

AUTHORISATION

of

5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

(pursuant to section 35 of the National Health Service Act 2006)



Signature:

A handwritten signature in blue ink, written over a dotted line.

1 March 2010

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PART 1 Authorisation

1. Monitor ("Monitor"), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 ("**the Act**") and all other powers exercisable by Monitor, hereby authorises 5 Boroughs Partnership NHS Trust to become an NHS Foundation Trust ("**the Trust**"), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 March 2010.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

PART 2 Interpretation and construction

1. Words and expressions used in the Authorisation shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
2. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
3. Words and expressions defined in the Act shall have the same meaning when used in this Authorisation.
4. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Authorisation.
5. In construing the provisions of this Authorisation, the heading or title of any Part, Condition or Schedule shall be disregarded.
6. Where any obligation of the Trust is required to be performed by a specified date or within a specified period, and where the Trust has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.
7. In this Authorisation:
 - “ancillary services” means services which support the provision of the mandatory goods and services listed in Schedule 2.
 - “property” is land and buildings owned or leased by the Trust.
 - “the Board of Directors” means the Board of Directors of the Trust.
 - “the provision of goods and services for purposes related to the provision of health care” includes the provision of social care services.
 - “high security psychiatric services” has the same meaning as in section 4 of the Act.

PART 3 Conditions

1. Principal Purpose

The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England. This does not preclude the provision of cross-border services to other parts of the United Kingdom.

2. General duty

The Trust shall exercise its functions effectively, efficiently and economically.

3. Constitution

(1) The Trust may make amendments to its constitution with the approval of Monitor.

(2) The constitution, incorporating any amendments which may be made thereto, is annexed at Schedule 1.

4. Compliance and enforcement

(1) The Trust shall comply with:

any requirements imposed on it under the Act or any other enactment;

the Conditions of this Authorisation;

the terms of its constitution;

if applicable, directions issued by the Secretary of State with respect to safety and security in connection with the provision of high security psychiatric services; and

the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.

(2) The Trust shall comply with any guidance issued by Monitor, unless Monitor has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.

(3) A failure to comply may result in Monitor taking enforcement action under sections 52, 53 or 54 of the Act.

5. Governance

(1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 and

the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.

- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

6. Health care and other standards

- (1) The Trust shall put and keep in place and comply with arrangements for the purpose of monitoring and improving the quality of health care provided by and for the Trust.
- (2) The Trust shall comply with statements of standards in relation to the provision of health care published by the Secretary of State under section 46 of the Health and Social Care (Community Health and Standards) Act 2003, as currently set out in the Department of Health publication Health and Social Care Standards and Planning Framework (July 2004) as may be amended from time to time.
- (3) If applicable, the Trust shall comply with any statements of standards with respect to social care services which the Secretary of State may issue from time to time.
- (4) If applicable, the Trust shall comply with any statements of standards with respect to security and risk management which the Secretary of State may issue from time to time.

7. Mandatory Services

- (1) The Trust is required to provide for the purposes of the health service in England the goods and services listed in Schedule 2 in the volumes or amounts specified therein ("**mandatory goods and services**") which goods and services in the volumes or amounts specified are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said goods and services in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force. This requirement includes an obligation to provide any ancillary services, accommodation and other facilities related to said goods and services and which are generally accepted to be required for the effective, efficient and economic provision of said goods and services in the volumes or amounts specified.
- (2) The Trust is required to provide education and training to third parties for the purposes of the health service in England listed in Schedule 3 in the volumes or amounts specified therein ("**mandatory education and training**"), which are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said education and training in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force.

- (3) Monitor reserves the right to vary the goods and services and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(1) and the education and training to third parties and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(2), in particular in order to ensure the continuity of local service provision and the fulfilment of local health needs as they may vary from time to time.
- (4) The Board of Directors of the Trust shall regularly review and shall at all times maintain and ensure the capacity and capability of the Trust to provide the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.

8. Authorised Services

- (1) The Trust is authorised to provide goods and services (including education and training, accommodation and other facilities) for purposes related to the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said goods and services and that the provision of said goods and services will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (2) Monitor reserves the right to refuse to authorise specific goods and services in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(1).
- (3) The Trust shall establish and maintain an up to date register of the goods and services referred to in Condition 8(1). With respect to education and training, only education and training provided to third parties shall be included in the register. Accommodation and other facilities do not require to be included in the register of goods and services.
- (4) The Trust shall make the register of goods and services available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.
- (5) The Trust is authorised to carry out research in connection with the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said research, that all relevant authorisations with respect to the carrying out of said research have been secured, that the said research will be carried out in accordance with the generally accepted ethical standards and that the said research will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (6) Monitor reserves the right to refuse to authorise research in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(5).
- (7) The Trust is authorised to make facilities and staff available for the purposes of education, training or research carried on by others.

- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of section 43(3) of the Act.

9. Protection of property

- (1) Property needed for the purposes of providing any of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 (including the ancillary services, accommodation and other facilities related thereto) and the mandatory training and education referred to in Condition 7(2) and listed in Schedule 3 is protected.
- (2) The Trust may not dispose any protected property without the approval of Monitor.
- (3) The Trust shall establish and maintain an asset register in respect of protected property, in accordance with guidance to be issued by Monitor.
- (4) The Trust shall make the asset register available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.

10. Private health care

The proportion of total income of the Trust in any financial year derived from private charges shall not be greater than the percentage set out in Schedule 4.

11. Limit on borrowing

- (1) The total amount of the Trust's borrowing is subject to the limit set out in Schedule 5 and the principles set out in the Prudential Borrowing Code for NHS Foundation Trusts.
- (2) The limit is subject to annual review by Monitor.

12. Financial viability

The Trust shall at all times remain a going concern as defined by relevant accounting standards in force from time to time.

13. Dividend payments on Public Dividend Capital

The Trust shall be required to pay annually to the Department of Health a dividend on its Public Dividend Capital at a rate to be determined from time to time by the Secretary of State.

14. Information

The Trust shall disclose to Monitor and directly to any third parties as may be specified by the Secretary of State the information, if any, specified in Schedule 6 as may be varied from time to time and such other information as Monitor may from time to time require.

15. Entry and inspection of premises

The Trust shall allow Monitor, any member, officer or member of staff of Monitor, and any agent acting on behalf of Monitor, to enter and inspect premises owned or controlled by the Trust.

16. Fees

The Trust shall pay to Monitor such reasonable annual fee, if any, as may be determined by Monitor.

17. Representative membership

The Trust shall continue to take such reasonable steps (as may be required by Monitor, by such date or within such period as may be specified by Monitor), to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) the patients' constituency is representative of those eligible for such membership.

18. Co-operation with other bodies

(1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the Care Quality Commission, NHS foundation trusts, other NHS trusts and other health authorities and organisations in accordance with the Act and any future guidance to be published by Monitor.

(2) The Trust shall co-operate with the Care Quality Commission, the National Oversight Group for High Security Hospitals and such other bodies (as may be specified in any future guidance to be published by Monitor) which have a remit covering activities related to the provision of mental healthcare services.

(3) The Trust shall co-operate with local authorities in the exercise of its own functions and in the exercise by the local authorities of their respective functions.

19. Emergency planning

The Trust shall assist the relevant authorities with, and participate in, local and national emergency planning and provision.

20. Information technology

The Trust shall participate in the national programme for information technology, in accordance with any guidance issued by Monitor.

21. Audit committee

(1) The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

(2) The Board of Directors shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

22. Audit

- (1) The Audit Code for NHS Foundation Trusts (“the Audit Code”) contains the directions of Monitor under paragraph 24(5) of Schedule 7 to the Act with respect to the standards, procedures and techniques to be adopted by the auditor.
- (2) The Trust shall comply with the Audit Code.
- (3) The auditor shall comply with the Audit Code.

