Strategy details differential future targets for membership based on percentage population in each public constituency.

## **ANNEX 2 – THE STAFF CONSTITUENCY**

**1.1** The staff constituency is divided into 3 classes of individuals as follows:

<b>Staff Constituency</b>	<b>Individuals eligible for Membership of that class</b>	<b>Minimum number of Members</b>
Medical Staff Class	Those individuals defined in paragraph 1.2 below	20
Other Clinical Staff Class	Those individuals defined in paragraph 1.3 below	200
Other Non-Clinical Staff Class	Those individuals defined in paragraph 1.4 below	200
<b>Total</b>		<b>420</b>

**1.2** The members of the medical class are individuals who are members of the staff constituency who are fully registered persons within the meaning of the consolidated Medical Act 1983 as amended (and in the case of medical practitioners, who hold a licence and are fully authorised to practice).

**1.3** The members of the other clinical class are individuals who are members of the staff constituency whose regulatory body falls within the remit of the Professional Standards Authority for Health and Social Care established under section 25 of the NHS Reform and Health Care Professions Act 2002 as amended, but are not fully registered persons within the meaning of the consolidated Medical Act 1983 as amended. Examples include Nurses, Occupational Therapists, Psychologists, Pharmacists, and Social Workers etc. (and where appropriate have live registration to practice).

**1.4** The members of the other non-clinical staff are individuals who are members of the staff constituency who do not come within paragraphs 1.2 or 1.3 above. Examples include Healthcare Assistants, Administrative, Estates and Support staff etc.

**1.5** Members of the staff constituency are to be individuals;

- a)** Who are 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 who has been continuously employed by the trust under a contract of employment for at least 12 months
- b)** 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. This includes any members of staff employed by any subsidiary company of the Trust
- c)** Who are not disqualified from membership under Annex 6 of this Constitution
- d)** Who have been invited by the trust to become a member of the Staff Constituency (as a member of the appropriate class) and have not informed the trust that they do not wish to do so.

**1.6** A person who is eligible to be a member of the staff constituency, may not become or continue as a member of any other constituency and may not become or continue as a member of more than one staff class.

**1.7** Where a member is eligible for more than one staff class or if any confusion exists as to the most appropriate staff class, the trust's decision will be final. The decision will be delegated to the Company Secretary.

**1.8** For the purposes of paragraph 8 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the trust or has continuously exercised functions for the purposes of the trust.

## **ANNEX 3 – THE SERVICE USER AND CARER CONSTITUENCY**

### **1. The Service User and Carer Constituency**

#### **1.1 The Service User and Carer constituency is divided into classes of individuals as follows:**

<b>Service User Class</b>	<b>Minimum number of Service User Members</b>
Service Users who within the preceding 6 years have used the trust's adult services, including substance misuse, forensic and specialist services (eating disorders, affective disorders, mother and baby, gender dysphoria, specialist psychological therapy and mental health services for the deaf)	100
Service Users who within the preceding 6 years have used the trust's children and young people's services	50
Service Users who within the preceding 6 years have used the trust's older people's services	50
Service Users who within the preceding 6 years have used the trust's learning disability services	25
Service Users who within the preceding 6 years have used the trusts' autism services	25
Service Users who within the preceding 6 years have used the trust's neuro-disability services	50
<b>Total</b>	<b>300</b>
<b>Carer Class</b>	<b>Minimum number of Carer Members</b>
Carers who within the preceding 6 years have cared for an individual who has used the trust's adult services, including substance misuse, forensic and specialist services (eating disorders, affective disorders, mother and baby, gender dysphoria,	50

specialist psychological therapy and mental health services for the deaf	
Carers who within the preceding 6 years have cared for an individual who has used the trust's children and young people's services	25
Carers who within the preceding 6 years have cared for an individual who has used the trust's older people's services	25
Carers who within the preceding 6 years have cared for an individual who has used the trust's learning disability services	10
Carers who within the preceding 6 years have cared for an individual who has used the trust's autism services	10
Carers who within the preceding 6 years have cared for an individual who has used the trust's neuro-disability services	25
<b>Total</b>	<b>145</b>

- 1.2** In accordance with the Membership Development Strategy, differential membership targets will be set for each class over time.
- 1.3** Where a member may be eligible for more than one Service User and Carer class, that member may choose the class they wish to be in. A person who is eligible for more than one class, but does not express a preference will be allocated to an appropriate class by the trust. The decision will be delegated to the Company Secretary.

## **ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS**

**1.1** The composition of the Council of Governors is as follows:

Constituency – Public (elected)	Number of Governors	Total
Class: Northumberland	1	
Class: North Tyneside	1	
Class: South Tyneside	1	
Class: Gateshead	1	
Class: Sunderland	1	
Class: Cumbria	1	
Class: Newcastle upon Tyne, rest of England and Wales	1	
<b>Public total</b>		<b>7</b>
Constituency – Service User and Carer (elected)	Number of Governors	Total
Class: Service User (elected)		
Adult Services	2	
Children and Young People's Services	1	
Learning Disability	1	
Autism Services	1	
Neuro-disability Services	1	
Older People's Services	1	
<b>Service User total</b>		<b>7</b>

Class: Carer (elected)		
Adult Services	2	
Children and Young People's Services	1	
Learning Disability	1	
Autism Services	1	
Neuro-disability Services	1	
Older People's Services	1	
<b>Carer total</b>		<b>7</b>
Constituency – Staff (elected)	Number of Governors	Total
Medical	1	
Clinical	3	
Non-Clinical	3	
<b>Staff total</b>		<b>7</b>
Constituency – Appointed	Number of Governors	Total
Northumberland County Council	1	
North Tyneside Metropolitan Borough Council	1	
Newcastle upon Tyne City Council	1	
South Tyneside Metropolitan Borough Council	1	
Gateshead Metropolitan Borough Council	1	
Sunderland City Council	1	
Cumbria County Council	1	
<b>Total Local Authority Appointed</b>		<b>7</b>
Newcastle University	1	



Northumberland University	1	
University of Cumbria	1	
University of Sunderland	1	
<b>Total University Appointed</b>		<b>4</b>
Community and Voluntary Sector	2	
<b>Total CVS Appointed</b>		<b>2</b>
<b>TOTAL COMPOSITION</b>		<b>41</b>

- 1.2** When future vacancies for an appointed Governor arise, the trust may in its absolute discretion decide whether to permit that Local Authority, University or Community Voluntary (Third) Sector partner which had first failed or declined to appoint a governor to do so for the next period of office.
- 1.3** Where vacancies exist in the publicly elected constituencies, University and Community Voluntary (Third) Sector Partner Governors may be temporarily stood down to ensure the Council of Governors is balanced in favour of publicly elected Governors, pending the outcome of an election or by-election.