23. Public interest reporting

The Trust shall forward a report to Monitor within thirty days (or such shorter period as Monitor may specify) of the auditor issuing a public interest report in terms of Schedule 10 paragraph 3 of the Act. The report shall include details of the Trust’s response to the issues raised within the public interest report.

24. Notification

The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under this authorisation or any financial or performance thresholds which Monitor may specify from time to time.

25. Information given to Parliament and to Members of Parliament

In addition to any statutory requirements, the Chairman, Chief Executive or any other person giving information to Parliament or to a Member of Parliament on behalf of a Trust shall ensure that they comply with the standards expected of Ministers of the Crown with regard to openness of dealings, the giving of accurate and truthful information and the correction of any inadvertent error at the earliest opportunity. Any question submitted to the Trust by a Member of Parliament shall be responded to by the Trust within the same timescale as that expected of Ministers with respect to Parliamentary questions.

26. Co-operation and Competition Panel

The Co-operation and Competition Panel (CCP) will advise Monitor on issues involving the Principles and Rules for Co-operation and Competition and NHS foundation trusts. In response to that advice, Monitor may issue directions to the Trust. The Trust shall comply with any such directions issued by Monitor

AUTHORISATION OF 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

Schedule 1

The Constitution (and Annexures)

5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST
CONSTITUTION

5 Boroughs Partnership NHS Foundation Trust - Constitution

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1. **Interpretation and Definitions (See also Annexes)**

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.

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.

constitution means this constitution and all annexes to it.

Monitor is the Independent Regulator of NHS Foundation Trusts, as provided by Section 31 of the 2006 Act.

Member is any individual who satisfies the criteria set out in paragraphs 7 and 8 and Annex 8 of the Constitution

Member Councillor has the meaning given in paragraph 10.1

terms of authorisation are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

the Accounting Officer is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

secretary means the Company Secretary of the Trust or any other person appointed to perform the duties of the Company Secretary, including a joint, assistant or Vice Secretary;

2. **Name**

The name of the foundation trust is 5 Boroughs Partnership NHS Foundation Trust (the Trust).

3. **Principal purpose**

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

4. **Powers**

4.1. The powers of the Trust are set out in the National Health Service Act 2006, subject to any restrictions in the terms of Authorisation

4.2. The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

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

5. Membership and constituencies

The Trust shall have Members, each of whom shall be a Member of one of the following constituencies:

- 5.1. a public constituency; or
- 5.2. a staff 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

- 7.1. An individual who lives in an area served by the Trust as specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.
- 7.2. Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 7.3. The minimum number of members in each area for the Public Constituency is specified in Annex 1.

8. Staff Constituency

- 8.1. An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
 - 8.1.1. he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2. he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2. Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3. Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff

Constituency.

- 8.4. The Staff Constituency shall be divided into 5 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.
- 8.5. The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

- 8.6. An individual who is:
 - 8.6.1. eligible to become a member of the Staff Constituency, and
 - 8.6.2. invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

9. Restriction on membership

- 9.1. An individual who is a Member of a constituency, or of a class within a constituency, may not while a Membership of that constituency or class continues, be a Member of any other constituency or class.
- 9.2. An individual who satisfies the criteria for Membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 9.3. An individual must be at least **14** years old to become a Member of the Trust.
- 9.4. Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 8 – Further Provisions.

10. Council of Members – Composition

- 10.1. The Trust is to have a Council of Members, which shall comprise both elected and appointed governors, who shall be known as Member Councillors.
- 10.2. The composition of the Council of Members is specified in Annex 3.
- 10.3. The Members of the Council of Members, 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 Member Councillors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

11. Council of Members – Election of Member Councillors

- 11.1. Elections for elected Members of the Council of Members shall be conducted in accordance with the Model Election Rules on the first past the post basis.
- 11.2. The Model Election Rules as published from time to time, by the Department of Health form part of this constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 4.
- 11.3. A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 41 of the constitution (amendment of the constitution).
- 11.4. An election, if contested, shall be by secret ballot.
- 11.5. Member Councillors must be at least 16 years of age at the date they are nominated for election or appointment.

12. Council of Members – Tenure

- 12.1. An elected Member Councillor may hold office for a period of up to 3 years.
- 12.2. An elected Member Councillor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 12.3. An elected Member Councillor shall be eligible for re-election at the end of his term, but shall serve for no more than three consecutive terms of office.

- 12.4. An appointed Member Councillor may hold office for a period of up to 3 years
- 12.5. An appointed Member Councillor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 12.6. An appointed Member Councillor shall be eligible for re-appointment at the end of his term, but shall serve for no more than three consecutive terms of office.

13. Council of Members – Disqualification and Removal

- 13.1. The following may not become or continue as a member of the Council of Members:
 - 13.1.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 13.1.2. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 13.1.3. 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 the option of a fine) was imposed on him;
- 13.2. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Members are set out in Annex 5 sections 1 and 2.

14. Council of Members – Meetings of Member Councillors

- 14.1. The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21 or paragraph 22 below) or, in his absence the Vice Chairman, (appointed in accordance with the provisions of paragraph 23 below)], shall preside at meetings of the Council of Members.
- 14.2. Meetings of the Council of Members shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons as specified in Annex 6, section 4.

15. Council of Members – Standing Orders

The Standing Orders for the practice and procedure of the Council of Members are attached at Annex 6.

16. Council of Members - Conflicts of Interest of Member Councillors

If a Member Councillor 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 Members, the Member Councillor shall disclose that interest to the members of the Council of Members as soon as he becomes aware of it. The Standing Orders (Annex 6) for the Council of Members shall make provision for the disclosure of interests and arrangements for the exclusion of a Member Councillor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

17. Council of Members – Travel Expenses

The Trust may pay travelling and other expenses to members of the Council of Members at rates determined by the Trust.

18. Council of Members – Further Provisions

Further provisions with respect to the Council of Members are set out in Annex 5.

19. Board of Directors – Composition

19.1. The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

19.2. The Board of Directors is to comprise:

19.2.1. a non-executive Chairman

19.2.2. **6** other non-executive directors; and

19.2.3. **7** executive directors.

19.3. The Chairman will have an additional vote in the event of an evenly split voting outcome.

19.4. One of the Executive Directors shall be the Chief Executive.

19.5. The Chief Executive shall be the Accounting Officer.

19.6. One of the Executive Directors shall be the Finance Director.

19.7. One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

19.8. One of the Executive Directors is to be a registered nurse or a registered midwife.

20. Board of Directors – Qualification for Appointment as a Non-executive Director

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

20.1. he is a Member of the Foundation Trust, or

20.2. he is not disqualified by virtue of paragraph 26 below.

21. Board of Directors – Appointment and Removal of Chairman and other Non-executive Directors

21.1. The Council of Members at a general meeting of the Council of Members shall appoint or remove the Chairman of the Trust and the other non-executive directors.

21.2. Removal of the Chairman or another Non-executive Director shall require the approval of three-quarters of the members of the Council of Members.

21.3. The initial Chairman and the initial Non-executive Directors are to be appointed in accordance with paragraph 22 below.

22. Board of Directors – Appointment of Initial Chairman and Initial other Non-executive Directors

22.1. The Council of Members shall appoint the Chairman of the applicant NHS Trust as the initial Chairman of the Trust if he wishes to be appointed.

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

22.3. The criteria for qualification for appointment as a Non-executive Director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 below) do not apply to the appointment of the initial Chairman and the initial other Non-executive Directors in accordance with the procedures set out in this paragraph.

22.4. An individual appointed as the initial Chairman or as an initial Non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) Non-executive Director of the

applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

23. Board of Directors – Appointment of Vice Chairman

The Council of Members at a general meeting of the Council of Members shall appoint one of the non-executive directors as a Vice Chairman.

24. Board of Directors - Appointment and Removal of the Chief Executive and other Executive Directors

24.1. The Non-executive Directors shall appoint or remove the Chief Executive.

24.2. The appointment of the Chief Executive shall require the approval of the Council of Members .

24.3. The initial Chief Executive is to be appointed in accordance with paragraph 25 below.

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

25. Board of Directors – Appointment and Removal of initial Chief Executive

25.1. The Non Executive Directors shall appoint the Chief Officer of the applicant NHS Trust as the initial Chief Executive of the Trust if he wishes to be appointed.

25.2. The appointment of the Chief Officer of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Members.

26. Board of Directors – Disqualification

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

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

26.2. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

26.3. 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.

27. Board of Directors – Standing Orders

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.

28. Board of Directors - Conflicts of Interest of Directors

If a Director 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 Board of Directors, the Director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

29. Board of Directors – Remuneration and Terms of Office

29.1. The Council of Members at a general meeting of the Council of Members shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

29.2. 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.

30. Secretary

30.1. The Trust shall have a Secretary who may be an employee. The Secretary may not be a Member Councillor, or the Chief Executive or the Finance Director.

30.2. The Secretary's functions shall include:

30.2.1. Acting as Secretary to the Council of Members and the Board of Directors, and any committees;

30.2.2. Attending all members' meetings, meetings of the Council of Members and the Board of Directors and keeping the minutes at those meetings;

30.2.3. Maintaining and keeping up to date the register of members and other registers and books required by this constitution;

30.2.4. Taking charge of the Trust's seal;

- 30.2.5. Publishing to members in an appropriate form relevant information about the Trust's affairs;
 - 30.2.6. Preparing and sending to the Regulator and any other statutory body all returns which are required to be made and
- 30.3. The Secretary shall be appointed and removed by the Board of Directors in consultation with the Council of Members.
- 30.4. The Board of Directors of the applicant NHS Trust shall appoint the first Secretary of the Trust.

31. Registers

The Trust shall have:

- 31.1. a register of Members showing, in respect of each Member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 31.2. a register of Members of the Council of Members;
- 31.3. a register of interests of Member Councillors;
- 31.4. a register of Directors; and
- 31.5. a register of interests of the Directors.

32. Admission to and removal from the registers

- 32.1. The Secretary shall be responsible for keeping the registers up to date from information received by him in accordance with his functions pursuant to paragraph 30.2.3.
- 32.2. Removal of members from the members' Register shall be in accordance with paragraph 9 of this Constitution.

33. Registers – Inspection and Copies

- 33.1. The Trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 33.2. The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if he so requests.

- 33.3. So far as the registers required to be made available:
- 33.3.1. they are to be available for inspection free of charge at all reasonable times; and
 - 33.3.2. a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 33.4. 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.

34. Documents available for public inspection

- 34.1. The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 34.1.1. a copy of the current constitution;
 - 34.1.2. a copy of the current authorisation;
 - 34.1.3. a copy of the latest annual accounts and of any report of the auditor on them;
 - 34.1.4. a copy of the latest annual report;
 - 34.1.5. a copy of the latest information as to its forward planning; and
 - 34.1.6. a copy of any notice given under section 52 of the 2006 Act.
- 34.2. Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 34.3. If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

35. Auditor

- 35.1. The Trust shall have an auditor.

The Council of Members shall appoint or remove the auditor at a general meeting of the Council of Members.

36. 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.

37. Accounts

- 37.1. The Trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.
- 37.2. The accounts are to be audited by the Trust's auditor.
- 37.3. The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the HM Treasury direct.
- 37.4. The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

38. Annual report and forward plans

- 38.1. The Trust shall prepare an Annual Report and send it to Monitor.
- 38.2. The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 38.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 38.4. In preparing the document, the directors shall have regard to the views of the Council of Members.

39. Meeting of Council of Members to consider annual accounts and reports

- 39.1. The following documents are to be presented to the Council of Members at a general meeting of the Council of Members:
 - 39.1.1. the annual accounts
 - 39.1.2. any report of the auditor on them
 - 39.1.3. the annual report
- 39.2. The Council of Members shall present to the members:
 - 39.2.1. the progress of the Membership Strategy
 - 39.2.2. any proposed changes to the policy for the composition of the Council of Members and of the Non-Executive Directors.
 - 39.2.3. the results of any election
 - 39.2.4. the appointment of Member Councillors and the appointment of Non-Executive Directors.

40. Instruments

40.1. The Trust shall have a seal.

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

41. Amendment of the Constitution

41.1. No amendment shall be made to this Constitution (including its annexes) unless:

41.1.1. it has been approved by two thirds of those Directors present and voting at a meeting of the Board of Directors; and

41.1.2. in the case of any proposed amendment to the Council of Members Standing Orders it has also been approved by two thirds of the Member Councillors present and voting at a meeting of the Council of Members; and

41.1.3. it has been approved by Monitor

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraph 7)

The Trust has 5 areas for a Public Constituency. Each is based upon a Local Authority electoral area or a combination of two or more such areas.

Each area shall comprise a minimum of 100 members.

The areas are covered by:

- Halton – the electoral area covered by Halton Borough Council
- Knowsley – the electoral area covered by Knowsley Metropolitan Borough Council
- St Helens - the electoral area covered by St Helens Metropolitan Borough Council
- Warrington - the electoral area covered by Warrington Borough Council
- Wigan - the electoral area covered by Wigan Borough Council

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraph 8)

The Staff Constituency is divided into 5 classes as follows:

The Secretary in conjunction with the Board of Directors will be the final arbiter as to which class a member of staff belongs.

Each class shall comprise a minimum number of staff in that class, as follows:

Class:	Minimum membership:
Allied Health Professionals and Psychologists	10
Managers (band 8 and above)	10
Medical Staff	10
Nursing Staff	40
Supporting Services Staff	40

ANNEX 3 – COMPOSITION OF COUNCIL OF MEMBERS

(Paragraph 10.2)

*Appointed Member Councillors will be sought from the partner organisations noted in the table below.

CONSTITUENCY	NUMBER OF SEATS
Elected Member Councillors (Public)	
Classes: Halton	4
Knowsley	4
St Helens	4
Warrington	5
Wigan	8
	25
Elected Member Councillors (Staff)	
Classes: Allied Health Professions	1
Managers (above Band 8)	1
Medical Staff	1
Nursing Staff	3
Supporting Services Staff	5
*Appointed Member Councillors (Partnership Organisations)	
Appointed Local Authority representatives (one from each of the five Local Councils) Wigan Council, , Halton Borough Council, Knowsley Council, St Helens Council and Warrington Borough Council .	5
Appointed Primary Care Trust Commissioner representatives (one from each of four commissioning PCTs) Halton and St Helens PCT, Knowsley NHS, Warrington PCT and Ashton Wigan and Leigh PCT	4
One appointed Representative from the three Local Police Forces, Greater Manchester, Merseyside and Cheshire	1
One Partnership Member Councillor to be appointed by 5 Borough's Staff Side Group. This group consists of accredited representatives of trade unions recognised by 5 Boroughs Partnership NHS Trust	1
	11
Total	47

ANNEX 4 –THE MODEL ELECTION RULES

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Part 1 - Interpretation

1. Interpretation –

- (1) In these rules, unless the context otherwise requires -

“corporation” means the public benefit corporation subject to this constitution;

“election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Members;

“the regulator” means the Independent Regulator for NHS Foundation Trusts; and

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.

- (2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

- 2. Timetable** - The proceedings at an election shall be conducted in accordance with the following timetable.

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll.

Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

3. Computation of time –

(1) In computing any period of time for the purposes of the timetable -

- (a) a Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday, or
- (c) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

(2) In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

Part 3 – Returning officer

4. Returning officer –

- (1) Subject to rule 57, the returning officer for an election is to be appointed by the corporation.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff – Subject to rule 57, the returning officer may appoint and pay such staff, including such technical advisors, as he or she considers necessary for the purposes of the election.