## **ANNEX 5 – FURTHER PROVISIONS IN RELATION TO THE COUNCIL OF GOVERNORS**

### **FURTHER PROVISIONS**

#### **1 COUNCIL OF GOVERNORS – TERMS OF OFFICE**

Public Governors; Service User and Carer Governors and Staff Governors can hold office for a period of up to three years and will be eligible for election following that period subject to a maximum term of nine years; or

- (a)** Until he/she ceases to be a member of the constituency he represents if sooner;

- 1.2** Local Authority Governors can hold office for an initial period of up to three years and will be eligible for reappointment at the end of that term, up to a maximum of nine years; or

- (a)** until the individual vacates the post if sooner;
- (b)** Until the Local Authority withdraws its sponsorship of the individual (by notice to the Board Secretary to that effect) if sooner.

- 1.3** University Partner Governors:

- (a)** Appointments to these posts will be nominated by: the University of Newcastle, the University of Northumbria at Newcastle, the University of Sunderland and the University of Cumbria, on a rotational basis at the discretion of the Chairman
- (b)** University Partner Governors can hold office for an initial period of up to three years and will be eligible for reappointment at the end of that term, up to a maximum of nine years; or
- (c)** until the University agrees with the Trust that another individual will take up the post if sooner; or
- (d)** Until the University withdraws its sponsorship of that individual (by notice to the Board Secretary to that effect) if sooner.

- 1.4** Community Voluntary Sector Partner Governors

- (e) Community Voluntary Sector Partner Governors can hold office for an initial period of up to three years and will be eligible for reappointment at the end of that term, up to a maximum of nine years; or
- (f) Until the individual's organisation withdraws its sponsorship of that individual (by notice to the Board Secretary to that effect) if sooner.

## **2 Termination of Tenure**

**2.1** A Governor's term of office shall be terminated:

**2.1.1** by the Governor giving notice in writing to the trust of his resignation from office at any time during that term of office;

**2.1.2** Immediately, if the Governor fails to attend three consecutive Council of Governors meetings, unless the Chair is satisfied that:

- (a) the absence was due to a reasonable cause; and
- (b) He/she will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.

**2.1.3** If the Council of Governors resolves to terminate his/her term of office on the grounds that in the reasonable opinion of three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose; his/her continuing as a Governor would or would be likely to:-

- (c) prejudice the ability of the trust to fulfil its principal purpose or purposes under this constitution or otherwise discharge its duties and functions; or
- (d) prejudice the trust's work with any other person or organisation with whom it is engaged or may be engaged in the provision of goods and services; or
- (e) adversely affect public confidence in the goods and services provided by the trust; or
- (f) otherwise bring the trust or the Council of Governors into disrepute or be detrimental to the interests of the trust; or
- (g) not be in the best interests of the trust; or

- 2.1.4** He/she has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him/her to undertake in his capacity as a Governor; or
- 2.1.5** he/she has in his conduct as a Governor failed to comply in a material way with the values and principles of the NHS or the trust; or
- 2.1.6** He/she has committed a material breach of any code of conduct applicable to the Governors of the trust.
- 2.1.7** He/she 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.
- 2.1.8** He/she is elected to a political post, e.g. Member of Parliament. Any Governor putting himself forward as a candidate for such a post should "stand down" as a Governor pending the outcome. Missing meetings pending the outcome of any such election shall not count as failure to attend for the purpose of paragraph 2.1.2 above.
- 2.1.9** Upon a Governor resigning or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions that Governor shall cease to be a Governor and his/her name shall be removed forthwith from the Register of Governors.
- 2.2** Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor to the disputes resolution process referred to in Paragraph 8, Annex 5 within 14 days of the date upon which notice in writing of the Council of Governors decision is given to the Governor.
- 2.3** 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 soon as reasonably practicable be entitled to attend a meeting with the Chair and Chief Executive of the trust, who shall use reasonable endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chair and Chief Executive shall not be entitled to rescind or vary the decision which has already been made.
- 2.4** In support of the Council of Governors proactively managing the arrangements specified in 2.1.2 above, the Council of Governors may grant a governor a "leave of absence" from their duties as a Governor. This facilitates the Council of Governors considering a Governor's circumstances in advance of the Governor failing to attend three consecutive meetings, enables cover arrangements for the Governor to

be put in place at the earliest opportunity and may benefit the Governors concerned, e.g. if suffering from ill health.

### **3     Disqualification**

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

- (a)**    He/she is less than the minimum age of 16 years;
- (b)**    In the case of a Public Governor or Service User and Carer Governor or a staff Governor, he/she ceases to be a member of the constituency he/she represents;
- (c)**    he/she is the spouse, partner, parent or child of another member of the Council of Governors or Board of Directors;
- (d)**    They are a Director of the Trust, or a Governor or Director of another NHS Trust or NHS Foundation Trust;
- (e)**    In the case of a Local Authority, Community Voluntary (Third) Sector or University Partner Governors, the appointing organisation withdraws their sponsorship of him/her;
- (f)**    He/she is a member of the Local Authority Health Overview and Scrutiny Committee or the Health and Wellbeing Board;
- (g)**    He/she has been dismissed, otherwise than by reason of redundancy, from any paid employment with a public service body, including for the avoidance of doubt the Trust;
- (h)**    He/she is a person whose tenure of office as the chair or as a member or Director of a public service body has been terminated on the grounds that his/her appointment is not in the interests of that public service, for nonattendance at meetings, or for non-disclosure of a pecuniary interest;
- (i)**    He/she is an Executive or Non-Executive Director of the Trust, or a Governor, Non-Executive Director, Chair, Chief Executive or Executive Director of another NHS foundation trust, except in the case of a Local Authority Governor, who may become a Governor at another NHS foundation trust;

- (j)** He/she has been removed from membership of a professional body or from a list of registered medical, dental, nursing or other health care practitioners as a result of disciplinary action or any conclusion that the continued inclusion of that person's name on any such list or membership of any such professional body would be prejudicial to the efficiency of the services to which the professional body or list relates and has not subsequently been re-instated to membership or such a list;
- (k)** He/she is incapable by reason of continuing mental incapacity, illness or injury of managing and administering his/her own affairs or property;
- (l)** They are a person who is subject to an order under the Sexual Offences Act 2003;
- (m)** They are a person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006 or any equivalent list
- (n)** They are a person where disclosures revealed by a Disclosure and Barring Services check against them are such that it would be inappropriate for them to become or continue as a Governor to would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- (o)** They have within the preceding two years been dismissed, otherwise than by reason of resignation or redundancy, from any paid employment within a public body;
- (p)** They have previously been removed as a Director or Governor of the Trust, or been removed as a Director or Governor of another NHS Foundation Trust;
- (q)** He/she brings the Council of Governors or any of its member organisations into disrepute;
- (r)** He/she fails to abide by the constitution as set out in this document; or
- (s)** He/she has failed to make, or has falsely made, any declaration required to be made under section 60 of the 2006 Act.

- 3.2** If a Staff Governor is suspended/excluded from duties for any reason, he/she will also be suspended from his/her role as a Governor for the duration of that suspension/exclusion. Whilst he/she is suspended, he/she may not attend meetings of the Council of Governors in any capacity, but missing meetings of the Council of Governors by virtue of suspension/exclusion will not count as failure to attend for the purposes of paragraph 2.1.2
- 3.3** Subject to paragraph 3.1, if a Governor is under investigation for a criminal offence, excluding minor traffic offences, he/she will be suspended from his/her role as a Governor for the duration of that investigation. Whilst a Governor is suspended, that Governor may not attend meetings of the Council of Governors in any capacity, but missing meetings of the Council of Governors by virtue of suspension will not count as failure to attend for the purposes of paragraph 2.1.2
- 3.4** Where a person has been elected or appointed as a Governor and he/she becomes disqualified under paragraph 3.1, he/she shall notify the Company Secretary in writing of such disqualification.

If it comes to the notice of the Company Secretary at the time of his/her appointment or later that the Governor is so disqualified, the Chairman shall immediately convene a meeting of the Council of Governors membership panel comprising the Chairman of the Trust (and Council of Governors), an Appointed Governor, two Public Governors and a Staff Governor. The final decision on disqualification from eligibility to become, or remain a Governor will rest with this membership panel. The Chair will have a casting vote but no vote otherwise. The decision of the panel on whether to disqualify the person in question will be notified to him in writing by the Company Secretary.

Upon receipt of any such notification, that person's term of office, shall be terminated and he/she shall cease to act as a Governor.

## **4 Vacancies**

- 4.1** Where membership of the Council of Governors ceases for one of the reasons set out in paragraph 2 of Annex 5 or terminates for whatever reason, elected Governors shall be replaced by inviting the person who was placed second in the previous election to fill the vacancy for the remaining period of the former Governor's term of office, provided:
- (a)** the period to when the seat is up for election is greater than 3 months
  - (b)** The election was held in the last three years

- (c) The person placed second in that election received at least 20% of the votes cast in the election.
- (d) The person placed second in that election is still a member of the relevant constituency.
- (e) The person placed second is not disqualified from becoming a Governor by virtue of paragraph 3 above.

**4.2** The time a person appointed under 4.1 serves as a Governor shall count towards the maximum period of office in paragraph 14.1.

**4.4** Where an appointed Governor post falls vacant, the appointing organisation will appoint another Governor within 3 months of the Company Secretary receiving notification from the appointing organisation of the vacancy.

**4.5** No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity or any act or decision of the Council of Governors made prior to the deficiency being known.

**5. Appointment, remuneration and allowances of the Chair and Non-Executive Directors**

**5.1** The remuneration and allowances for the Chairman and Non-Executive Directors of the Trust are to be set by the Council of Governors (the Company Secretary taking independent advice on behalf of the Council of Governors where required) and are to be published in the Trust's annual report.

**5.2** The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates to the positions of Chair and non-executive director as it considers appropriate and in reaching its decision shall have regard to the views of the Board of Directors and of the Governors' Nominations Committee as to the suitability of the available candidates.

**5.3** The Council of Governors shall appoint a Vice-Chair in accordance with paragraph 28 of the constitution.

**5.4** Governors are not to receive remuneration.



## 6. Meetings

- 6.1 The Council of Governors will meet no less than 4 times per year.
- 6.2 At a general meeting no later than 30 September in each year, the Council of Governors are to receive and consider the annual accounts, any report of the auditor on them, and the annual report. The general meeting may be combined with the Annual Members' Meeting, the provisions for which are set out in paragraph 11.
- 6.3 The Council of Governors' Standing Orders as set out in Annex 7 of the constitution provides for further details of the practice and procedure at Council of Governors' meetings.

## 7. Committees and Sub-Committees

- 7.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 7.2 These committees or sub-committees may call upon outside advisers for assistance.
- 7.3 Such committees or sub-committees may make recommendations to the Council of Governors but final decision making powers rest with the full Council of Governors.
- 7.4 A member of a committee shall not disclose to any third party a matter dealt with by or brought before the committee, without that committee's permission until that committee has reported to the Council of Governors or has otherwise concluded action on that matter.
- 7.5 A member of a committee shall not disclose any matter to any third party if the Council of Governors or committee resolves that **it is confidential**.
- 7.6 The Council of Governors shall establish a committee of its members to be called the Nominations Committee to discharge those functions in relation to the appointment and removal of the Chair and Non-Executive Directors and their remuneration and allowances and other terms and conditions.