6. Expenditure - The corporation is to pay the returning officer –

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation – The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election – The returning officer is to publish a notice of the election stating –

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Council of Members to be elected from that constituency, or class with that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained,
- (e) the address for return of nomination papers, and the final date that they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date of the close of the poll in the event of a contest.

9. Nomination of candidates –

- (1) Each candidate must be nominated on a separate nomination paper.
- (2) The returning officer -
 - (a) is to supply any member of the corporation with a nomination paper, and
 - (b) is to prepare a nomination paper for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars –

- (1) The nomination paper must state the candidate's -
 - (a) full name,
 - (b) contact address in full, and
 - (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests – The nomination paper must state –

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility –

- (1) The nomination paper must include a declaration made by the candidate –
 - (a) that he or she is not prevented from being a member of the Council of Members by paragraph 8 of Schedule 1 of the 2003 Act ((1)(a, b, or c) or by any provision of the constitution, and
 - (b) for a member of the public constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which election is being held.

- (2) The declaration must be made by the candidate within 6 months of the close of the poll to be valid for the purposes of section 36(2) of the 2003 Act.

13. Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

- (a) they wish to stand as a candidate,
- (b) their declaration of interests as required under rule 11, is true and correct, and
- (c) the declaration of eligibility required under rule 12 is true and correct.

14. Decisions as to validity of nomination papers –

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer -
 - (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination paper is invalid
 - (c) receives satisfactory proof that the candidate has died, or,
 - (d) receives a written request by the candidate of their withdrawal from candidacy.

- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -
 - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.

(3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

(4) Where the returning officer decides that a nomination paper is invalid, the returning office must endorse this on the paper, stating the reasons for the decision.

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates –

(1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election as nominated.

(2) The statement must show –

(a) the name, contact address, and constituency or class within a constituency of each candidate standing, and

(b) the declared interests of each candidate standing, as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers –

(1) The corporation is to make the statement of nominated candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statement of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates - A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.

18. Method of election –

(1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council or Members, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Members, those candidates are to be declared elected in accordance with Part 7 of these rules.

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be board of governors, then –

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot –

(1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper –

(1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Members to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date of the close of the poll, and
- (g) the contact details of the returning officer.

(3) Each ballot paper must have a unique identifier.

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public constituency)–

(1) In respect of an election for a public constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public constituency, of the particulars of that member's qualification to vote as a member of the constituency or class for a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be invalid.

Action to be taken before the poll

22. List of eligible voters –

(1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - The returning officer is to publish a notice of the poll stating–

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Members to be elected from that constituency, or class with that constituency,

- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer –

(1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

- (a) a ballot paper and ballot paper envelope
- (b) a ballot paper envelope,
- (c) a declaration of identity (if required),
- (d) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (e) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope –

(1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

(2) The covering envelope is to have –

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

(3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (a) the completed declaration of identity if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote – An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.–

27. Voting by persons who require assistance –

(1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

28. Spoilt ballot papers –

(1) If a voter has inadvertently dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

(2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity, and
- (b) has ensured that the declaration of identity, if required, has not been returned.

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers –

(1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity,
- (b) has no reason to doubt that the voter did not receive the original ballot paper, and
- (c) has ensured that the declaration of identity, if required, has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

- (a) the name of the voter, and

- (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot papers –

(1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed by rule 28(3) or 29(2) he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity, if required, has already been received by the returning officer in the name of that voter.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituency) -

(1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter’s signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents –

(1) Where the returning officer receives a –

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper, before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

(3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper –

(1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been returned by the returning officer before the close of the poll, with a declaration of identity, if required, that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

- (a) put the declaration of identity if required in a separate packet, and
- (b) put the ballot paper aside for counting after the close of the poll.

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

- (a) mark the ballot paper “disqualified”,
- (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency)

– Where the returning officer receives a declaration of identity but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “disqualified”,

- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and
- (c) place the declaration of identity in a separate packet.

35. Sealing of packets – As soon as is possible after the closure of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

36. Arrangements for counting of the votes – The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

37. The count –

- (1) The returning officer is to –
 - (a) count and record the number of ballot papers that have been returned, and
 - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

38. Rejected ballot papers –

- (1) Any ballot paper –
 - (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - (b) on which votes are given for more candidates than the voter is entitled to vote,
 - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (d) which is unmarked or rejected because of uncertainty, shall, subject to paragraphs (2) and (3) below, be rejected and not counted,

(2) Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

(3) A ballot paper on which a vote is marked –

- (a) elsewhere than in the proper place,
- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

(4) The returning officer is to –

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

39. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

40. Declaration of result for contested elections –

(1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Members from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected–
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the 5 Boroughs Partnership NHS trust by section 4(4) of the 2003 Act, to the Chairman of the NHS trust, or
 - (ii) in any other case, to the Chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule 38(5), available on request.

41. Declaration of result for uncontested elections – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the Chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

Part 8 – Disposal of documents

42. Sealing up of documents relating to the poll –

(1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(2) The returning officer must not open the sealed packets of –

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the declarations of identity,
- (c) the list of spoilt ballot papers,

- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(3) The returning officer must endorse on each packet a description of –

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

43. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the Chairman of the corporation.

44. Forwarding of documents received after close of the poll – Where –

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the Chairman of the corporation.

45. Retention and public inspection of documents –

(1) The corporation is to retain the documents relating to an election that are forwarded to the Chairman by the returning officer under these rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 46(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

(3) A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

46. Application for inspection of certain documents relating to an election –

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,

- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

(4) On an application to inspect any of the documents listed in paragraph (1), –

- (a) in giving its consent, the Regulator, and
- (b) in making the documents available for inspection, the corporation,

must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

- (i) that his or her vote was given, and
- (ii) that the Regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

47. Countermand or abandonment of poll on death of candidate –

(1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

(2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 34 and 35, and is to make up separate sealed packets in accordance with rule 36.

(5) The returning officer is to –

- (a) count and record the number of ballot papers that have been received, and
- (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(6) The returning officer is to endorse on each packet a description of –

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the Chairman of the corporation, and rules 52 and 53 are to apply.

Part 10 – Election expenses and publicity

Election expenses

48. Election expenses – Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the Regulator under Part 11 of these rules.

49. Expenses and payments by candidates - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

50. Election expenses incurred by other persons –

(1) No person may -

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

51. Publicity about election by the corporation –

(1) The corporation may –

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

(3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

52. Information about candidates for inclusion with voting documents -

(1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than 250 words.

53. Meaning of “for the purposes of an election” –

(1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

(2) The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

Part 11 – Questioning elections and the consequence of irregularities

54. Application to question an election –

(1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator by -

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

- (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- (b) The determination by the person or persons nominated in accordance with rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- (c) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

55. Secrecy –

(1) The following persons –

- (a) the returning officer,
- (b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate for whom any person has voted. .

(2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.

(3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

56. Prohibition of disclosure of vote – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state who for whom he or she has voted.

57. Disqualification – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is –

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

58. Delay in postal service through industrial action or unforeseen event – If industrial action, or some other unforeseen event, results in a delay in –

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF MEMBERS

(Ref: Paragraph 13.2)

1. Exclusion of Member Councillors

A person may not become a Member Councillor of the Trust and, if already holding such office, will immediately cease to do so if:

- 1.1 they are a Director of the Trust, or a governor or director of a health service body (unless they are appointed by an appointing organisation which is a health service body);
- 1.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 1.3 they are a member of a Local Authority Scrutiny Committee covering health matters;
- 1.4 they have been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000;
- 1.5 they have within the preceding two years been dismissed, otherwise than by reason of redundancy or incapacity, from any paid employment with a health service body;
- 1.6 they are a person whose tenure of office as the Chairman or as a member or Director of a 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 for non-disclosure of a pecuniary interest
- 1.7 they fail to disclose information later obtained by way of a Criminal Records Bureau check on the basis of which the person is not deemed suitable to be a Member Councillor. The Trust undertakes not to discriminate unfairly against any subject of a disclosure on the basis of conviction or other information revealed. Having a criminal record will not necessarily prevent an individual from being appointed or elected as a Member Councillor. This will depend on the nature of the position and the circumstances and background of the offences.
- 1.8 they have been identified as a 'vexatious complainant' as defined by Trust policy.
- 1.9 they have been the subject of official action for acts of violence and aggression or, is registered as a sex offender.
- 1.10 they are under 16 years of age.