## **8. Disputes Resolution – Governors and Directors**

- 8.1** The Council of Governors and Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.
- 8.2** If the Chair cannot achieve resolution of a disagreement through informal efforts, the Chair will follow the dispute resolution procedure outlined below. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve a resolution:
- (a)** The Chair will call a joint meeting (Resolution Meeting) of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than 20 clear working days following the date of the request. The meeting must comprise at least two thirds of the membership of the Council of Governors and at least two thirds of the membership of the Board of Directors. The meeting will be held in private. The aim of the meeting is to resolve the conflict. The Chair will have the right to appoint an independent facilitator to assist the process. Every reasonable effort must be made to reach agreement.
  - (b)** If a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
  - (c)** If following the Resolution Meeting, and any decision of the Board of Directors, the Council of Governors considers that implementation of the decision will result in the trust failing to comply with the constitution, its Provider Licence or to act in accordance with provision made by or under Chapter 5 of the 2006 Act, a governor may refer the issue in accordance with paragraph 19 of the constitution.
- 8.3** The right to call a Resolution Meeting rest with the following, in the sequence of escalation shown:

- (a) The Chair
- (b) The Chief Executive
- (c) Two thirds or more of the Council of Governors
- (d) Two thirds or more of the Board of Directors

**9. Appointment of Lead Governor**

- 9.1** The Council of Governors shall appoint one of the Governors to be Lead Governor of the Council of Governors via a process agreed with the Council of Governors, Chairman and Company Secretary.

**10. Disclosure of Interests**

- 10.1** If a Governor has a pecuniary interest (financial), personal or family interest, whether that interest is actual or potential, 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 they become aware of it.6.2 Any Governor who has a material interest in a matter defined below shall declare such an interest to the Council of Governors and:

**10.1.1** Shall withdraw from the meeting and play no part in the relevant discussion or decision; and

**10.1.2** Shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counter).

- 10.2** Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a decision of the remaining Governors in accordance with 2.1.3 of this Annex.

- 10.3** Subject to the exceptions detailed in 6.5 below, a material interest is:

**10.3.1** Any Directorship of a company, including Non-Executive Directorships held in limited companies (with the exception of dormant companies);

**10.3.2** Any interest held by a Governor in any company or business, which in connection with the matter, is trading with the Trust, or is reasonably likely to be considered as a potential trading partner with the Trust;

**10.3.3** Any interest in a voluntary or other organisation providing health and social care services to the NHS;

- 10.3.4** A position of authority in a charity or voluntary organisation in the field of health and social care; and
  - 10.3.5** Any personal, or familial connection with any organisation, entity, company or business, considering entering into or having entered into a financial arrangement with the Trust including, but not limited to, tenders, contracts or banks.
- 10.4** The exception which shall not be treated as material interests are as follows:
  - 10.4.1** Shares not exceeding 2% of the total shares in issue in any company whose shares are listed on any public exchange;
  - 10.4.2** An employment contract held by staff governors;
  - 10.4.3** An Appointed Governor's employment contracts with their appointing organisation.

## **ANNEX 6 – FURTHER PROVISIONS IN RELATION TO THE TRUST'S MEMBERSHIP**

### **FURTHER PROVISIONS**

#### **1. Termination of Membership**

- 1.1** A person may not be a member of the Trust if:
  - 1.1.1** They resign by notice to the Company Secretary's Office;
  - 1.1.2** They are deceased;
  - 1.1.3** They have been dismissed from membership under the provisions of this constitution
  - 1.1.4** They cease to be entitled under this Constitution to be a member of their allocated constituency
- 1.2** It is the responsibility of members to ensure their eligibility and not the Trust but if the Trust is on notice that a member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.
- 1.3** Membership of the Public and Service User and Carer Constituencies is deemed to have commenced upon the receipt of a completed membership application form by the Trust's Membership Office.
- 1.4** Membership of the Staff Constituency is automatic for qualifying staff, but staff may opt out by notifying the Company Secretary's Office..
- 1.5** A member may be expelled by a resolution approved by not less than two-thirds of the Council of Governors attending and voting at a general meeting (unless they are a Governor, then paragraph XX of Annex XX should be applied). The following procedure for considering removal of a members should be adopted:
  - 1.5.1** Any member may complain to the Company Secretary that another member has acted in a way detrimental to the Trust;
  - 1.5.2** If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it

considers appropriate to ensure that each member's point of view is heard and may either;

- a)** Dismiss the complaint and take no further action
- b)** For a period not exceeding 12 months, suspend the rights of the member complained of to attend Members meetings and vote under this Constitution
- c)** Arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.

- 1.6** If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 1.7** At the meeting, the Council of Governors will consider the evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.
- 1.8** If the Member complained of fails to attend the meeting without due cause as determined by the Chairman of the Council of Governors, the meeting may proceed in their absence.
- 1.9** A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 1.10** No person who has been expelled from membership is to be re-admitted except by resolution carried by the votes of two-thirds of the Council of Governors who are present at a General Meeting.

## **ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

### **1. Meetings**

- 1.1** The Chair may call a meeting of the Council of Governors at any time. If the Chair is requested and refuses or fails to call a meeting, on receipt of a written request, within seven days of such refusal or failure, signed by at least one third of the whole number of Governors, one third or more of the Governors may call a meeting.
- 1.2** Ordinary meetings (General Meetings) of the Council of Governors, whether public or private shall be held at regular intervals at such times and places as the Council of Governors may determine.
- 1.3** Where meetings are held in public, the public and representatives of the press shall be afforded facilities to attend all General meetings of the Council of Governors, but shall be required to withdraw upon the Council of Governors resolving as follows: “That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”
- 1.4** The Chair (or Vice Chair) shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust’s business shall be conducted without interruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows: “That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Council of Governors to complete business without the presence of the public.”
- 1.5** Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Trust or Committee thereof. Such permission shall be granted only upon resolution of the Trust.
- 1.6** The trust will make such provisions as may be necessary to enable Governors with special requirements to participate in meetings e.g. by providing advocates, signers for the deaf.
- 1.7** The trust shall decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to

attend and address any of the Council of Governors meetings and may change, alter or vary these terms and conditions as it deems fit.

- 1.8** At a general meeting held by 30 September in each year, the Trust's Directors shall present the Trust's audited accounts and annual report and any report on the accounts to the Council of Governors. This meeting can be combined with the Annual Members' Meeting.

## **1 Chair and Vice Chair**

- 1.1** The Chair of the Trust Board of Directors will act as Chair of the Council of Governors and in his absence the Vice Chair of the Board of Directors will act as Chair of the Council of Governors.
- 1.2** In the absence of both the Chair and Vice Chair of the Board of Directors, the Senior Independent Director will act as Chair of the Council of Governors.

## **2 Chair of Meetings**

- 2.1** At any meeting of the Council of Governors the Trust Chair, if present, shall preside. The Chair shall have a casting vote but no vote otherwise.
- 2.2** If the Chair is absent from the meeting, the Trust Vice Chair, shall preside. In the absence of both the Chair and Vice Chair of the Board of Directors, the Senior Independent Director shall preside. In the absence of the Chair, Vice Chair and Senior Independent Director another Non-Executive Director shall preside.
- 2.3** Should there be a vote on any matter relating to the Chair directly, (which for the avoidance of doubt would not include an issue affecting other members of the Board of Directors), the casting vote would be exercised by the Vice Chair of the Board of Directors. Should there be a vote on any matter relating to the Non-Executive Directors directly, neither the Chair nor the Vice Chair should preside. In such circumstances, the Lead Governor shall preside over and to have the casting vote on such matters.

## **3 Notice of Meetings**

- 3.1** Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted thereat, and signed by the Chair or by an officer authorised by the Chair to sign on his behalf, shall be delivered to every Governor, at their usual place of residence, so as to be available to such Governor at least seven days before the meeting:
- 3.2** For public meetings of the Council of Governors a notice of the meeting shall be placed on the trust's website;



- 3.3** Want of service of such notice on any Governor shall not affect the validity of a meeting or any decision thereat;
- 3.4** In the case of a meeting called by Governors in default of the Chair or in his/her absence the Vice Chair, the notice shall be signed by those Governors who called the meeting, being no less than one third of the whole Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.5** Executive and non-executive directors shall be invited to attend all meetings of the Council of Governors to provide such information as may be necessary for the successful functioning of the Council of Governors e.g. finance, performance, medical, nursing reports.

#### **4 Record of Attendance**

- 4.1** The names of Governors present at the meeting shall be recorded in the minutes of the meeting.

#### **5 Quorum**

- 5.1** No business shall be transacted at a Council of Governors meeting unless at least one-third of the whole number of Governors are present, i.e. one third of the whole number of Governors in post at the time of the decision, including at least 50% from the Public and Service Users' and Carers' constituencies and one Governor from the Staff Constituency.
- 5.2** If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, that person shall no longer count towards the quorum. If a quorum is then not available for discussion and/or passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 5.3** Members of the Council of Governors can participate in meetings or committee meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 5.4** Should any member of the Council of Governors participate in meetings by telephone or video link for a specific item on the agenda, they must participate at the commencement of the agenda item, and remain present until the Chairman has deemed the item closed.

## **6 Minutes**

- 6.1** The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding thereat.
- 6.2** No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 6.3** Minutes of the meetings held in public will be available on the trust's website.

## **7 Notice of Motion**

- 7.1** Subject to the provisions of Section 9 below, a Governor desiring to move a motion shall send a notice thereof at least ten clear days before the meeting to the Board Secretary, who shall insert in the agenda for the meeting all notices so received that are permissible under the appropriate order. This paragraph shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

## **8 Motions**

- 8.1** All motions and amendments to resolutions must have a proposer and seconder otherwise they shall not be discussed or put to a meeting.
- 8.2** The mover of a motion shall have a right of reply at the close of any discussion on a motion or any amendment thereto.
- 8.3** Motions which may be moved during Debate. When a motion is under debate or immediately prior to discussion no other motions shall be moved except the following:-
  - 8.3.1** Amendments to the motion;
  - 8.3.2** The adjournment of the discussion or the meeting;
  - 8.3.3** That the meeting proceed to the next business;
  - 8.3.4** The appointment of an ad hoc committee to deal with a specific item of business;
  - 8.3.5** That the question be now put to a motion to exclude the public (including the press);

## **9 Motion to Rescind a Motion**

Notice of motion to rescind any resolution, (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governor who gives it and also the signature of two other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be permitted for any Governor other than the Chair to propose a motion to the same effect within six months.

## **10 Chair's Ruling**

- 10.1** The decision of the Chair on questions of order, relevancy and regularity (including procedure on handling motions) and his interpretation of the Standing Orders shall be final. In this interpretation he shall be advised by the Chief Executive and/or the Board Secretary.

## **11 Voting**

- 11.1** Subject to the provisions of the Constitution, every question at a meeting, which the Council of Governors agrees should be put to the vote, shall be determined by a majority of the votes of the Governors present. In the case of an equality of votes, the Chair shall have a casting vote.
- 11.2** All questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by show of hands provided that, upon any question the Chair may direct, or it may be proposed, seconded and carried that a vote be taken by paper ballot.
- 11.3** If at least one-third of the Governors present so request, the voting on any question may be recorded so as to show how each Governor present and voting gave his vote.
- 11.4** If a Governor so requests, his/her vote shall be recorded by name.
- 11.5** In no circumstances may an absent Governor vote by proxy.
- 11.6** No resolution of the Council of Governors shall be passed if it is opposed by all of the Public and Service User and Carer Governors present.
- 11.7** All decisions taken in good faith at a meeting of the Council of Governors or any committee of the Council of Governors shall be valid, even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of any of the Governors present at the meeting.