2. Termination and Removal of Member Councillors

A person will cease to be a Member Councillor of the Trust if:

- 2.1 they resign by notice in writing to the Trust;
- 2.2 they fail to attend three consecutive meetings, unless the other Members are satisfied that:
 - 2.2.1 the absences were due to reasonable causes; and
 - 2.2.2 they will be able to start attending meetings of the Council of Members again within such a period as the Council of Members consider reasonable.
- 2.3 in the case of an elected Member Councillor ceasing to be a Member of the constituency or class of the constituency by which they were elected;
- 2.4 in the case of an appointed Member Councillor, the appointing organisation terminates the appointment;
- 2.5 they have refused without reasonable cause to undertake any training, which the Council of Members requires its Members to undertake;
- 2.6 they have failed to sign and deliver to the Trust a statement in the form required by the Trust confirming acceptance of the Code of Conduct for Member Councillors;
- 2.7 they are removed from the Council of Members under the following provisions;
 - 2.7.1 by a resolution approved by not less than three-quarters of the remaining Member Councillors present and voting on the grounds that
 - 2.7.1.1 they have committed a serious breach of the Code of Conduct; or,
 - 2.7.1.2 they have acted in a manner detrimental to the interests of the Trust; and
 - 2.7.2 Member Councillors consider that it is not in the best interests of the Trust for them to continue as a Member Councillor.

3. Vacancies on the Council of Members

- 3.1 Where a vacancy arises on the Council of Members for any reason other than expiry of term of office, the following provision will apply.

- 3.1.1 Where the vacancy arises amongst the appointed Member Councillors the Trust shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 3.1.2 Where the vacancy arises amongst the elected Member Councillors within 12 months following an election to that seat, the Trust shall approach the person who polled the next highest number of votes in the original election and offer the vacant seat to them. Should that person decline, the Trust shall make a similar approach to the next person in line until the seat is filled.
- 3.1.3 Where:
- 3.1.3.1 The vacancy arises amongst the elected Member Councillors more than 12 months after the initial election; or
- 3.1.3.2 Where the vacancy arises amongst the elected Member Councillors with 12 months of the initial election but there is no candidate with the next highest number of votes willing to fill the vacant seat
- the Trust shall call an election within three months to fill the seat for the remainder of that term of office.

4. Roles and Responsibilities

- 4.1 The Member Councillors have three general roles:
- Advisory – to communicate to the Board the views and interests of Members and the wider community;
 - Guardianship – to ensure that the Trust is operating in accordance with its Authorisation;
 - Strategic – to advise on the Trust's strategy and deliverance of that strategy.
- 4.2 The Member Councillors shall carry out their roles and responsibilities in accordance with this Constitution and the Trust's Authorisation and Code of Conduct..
- 4.3 The roles and responsibilities of the Member Councillors shall include to:
- 4.3.1 Appoint or remove the Chair and the other Non-Executive Directors. The removal of a Non-Executive Director requires the approval of three-quarters of the members of the Council of Members; (the Council of Members shall establish a Nominations Committee to identify suitable candidates (taking into account the skills and experience identified for such posts and the job

description(s)) and to assist with the process of selection of Non-Executive Directors (including the Chair and Vice Chair) by the Council of Members).

- 4.3.2 Decide the remuneration and allowances, and the other terms and conditions of office of the Non-Executive Directors; (the Council of Members shall establish a Remunerations and Terms of Service Committee to prepare information to assist the Council of Members to make these decisions).
- 4.3.3 Appoint or remove any external auditor and the Trust's financial auditor;
- 4.3.4 Approve (by a majority of the Council of Members voting) an appointment of the Chief Executive, other than the initial Chief Executive;
- 4.3.5 Give the views of the Council of Members to the Board of Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to the Regulator;
- 4.3.6 Consider the annual accounts, any report of the financial auditor on them, and the annual report;
- 4.3.7 Consult with the Board of Directors on future plans for the services provided by the Trust;
- 4.3.8 Work with the Board of Directors to ensure the Trust operates within its terms of Authorisation;
- 4.3.9 Respond to any matter as appropriate when consulted by the Directors;
- 4.3.10 Review the Trust's Membership Strategy from time to time and at least once every three years to develop the membership of the Trust and represent the interests of Members, and to review from time to time the Trust's policy for the composition of the Council of Members;
- 4.3.11 Establish mechanisms for consulting with the Members and partnership organisations they may represent, particularly on developments and significant changes to services provided by the Trust;
- 4.3.12 Act as a source of ideas about how the Trust can provide services which reflect the needs of patients and the wider community;

4.3.13 Ensure that the Trust follows its values, as set out in the Trust's Membership Strategy;

4.3.14 Monitor the success of the Trust in meeting its planned service objectives;

4.3.15 Undertake such functions as the Board of Directors shall from time to time request.

5. Requirement of a Member Councillor to Notify Trust

5.2 Where a person has been elected or appointed to be a Member Councillor and he becomes disqualified from office under the provisions of this constitution, he shall notify the Secretary in writing of such disqualification.

6. Expenses

6.1 The Trust shall reimburse reasonable expenses when Member Councillors are required to attend meetings in relation to their Member Councillor duties.

6.2 Expenses incurred shall be reimbursed in line with the appropriate Trust policy(ies).

7. Attendance of Staff Member Councillors

7.1 The Trust will grant reasonable time off, with pay, to recognised staff Member Councillors to carry out member councillor duties.

7.2 Where time off with pay has been approved, the payment due will equate to the earnings the employee would have otherwise received had he been at work.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF COUNCIL OF MEMBERS FOR 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

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1. Interpretation

- 1.1 Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he shall be advised by the Chief Executive and Director of Finance).
- 1.2 Any expression to which a meaning is given in the NHS Act 2006 shall have the same meaning in this interpretation and in addition;
- 1.2.1 "**Accounting Officer**" shall be the officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
- 1.2.2 "**Board**" shall mean the Chairman and Non-Executive Directors and the Executive Directors appointed in accordance with the Constitution.
- 1.2.3 "**Budget**" shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
- 1.2.4 "**Chairman**" is the person appointed by the Council of Members in accordance with paragraphs 21 and 22 of the constitution. The expression "the Chairman of the Trust" shall be deemed to include the Non-Executive Director appointed by the Council of Members to take on the Chairman's duties if the Chairman is absent or is otherwise unavailable (the Vice Chairman).
- 1.2.5 "**Chief Executive**" shall mean the chief officer of the Trust.
- 1.2.6 "**Committee**" shall mean a Committee appointed by the Council of Members.
- 1.2.7 "**Committee Members**" shall be persons formally appointed by the Council of Members to sit on or to chair specific Committees.
- 1.2.8 "**Director**" shall mean a person appointed to the Board of Directors in accordance with the Trust's constitution and includes the Chairman.
- 1.2.9 "**Motion**" means a formal proposition to be discussed and voted on during the course of a meeting.
- 1.2.10 "**Nominated Officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders.

1.2.11 "Officer" means an employee of the Trust.

1.2.12 "SOs" means Standing Orders.

2. General Information

The purpose of the Standing Orders for the Practice and Procedure of the Council of Members is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Members' meetings and associated deliberations. The Council of Members shall at all times seek to comply with the Trust's Code of Conduct.