## **12 Conflict of Interest**

- 12.1** The Constitution requires Governors to declare all interests which they, or their spouse or partner, have which would be considered as relevant and material to the Council of Governors. Interests should be declared on election or appointment, or as soon as possible after a change has occurred.
- 12.2** At the time Governors interests are declared, they should be recorded in the minutes of the Council of Governors. Any changes in interests should be declared at the next Council of Governors meeting after the change has occurred.
- 12.3** If during the course of a meeting of the Council of Governors a conflict of interest is established, the Governor concerned shall withdraw from the meeting and play no further part in the relevant discussion or decision. For the avoidance of doubt this includes voting on an issue where a conflict is established. If there is a dispute as to whether a conflict exists, the majority will resolve the issue in consultation with the Board Secretary, with the Chair having the casting vote.
- 12.4** Interests which should be regarded as relevant or material are:
- a)** Directorships, including non-executive directorships held in private companies or plcs;
  - b)** Ownership, part-ownership or directorships of private companies, businesses or consultancies possibly seeking to do business with the Trust;
  - c)** Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the Trust;
  - d)** A position of authority in a charity or voluntary organisation in the field of health or social care;
  - e)** Any connection with a voluntary or other organisation contracting for Trust services to the extent not covered above, 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.
- 12.5** If Governors have any doubt about the relevance of an interest, this should be discussed with the Board Secretary.
- 12.6** Declarations of interest will be a standing agenda item at the beginning of every meeting.

### **13. Register of Interests**

A register of Governors' interests will be held by the Trust and will be made available for inspection on request.

### **14. Confidentiality**

**14.1** Matters to be dealt with by the Council of Governors following the exclusion of members of the public and representatives of the press shall be confidential to the Council of Governors.

**14.2** Governors, Directors Officers or any employee or any other representative in attendance at a Council of Governors meeting, or any of its committees, in private shall not reveal or disclose the contents of papers, discussions or minutes of the items taken in private, outside of the meeting, without the express permission of the Chairman and any such occurrence will be treated as a breach of the relevant Governor/Director/Officer Code of Conduct.

### **15. Appointment of committees and sub-committees**

**15.1** The Council of Governors may form advisory sub-committees under a written Terms of Reference, which must be approved by the Council of Governors. Advisory meetings may include members of the Board and other Trust representatives, or service users. The Council of Governors may appoint the membership of sub-committees of the Council of Governors and all acts of proceedings of advisory committees shall be reported to the Council of Governors.

**15.2** These Standing Orders in their entirety, as far as they are applicable, shall apply also, with the appropriate alternation, to meetings of the sub-committees of the Council of Governors.

**15.3** The Council of Governors may not delegate any of its statutory powers to any of its sub-committees.

**15.4** The sub-committees to be established by the Council of Governors are: the Nomination Committee, the Terms of Reference of which shall be made available on the Trust's website. In addition, the Council of Governors may establish other sub-committee and groups as it deems necessary to assist it in exercising its functions.

## **ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

### **TRUST BOARD OF DIRECTORS**

**Note: This Annex has been prepared to be used as a standalone document in addition to being part of the Constitution.**

#### **1. INTRODUCTION**

##### **1.1 Statutory Framework**

- a)** The trust is a Public Benefit Corporation established by the granting of Authorisation by Monitor.
- b)** The statutory functions conferred on the trust are set out in the NHS Act 2006 and in the trust's Provider Licence. All business shall be conducted in the name of the trust.
- c)** All the powers of the trust shall be exercised by the Board of Directors on its behalf, but any of those powers may be delegated to a committee of directors or to an executive director. The Board of Directors is required to adopt a schedule of matters reserved for decision by the Board of Directors, Board committees' terms of reference and a document outlining details of delegation to individuals (i.e. the Decision Making Framework). These documents shall outline such restrictions and conditions the trust thinks fit and shall have effect as if incorporated into the Standing Orders.

#### **2. Appointment of the Chair and Non-Executive Directors**

The Chair and Non-Executive Directors shall be appointed by the Council of Governors in accordance with paragraphs 25 of the Constitution.

#### **3. Terms of Office of the Chair and Non-Executive Directors**

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 Chair and the other non-executive directors.

#### **4. Appointment of Vice Chair**

- 4.1** Any Non-Executive Director appointed as Vice Chair, may at any time resign from the office of Vice Chair by giving notice in writing to the Chair.
- 4.2** The vice Chair may preside at meetings of the Board of Directors in the following circumstances:
- When there is need for someone to have the authority to chair any meeting of the Board of Directors when the Chair is not present; or
  - On occasions when the Chair declares a pecuniary interest or other interest in accordance with paragraph 32 of the Constitution that prevents him from taking part in the consideration or discussion of the matter before the Board of Directors.

#### **5. Independent Directors**

At least half of the Board of Directors, excluding the Chair, shall comprise non-executive directors determined by the Board of Directors to be independent. The Board of Directors shall appoint one of the independent non-executive directors to be the senior independent director. The senior independent director shall be available to members and Governors if they have concerns which contact through normal channels of the Chair, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate. The Vice Chair may be appointed as the Senior Independent Director but this is not mandatory. The Council of Governors is responsible for appointing the Vice-Chair following the advice and guidance of the Chairman.

#### **6. Calling Meetings**

- 6.1** The Chair may call a meeting of the Board of Directors at any time. If the Chair is requested and refuses or fails to call a meeting, on receipt of a written request, within seven days signed by one third of the whole number of Directors, one third or more of the Directors may call a meeting.
- 6.2** Ordinary meetings of the Board of Directors whether public or private shall be held at regular intervals at such times and places as the Board may determine.
- 6.3** Where meetings are held in public, the public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board of Directors, but shall be required to withdraw upon the Board resolving as follows: "That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to

the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”

- 6.4 The Chair (or Vice Chair) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust’s business shall be conducted without interruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows: “That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public”
- 6.5 Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Trust or Committee thereof. Such permission shall be granted only upon resolution of the Trust.
- 6.6 Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public, as provided above, shall be confidential to the Board.
- 6.7 Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked “In Confidence” or minutes headed “Items Taken in Private” outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

## **7. Observers at such meetings**

The Trust shall decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board’s meetings and may change, alter or vary these terms and conditions as it deems fit.

## **8. Chair of Meetings**

- 8.1 At any meeting of the Board of Directors the Chair, if present, shall preside.
- 8.2 If the Chair is absent from the meeting, the Vice Chair, if present, shall preside.
- 8.3 If the Chair and Vice Chair are absent, such Non-Executive Director as the members present shall choose, shall preside.



- 8.4** If the Chair is absent temporarily on the grounds of a declared conflict of interest, the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.

## **9. Notice of Meetings**

- 9.1** Before each meeting of the Board of Directors a notice of the meeting, specifying the business proposed to be transacted thereat, and signed by the Chair or by an officer authorised by the Chair to sign on his behalf, shall be delivered to every Director, at their usual place of residence, so as to be available to such Director at least seven days before the meeting.
- 9.2** For public meetings of the Board of Directors a notice of the meeting shall be placed on the trust's website;
- 9.3** Want of service of such notice on any Director shall not affect the validity of a meeting or any decision made thereat;
- 9.4** In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.
- 9.5** Agendas and available supporting papers will be circulated to Directors five days before the meeting but will certainly be despatched no later than three working days before the meeting, save in an emergency. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one working day after posting.
- 9.6** Before each public meeting of the Board of Directors, a public notice of the time and place of every meeting, and the public part of the agenda, shall be displayed at the Trust's offices and website, at least three working days before the meeting.

## **10. Setting the Agenda**

- 10.1** The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 10.2** A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten working days before the meeting. The request should state whether the item of business is propose to be transacted in the presence of the public and should include appropriate supporting information.

Requests made less than ten working days before a meeting may be included on the agenda at the discretion of the Chair.

**11. Petitions**

Where a petition has been received by the Trust the Chair shall include the petition as an item for the agenda of the next Board meeting.

**12. Record of Attendance**

The names of the Chair and Directors present at the meeting shall be recorded in the minutes.

**13. Quorum**

No business shall be transacted at a Board of Directors meeting unless at least one-third of the whole number of Directors are present, including at least one Executive and one Non-Executive Director.

**14. Minutes**

**14.1** The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

**14.2** No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

**14.3** Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting, the minutes shall be made available to the public.

**15. Notice of Motion**

Subject to the provisions of section 16 below, a Director desiring to move a motion shall send a notice thereof at least ten days before the meeting to the Board Secretary, who shall insert in the agenda for the meeting all notices so received that are in order. This paragraph shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

**16. Motions**

**16.1** All motions and amendments to resolutions must have a proposer and seconder otherwise they shall not be discussed or put to a meeting.

**16.2** The mover of a motion shall have a right of reply at the close of any discussion on a motion or any amendment thereto.

**16.3** When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

**16.3.1** An amendment to the motion;

**16.3.2** The adjournment of the discussion or the meeting;

**16.3.3** That the meeting proceed to the next business (\*);

**16.3.4** The appointment of an ad hoc committee to deal with a specific item of business;

**16.3.5** That the motion now be put (\*);

**16.3.6** That a Director be not further heard; or

**16.3.7** A motion to exclude the public (including the press)

**16.3.8** (\*) In the case of sub-sections denoted by (\*) above, to ensure objectivity, motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.

**16.4** No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the Motion.

**17. Motion to Rescind a Resolution**

Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months, shall bear the signature of the Director who gives it and also the signature of two other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be permitted for any Director other than the Chair to propose a motion to the same effect within six months.

**18. Emergency Motions**

Subject to the agreement of the Chair, a Director may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of the urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item in the agenda. The Chair's decision to include or exclude the item shall be final.

**19. Content of Motions**

**19.1** The Chair may exclude from the debate at his discretion any such motion of which notice was not given on the notice of convening the meeting other than a motion relating to:

**19.1.1** The reception of a report;

**19.1.2** Consideration of any item of business before the Board;

**19.1.3** The accuracy of the minutes;

**19.1.4** That the Board proceed to the next business;

**19.1.5** That the Board adjourn;

**19.1.6** That the question now be put.

**20. Withdrawal of Motion or Amendments**

A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

**21. Chair's Ruling**

Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and other means shall be final.

**22. Voting**

**22.1** Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion be equal, the Chair of the meeting shall have a second and casting vote.

**22.2** All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by show of hands. A paper ballot may also be used if a majority of Directors present so request.

**22.3** If at least one third of the Directors present and the Chair so request, the voting (other than by ballot paper) on any question may be recorded so as to show how each Director present and voted or abstained.

- 22.4** If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 22.5** In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 22.6** An officer who has been appointed formally by the Board to act up 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.
- 22.7** An officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status, may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

**23. Interest of Directors in Contracts and Other Matters**

- 23.1** A register of Directors' interests will be held by the Trust and will be made available for inspection on request.
- 23.2** Subject to the following provisions of this Standing Order, if a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 23.3** The Trust may exclude a Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, direct or indirect, is under consideration.
- 23.4** The Trust may, subject to any terms set by Monitor, terminate the appointment of any Non-Executive Director who fails, as required, to declare a pecuniary interest, and in the case of an Executive Director who fails to declare an interest or is found to have used the position or knowledge for private advantage, may take disciplinary action leading to his/her dismissal.
- 23.5** Any remuneration, compensation or allowances payable to a Chair or other Non-Executive Director in accordance with the remuneration and allowances and other terms and conditions of office decided by the

Council of Governors, shall not be treated as pecuniary interest for the purpose of this regulation.

**23.6** Interests which should be regarded as relevant or material are:

Directorships, including non-executive directorships held in private companies or plcs

- I** Ownership, part-ownership or directorships of private companies, businesses or consultancies possibly seeking to do business with the Trust;
- II** Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the Trust
- III** A position of authority in a charity or voluntary organisation in the field of health or social care;
- IV** Any connection with a voluntary or other organisation contracting for Trust services to the extent not covered above, 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.

A Director shall be treated, subject to the next following paragraphs, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if

**23.6.1** He/she or a nominee is a member 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/she is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed to be also the interest of the other.

**23.7** The Chair or 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/her membership of a company or other body if he/she has no beneficial interest in any securities of that company or other body;

**23.7.2** Of an interest of his/her or of any company, body or person with which he/she is connected as mentioned above 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** Where the Chair or a Director has 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 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 if the share capital is of more than one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this shall not prohibit him/her 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/her duty to disclose his interest.

## **24. Register of Interests**

**24.1** The Company Secretary will ensure that a Register of Interests is established to formally record declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non- Executive Directors, as previously defined. The Register will be held by the Board Secretary.

**24.2** These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared in the preceding 12 months will be incorporated, while recognising that interests should be declared as soon as possible.