- 2.1** All business shall be conducted in the name of the Trust.
- 2.2** A Member Councillor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Member Councillor save where the Member Councillor has acted recklessly.
- 2.3** In case of doubt/dispute as to whether a Council Member has acted recklessly in any given case, the Chairman will have the final say.
- 2.4** On behalf of the Council of Members, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

3. Composition of the Council of Members

- 3.1** The composition of the Council of Members shall be in accordance with paragraph 10 and Annex 3 of the Trust's Constitution.
- 3.2** Appointment and Removal of the Chairman and Vice Chairman of the Council of Members - these appointments shall be made by the Member Councillors in accordance with paragraph 21 and 23 of the Trust's Constitution.
- 3.3** Duties of Vice Chairman - Where the Chairman of the Trust has been unable to perform his duties as Chairman owing to illness or death or has otherwise ceased to hold office or where conflict of interest or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Vice Chairman or the Non-Executive Director nominated by the Council of Members to take on the duties of the Chairman or Vice Chairman should both be absent from a meeting or otherwise unavailable or unable to perform his duties.

4. Meetings of the Council of Members

4.1 Meetings held in Public

- 4.1.1** Meetings of the Council of Members must be open to the Public, subject to paragraphs 4.1.2 and 4.1.3 below.
- 4.1.2** The Council of Members may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that it considers that:
- 4.1.2.1** publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - 4.1.2.2** there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 4.1.3** The Chairman may exclude any member of the public from a meeting of the Council of Members if he considers that he is interfering with or preventing any conduct of the meeting.
- 4.1.4** Meetings of the Council of Members shall be held at least three times each year at times at places that the Council of Members may determine.
- 4.1.5** The Council of Members may invite the Chief Executive, and other appropriate Directors, to attend any meeting of the Council to enable Member Councillors to raise questions about the Trust's affairs.

4.2 Calling Meetings

- 4.2.1** Notwithstanding paragraph 4.1.4 above, the Chairman may call a meeting of the Council of Members at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by a majority of the Member Councillors, or if without so refusing the Chairman does not call a meeting within fourteen days after requisition to do so, then the Member Councillors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of their members.

4.3 Notice of Meetings

- 4.3.1** Before each meeting of the Council of Members, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an Officer of the Trust authorised by the Chairman to sign on his

behalf subject to paragraphs 4.3.2 and 4.3.3 below shall be delivered to every Member Councillor, by email as preferred method of delivery or sent by post to the usual place of residence of such Member Councillor, so as to be available to him at least twenty-one clear days before the meeting. Lack of service of the notice on any Member Councillor shall not affect the validity of a meeting, subject to paragraph 4.3.4 below.

4.3.2 Notwithstanding the above requirement for notice, the Chairman may waive notice in the case of emergencies or in the case of the need to conduct urgent business.

4.3.3 In the case of a meeting called by Member Councillors in default of the Chairman, the notice shall be signed by those Member Councillors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.

4.3.4 Subject to paragraph 4.3.2, failure to serve notice on more than three quarters of Member Councillors will invalidate any meeting. A notice will be presumed to have been served 48 hours after an electronic communication was sent or, in the case of an envelope containing it, 48 hours after it was posted.

4.4 Setting the Agenda

4.4.1 The Council of Members may determine that certain matters shall appear on every agenda for a meeting of the Council of Members and shall be addressed prior to any other business being conducted.

4.4.2 In the case of a meeting called by the Chairman, a Member Councillor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

4.4.3 The Chairman shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Member Councillor, or sent by post to the usual place of residence of such Member Councillor, so as to be available to him/her at least five clear days before the meeting.

4.5 Chairman of Meeting

4.5.1 At any meeting of the Council of Members, the Chairman, if present, shall preside. If the Chairman is absent from the meeting or the Council of Members is meeting to appoint or remove the Chairman or decide his remuneration and allowances and other terms and conditions of office the Vice Chairman shall preside. Otherwise, such other Non-Executive Director as the Council of Members may choose shall preside.

4.6 Notices of Motions

4.6.1 A Member Councillor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert this in the agenda for the meeting. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.3. of these Standing Orders.

4.6.2 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 Chairman.

4.6.3 Notice of motion to amend or 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 Member Councillors who gave it and also the signature of four other Member Councillors. When any such motion has been disposed of by the Council of Members it shall not be competent for any Member Councillor, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he considers it appropriate.

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

4.6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Member Councillor to move:

4.6.5.1 An amendment to the motion.

4.6.5.2 The adjournment of the discussion or the meeting.

4.6.5.3 The appointment of an ad hoc Committee to deal with a specific item of business.

4.6.5.4 That the meeting proceed to the next business.

4.6.5.5 That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion. In the case of motions under paragraphs 4.6.5.4 and 4.6.5.5 of these Standing Orders, to ensure objectivity, motions may only be put by a Member Councillor who has not previously taken part in the debate.

4.7 Chairman's Ruling

4.7.1 Statements of Member Councillors made at meetings of the Council of Members shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

4.8 Voting

4.8.1 Decisions at meetings shall be determined by a majority of the votes of the Member Councillors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

4.8.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Member Councillors present so requests.

4.8.3 If at least one-third of the Member Councillors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Member Councillor present voted or abstained.

4.8.4 If a Member Councillor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

4.8.5 In no circumstances may an absent Member Councillor vote by proxy. Absence is defined as being absent at the time of the vote.

4.8.6 A Member Councillor who is a member of the Public Constituency may not vote at a meeting of the Council of Members unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of

the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Trust. A Member Councillor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Members and every agenda for meetings of the Council of Members shall draw this to the attention of the Member Councillors.

4.9 Suspension of Standing Orders

4.9.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council of Members are present and that a majority of those present vote in favour of suspension.

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

4.9.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.

4.9.4 No formal business may be transacted whilst Standing Orders are suspended.

4.9.5 The Trust's Audit Committee shall review every decision to suspend Standing Orders.

4.10 Variation and Amendment of Standing Orders

These Standing Orders, which may be varied from time to time subject to approval from Monitor, shall be amended only if:

4.10.1 a notice of motion has been given; and

4.10.2 no fewer than two thirds of the total number of Member Councillors approve the variation/amendment; and

4.10.3 the provisions of paragraph 41 are complied with; and

4.10.4 the variation/amendment proposed does not contravene a statutory provision.

4.11 Record of Attendance

The names of the Member Councillors present at the meeting shall be recorded in the minutes.

4.12 Minutes

4.12.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

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

4.12.3 Minutes shall be circulated in accordance with the Member Councillors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of paragraph 4.1 of the SOs.

4.13 Quorum

4.13.1 A quorum for a Meeting of the Council of Members shall be 16 Member Councillors, including not less than eight public Member Councillors and not less than eight staff and appointed Member Councillors.

4.13.2 No business shall be transacted at a meeting of the Council of Members unless a quorum of the Council of Members is present.

4.13.3 If a Member Councillor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the 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. Arrangements for the Exercise of Functions by Delegation

5.1 Emergency Powers - The powers which the Council of Members has retained to itself within these Standing Orders may in an emergency be exercised by the Chairman after having consulted at least five elected Member Councillors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council of Members for ratification.

- 5.2 The Nominations Committee of the Council of Members shall exercise the functions set out in its Terms of Reference on behalf of the Council of Members. The Nominations Committee's role is that of selection rather than appointment.
- 5.3 The Remuneration Committee of the Council of Members shall exercise the functions set out in its Terms of Reference on behalf of the Council of Members.
- 5.4 Delegation to a Member Councillor– the Council of Members may delegate duties to an individual Member Councillor but only under a clear remit approved by the Council of Members.
- 5.5 The Council of Members may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, directors and other persons to assist the Council of Members in carrying out its functions. The Council of Members may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
- 5.6 All decisions, taken in good faith, at a meeting of the Council of Members or of any committee shall be valid even it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Member Councillors attending,

6. Confidentiality

- 6.1 A member of the Council of Members shall not disclose a matter dealt with by, or brought before, the Council of Members without its permission.
- 6.2 Members of the Nominations Committee and Remuneration Committee shall not disclose any matter dealt with by the Committee notwithstanding that the matter has been reported or action has been concluded, if the Council of Members or Committee resolves that it is confidential.