**24.3** Declarations of interest will be a standing agenda item at the beginning of every Board of Directors meeting.

**24.4** The Register shall be made available for inspection by members of the public, except if otherwise prescribed by regulations. So far as the registers are required to be made available, they are to be available for inspection free of charge at all reasonable times and a person who requests a copy of or extract from the register is to be provided with a copy or extract. 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.

## **25. Appointment of Committees and Sub-committees**

- 25.1** Subject to any directions by Monitor, the Board of Directors may, and if directed as aforesaid shall, appoint committees of the Board of Directors, or together with one or more NHS Foundation Trusts, NHS Trusts, commissioners or other statutory partner organisations, appoint joint committees, consisting wholly or partly of the Chair and Directors of the Trust or other health service bodies or wholly of persons who are not Directors or other health service bodies in question.
- 25.2** A committee or joint committee appointed under this regulation may, subject to such directions as may be given by Monitor or the appointing Board of Directors, appoint sub-committees consisting wholly or partly of Directors of the committee or joint committee (whether or not they are Directors of the Trust); or wholly of persons who are not Directors of the committee of the Trust.
- 25.3** The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Trust. In which case the term 'Chair' is to be read as a reference to the Chair of the committee as the context permits, and the term 'Member' is to be read as a reference to a Member of the committee also as the context permits. (There is no requirement to hold meetings of committees established by the Trust in public).
- 25.4** Each committee shall have such terms of reference and powers, and be subject to such conditions (as to reporting to the Board of Directors), as the Trust shall decide and shall be in accordance with any relevant legislation and regulation as may be applicable. Such terms of reference and powers shall have effect as if incorporated into Standing Orders.
- 25.5** Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors. This is subject to that all powers of the trust shall be exercised by the Board of Directors on its behalf, but any of those powers may be delegated to a committee of directors or to an executive director.
- 25.6** The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons who are neither Directors nor officers shall be appointed to a committee, the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings and/or expenses in accordance, where appropriate, with national guidance.



**25.7** Where the Board is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Board, such appointments shall be made in accordance with applicable statute and regulations, and with any guidance issued by Monitor.

**25.8** The committees established by the Board shall include:

- The Audit Committee
- The Remuneration Committee
- The Mental Health Legislation Committee

**25.9** Proceedings in Committee to be Confidential.

**25.9.1** A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded action on that matter.

**25.9.2** A Director or a member of a committee shall not disclose any matter reported to the Board of Directors or committee, if the Board of Directors or committee shall resolve that it is confidential.

**25.10** Every committee shall have a Non-Executive Director Chair, appointed by the Trust Chair.

**25.11** Except where approved by the Board of Directors, business shall not be transacted at any meeting of any committee of the Trust unless at least one third of the whole number of the committee is present provided that in no case shall the quorum of the committee be less than two members.

**26. Conflict of Interests**

During the course of a meeting of the Board of Directors if a conflict of interest is established, the Director concerned shall withdraw from the meeting and play no further part in the relevant discussion or decision. For the avoidance of doubt this includes voting on an issue where a conflict is established. If there is a dispute as to whether a conflict exists, the majority will resolve the issue with the Chair having the casting vote.

**27      CQC's Fit and Proper Person Test for Directors (Regulated Activities Regulations)**

**27.1.** Regulation 5 of the Regulated Activities Regulations states that the Trust must not appoint or have in place an individual as a director, or performing the functions of or equivalent or similar to the functions of, such a director, if they do not satisfy all the requirements set out in paragraph 3 of that Regulation.

**27.2.** The requirements of paragraph 3 of Regulation 5 of the Regulated Activities Regulations are that:

- (a)** The individual is of good character
- (b)** The individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed
- (c)** The individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed
- (d)** The individual has not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity
- (e)** None of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

**27.3.** The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are:

- (a)** The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged

- (b) The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland
- (c) The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986
- (d) The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
- (e) The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland
- (f) The person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.

**27.4.** Part 2 of Schedule 4 to the Regulated Activities Regulations expands on good character as follows:

- (g) Whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence
- (h) Whether the person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

## **28. Suspension of Standing Orders**

**28.1** Except where this would contravene any statutory provision or any guidance issued by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two thirds of the Board are present, including one Executive and one Non-Executive Director and that the majority of those present vote in favour of suspension.

**28.2** A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

**28.3** A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and other Directors.

**28.4** No formal business may be transacted while Standing Orders are suspended.

**29. Variation and Amendment of Standing Orders**

These Standing Orders shall be amended only if:

- (a)** A notice of motion under Standing Order has been given
- (b)** Approved by the Board of Directors
- (c)** The variation proposed does not contravene a statutory provision made by the Secretary of State or any term of the Trust's Provider Licence
- (d)** The amendment is made in accordance with the terms of the Trust's Constitution paragraph 45

**30. Review of Standing Orders**

These Standing Orders shall be reviewed annually by the Board of Directors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

**31. Notice**

Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient.

**32. Disputes Resolution**

**32.1** The Council of Governors and Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

**32.2** If the Chair cannot achieve resolution of a disagreement through informal efforts, the Chair will follow the dispute resolution procedure outlined below. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve a resolution:

- (a)** The Chair will call a joint meeting (Resolution Meeting) of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than 20 working days following the date of the request. The meeting must comprise at least two thirds of the membership of the Council of Governors and at least two thirds of the membership of the Board of Directors. The meeting will be held in private. The aim of the meeting is to resolve the conflict. The Chair will have the right to appoint an independent facilitator to assist the process. Every reasonable effort must be made to reach agreement.
- (b)** If a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
- (c)** If following the Resolution Meeting and any decision of The Board of Directors or The Council of Governors considers implementation of the decision will result in the trust failing to comply with the constitution or to act in accordance with provision made by or under Chapter 5 of the 2006 Act. A governor may refer the issue in accordance with paragraph 19 of the constitution

**32.3** The right to call a Resolution Meeting rest with the following, in the Sequence of escalation shown:

- (a)** The Chair
- (b)** The Chief Executive
- (c)** Two thirds or more of The Council of Governors
- (d)** Two thirds or more of The Board of Directors