7. Declaration of Interests and Register of Interests

7.1 Declaration of Interests

Member Councillors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council of Members. All Member Councillors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

- 7.1.1 Interests regarded as "relevant and material" include any of the following, held by a Member Councillor, or the spouse,

partner, parent or child of a Member Councillor.

7.1.1.1 Directorships, including Non-Executive Directorships, held in private companies or PLCs (with the exception of those of dormant companies).

7.1.1.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.

7.1.1.3 Employment with any private company, business or consultancy.

7.1.1.4 Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.

7.1.1.5 A position of authority in a charity or voluntary organisation in the field of health and social care.

7.1.1.6 Any connection with a voluntary or other organisation contracting for NHS services.

7.1.2 If a Member Councillor has any doubt about the relevance of an interest, he should discuss it with the Chairman who shall advise him whether or not to disclose the interest.

7.1.3 At the time Member Councillors' interests are declared, they should be recorded in the minutes of the Council of Members meeting and entered on a Register of Interests of Member Councillors to be maintained by the Secretary. Any changes in interests should be declared at the next Council of Members meeting following the change occurring.

7.1.4 Member Councillors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.

7.1.5 During the course of a Council of Members meeting, if a conflict of interest is established, the Member Councillor concerned shall, unless two thirds of those Member Councillors present agree otherwise, withdraw from the meeting and play no part in the relevant discussion or decision. If the Member Councillor remains present at the meeting on the agreement of two thirds of those Member Councillors present, he shall not be entitled to vote on the issue in respect of which the conflict of interest has been established.

7.2 Register of Interests

7.2.1 The Trust Secretary will ensure that a Register of Interests is established and maintained to record formally the declarations of interests of Member Councillors.

7.2.2. Details of the Register will be kept up to date and reviewed annually.

7.2.3 The Register will be available to the public.

8. Compliance - Other Matters

8.1 All Members of the Council of Members shall comply with the Trust's policies relating to standards of business conduct set by the Board of Directors for the guidance of all staff employed by the Trust.

8.2 All Member Councillors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.

8.3 All Member Councillors must behave in accordance with the seven Nolan principles of behaviour in Public Life and the Trust's Code of Conduct for Member Councillors as amended from time to time.

9. Resolution of Disputes with Board of Directors

9.1 Should a dispute arise between the Council of Members and the Board of Directors, then the disputes resolution procedure set out below shall be followed.

9.2 The Chairman, or Vice Chairman (if the dispute involves the Chairman), shall first endeavour, through discussion with Member Councillors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.

9.3 Failing resolution under 9.2 above, then the Board or the Council of Members, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

9.4 The Chairman shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council of Members as appropriate. That meeting shall agree the precise wording of a Response to the Disputes Statement.

9.5 The Chairman or Vice Chairman (if the dispute involves the Chairman) shall immediately, or as soon as is practical, communicate

the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.

- 9.6** If, in the opinion of the Chairman or Vice Chairman (if the dispute involves the Chairman) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Vice Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council of Members and Board accordingly.
- 9.7** On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 9.8** On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 9.9** Nothing in this procedure shall prevent the Council of Members, if it so desires, from informing the Regulator that, in the Council of Members' opinion, the Board has not responded constructively to concerns of the Council of Members that the Trust is not meeting the terms of its authorisation.

10. Council of Members Performance

The Chairman shall, at least annually, lead a performance assessment process for the Council of Members to enable the Council of Members to review its roles, structure and composition, and procedures, taking into account emerging best practice.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS FOR 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

FOREWORD

The Trust's Board of Directors has a responsibility to agree Standing Orders and schedules of reservation and delegation of powers. These documents, together with standing financial instructions, provide a Regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests by ensuring all transactions maximise the benefit to the Trust and protecting staff from possible accusations that they have acted less than properly.

The Standing Orders, Schedule of Reservation and Delegation of Powers and Standing Financial Instructions provide a comprehensive business framework. All Board directors and all staff should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

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Introduction

Statutory framework

The principal place of business of the Trust is Hollins Park House, Hollins Lane, Winwick, Warrington, WA2 8WA

Foundation Trusts are governed by a Regulatory framework that confers the functions of the Trust and comprises Acts of Parliament (in particular the National Health Service Act 2006), their constitution and the terms of their authorisation granted by the Regulator.

As a corporate body the Board has specified powers to contract in the name of the Trust and to act as a corporate Trustee. In the latter role the Board is accountable to the Charity Commission for those funds deemed to be charitable, as well as to the Regulator.

The Regulatory framework requires the Trust to adopt Standing Orders (SOs) for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of the Standing Orders setting out the responsibilities of individuals, additional responsibilities and additional detailed provisions.

Reservation and delegation of powers

The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in a separate document entitled the Schedule of Reservation and Delegation of Powers. This document also details those powers, which it has delegated to officers and other bodies.

1. Interpretation and definitions

1.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing

Orders, the schedule of reservation and delegation of powers and/or the standing financial instructions (on which he should be advised by the Chief Executive).

- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 (the Act), or in regulations made under the Act, shall have the same meaning in these Standing Orders and in addition:
- 1.2.1 "**Accounting Officer**" means the person who from time to time discharges the functions specified in paragraph 25(5) of schedule 7 to the Act. For the Trust it shall be the Chief Executive.
 - 1.2.2 "**Board**" means the Board of Directors, formally constituted in accordance with this constitution and consisting of the Chairman, Non-Executive Directors appointed by the Council of Members and the Executive Directors.
 - 1.2.3 "**Chairman**" is the person appointed by the Council of Members to lead the Board, and to ensure that it discharges its overall responsibility for the Trust as a whole.
 - 1.2.4 "**Chief Executive**" means the chief officer of the Trust.
 - 1.2.5 "**Committee**" means a Committee appointed by the Board.
 - 1.2.6 "**Council of Members**" means the Council of Members, formally constituted in accordance with the constitution and presided over by the Chairman.
 - 1.2.7 "**Vice Chairman**" is the Non-Executive Director appointed by the Council of Members to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.
 - 1.2.8 "**Director**" is an Executive or Non-Executive Member of the Board
 - 1.2.9 "**Director of Finance**" means the chief financial officer of the Trust.
 - 1.2.10 "**Executive Director**" means a member of the Board who is an officer of the Trust.
 - 1.2.11 "**Motion**" means a formal proposition to be discussed and voted on during the course of a meeting
 - 1.2.12 "**Non-Executive Director**" means a Non-Executive Director of the Trust who satisfies the independence criteria as set out at paragraph A.3.1 of the NHS Foundation Trust Code of Governance;

- 1.2.13 **"Nominated Officer"** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and standing financial instructions.
- 1.2.14 **"Officer"** means an employee of the Trust or any other person holding a paid appointment or office with the Trust.
- 1.2.15 **"Regulator"** Monitor, the Independent Regulator, as provided by section 31 of the 2006 Act and which is responsible for authorising, and regulating NHS Foundation Trusts.
- 1.2.16 **"Secretary"** means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or Vice Secretary;
- 1.2.17 **"Senior Independent Director"** means the senior independent Non-Executive Director, appointed by the Chairman after consultation with the Council of Members.
- 1.2.18 **"SFIs"** means Standing Financial Instructions.
- 1.2.19 **"SOs"** means these Standing Orders.
- 1.2.20 **"Trust"** means 5 Boroughs Partnership NHS Trust.
- 1.2.21 All references in these instructions to the masculine gender shall be read as equally applicable to the feminine gender.
- 1.2.22 References to any statute, statutory provision, statutory instrument or guidance in these SOs include reference to that statute, provision, instrument or guidance as replaced, amended, extended, re-enacted or consolidated from time to time.

2. The Board

2.1 Composition

In accordance with the constitution, the composition of the Board shall comprise both executive and Non-Executive Directors. The Board is to comprise:

- 2.1.1 a non-executive Chairman
- 2.1.2 not less than 6 Non-Executive Directors; and
- 2.1.3 not less than 7 Executive Directors; and

2.1.4 the Chairman will have an additional vote in the event of an evenly split voting outcome

Of the Executive Directors

2.1.5 one of the Executive Directors shall be the Chief Executive

2.1.6 the Chief Executive shall be the Accounting Officer

2.1.7 one of the Executive Directors shall be the Director of Finance

2.1.8 one of the Executive Directors is to be a registered medical Practitioner

2.1.9 one of the Executive Directors is to be a registered nurse

2.1.10 overall the number of Executive Directors shall not exceed the number of Non-Executive Directors (including the Chair).

2.2 **Appointment of Chairman and members of the Board**

2.2.1 The Council of Members, at a general meeting of the Council of Members, shall appoint the Chairman and other Non-Executive Directors by majority vote. These arrangements will not apply to the initial Chairman and non-executives who, as part of the transitional arrangements, will transfer from 5 Boroughs Partnership NHS Trust to the Trust in accordance with paragraph 22.

2.2.2 The Council of Members will make the terms and conditions of appointment of the Non-Executive Directors available for inspection.

2.2.3 The Non-Executive Directors shall appoint or remove the Chief Executive, having followed the process specified in the constitution. The appointment of the Chief Executive shall require the approval of the Council of Members.

2.2.4 A Committee consisting of the Chairman, the Chief Executive (except in the case of appointment of the Chief Executive) and the other Non-Executive Directors shall appoint or remove the Executive Directors, having followed the process specified in the constitution and good employment practice.

2.2.5 These arrangements will not apply to the appointment of the initial Chief Executive who, as part of the transitional arrangements, will transfer from 5 Boroughs Partnership NHS Trust to the Trust in accordance with paragraph 25.

2.3 Terms of Office

- 2.3.1 The Chairman and the Non-Executive Directors will:
- 2.3.1.1 serve terms of office of no longer than 3 years;
 - 2.3.1.2 be eligible for re-appointment at the end of the three years
 - 2.3.1.3 not hold office for longer than nine consecutive years
 - 2.3.1.4 not be eligible for re-election (after 9 years) until there has been a minimum break of one year.
- 2.3.2 For the purposes of the maximum number of consecutive years of office allowed, service as an Non-Executive Director of 5 Boroughs Partnership NHS Trust will count towards the total of 9 consecutive years of service as a Non-Executive Director of the Trust.
- 2.3.3 The Chief Executive and Executive Directors will normally hold contracts of employment that are not time limited.

2.4 Appointment and Powers of Vice Chairman

- 2.4.1 The Council of Members, at a general meeting of the Council of Members, shall appoint one of the Non-Executive Directors as Vice Chairman of the Board. If the Chairman is unable to discharge his office as Chairman of the Trust, the Vice Chairman of the Board shall be acting Chairman of the Trust. (See paragraph 23 of Constitution)
- 2.4.2 Any Board member so appointed may at any time resign from the office of Vice Chairman by giving notice in writing to the Chairman. The Council of Members may thereupon appoint another member as Vice Chairman in accordance with the constitution.

2.5 Joint Members

- 2.5.1 Where more than one person is appointed jointly as a member of the Board, those persons shall count as one person.
- 2.5.2 Where the office of a member of the Board is shared jointly by more than one person:
- 2.5.3.1 Either may attend or take part in meetings of the Board.
 - 2.5.4 If both are present at a meeting they should cast one vote if

they agree.

2.5.5 In the case of disagreements no vote should be cast.

2.5.6 The presence of either or both those persons should count as the presence of one person for the purpose of quorum.

2.6 **Role of Members**

2.6.1 The Board will function as a corporate decision-making body. Executive and Non-Executive Directors will be full and equal members. Their role as director will be to consider the key strategic and Managerial issues facing the Trust in carrying out its statutory and other functions.

2.7 **Executive Directors**

Executive directors shall exercise their authority within the Terms of these Standing Orders and Standing Financial Instructions and the schedule of reservation and delegation of powers.

2.7.1 **Chief Executive**

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. He is the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under any relevant guidance from the Regulator and in line with the requirements of the Accounting Officer Memorandum.

2.7.2 **Director of Finance**

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. He shall be responsible along with the Chief Executive for ensuring the discharge of obligations under any relevant guidance from the Regulator and as detailed in the relevant parts of the Schedule of Reservation and Delegation of Powers.

2.7.3 **Non-Executive Directors**

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of or when chairing a Committee of the Trust which has delegated powers and in particular in relation to those matters detailed in the relevant parts of the schedule of reservation and delegation of

powers.

2.7.4 Chairman

The Chairman shall be responsible for the operation of the Board and chair all Board meetings when present. The Chairman has certain delegated executive powers. The Chairman must comply with the terms of appointment and with these Standing Orders.

The Chairman shall liaise with the Council of Members over the appointment of Non-Executive Directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance.

The Chairman shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions. The Chairman shall comply with those duties delegated to him in sections 6 and 7 of the schedule of reservation and delegation of powers.

2.7.5 Senior Independent Director

The Chair and the Non-Executive Directors should appoint one of the Non-Executive Directors to be the Senior Independent Director in consultation with the Council of Members.

The Senior Independent Director shall make himself available to members and Member Councillors who have concerns that they do not feel they can raise with the Chairman or any executive director of the Trust. Recourse to the Senior Independent Director shall not replace the right to instigate the dispute resolution procedure contained within Annex 6 of the constitution.

Corporate Role of the Board

2.8 All business shall be conducted in the name of the Trust.

Charitable Funds

2.9 All gifts shall be received and held in the name of the Trust and administered in accordance with the Trust's policy. Attention is also drawn to the requirements of the Charities Act 1993. Officers should not hold bank accounts for funds holding donated monies and income,

which should have been paid into charitable or endowment funds.

- 2.10 All charitable funds received in trust shall be held in the name of the Board as corporate Trustee. In relation to funds held on trust, powers exercised by the Board as a corporate Trustee shall be exercised separately and distinctly from those powers exercised as the Board of the Trust.
- 2.11 The Board also serve as Trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.

3. Meetings of the Board

Calling a meeting

- 3.1 Ordinary meetings of the Board shall be held at such times and places as the Board may determine.
- 3.2 Meetings of the Board may be called by the Chairman, or by the Secretary, or by four directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all directors as soon as possible after receipt of such a request.
- 3.3 The Secretary shall call a meeting on at least fourteen (14) clear days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or the four directors who give written notice pursuant to Standing Order 3.2 above, whichever is the case, shall call such a meeting.
- 3.4 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all directors at least fourteen (14) clear days written notice of the date and place of every meeting of the Board.
- 3.5 Meetings of board shall be held in private unless they determine otherwise.

Notice of meetings

- 3.6 Before each meeting of the Board, a notice of the meeting, specifying the business to be transacted at it, shall be delivered to every Board member, or sent by post to the usual place of residence of such member, so as to be available to him at least five (5) clear days before the meeting.
- 3.7 Want of service of the notice on any member shall not affect the validity of a meeting.

- 3.8 In the case of a meeting called by the Chairman or Board members in default of the Secretary, the notice shall be signed by the Chairman, or those Board members who gave notice pursuant to Standing Order 3.2 above, and no business shall be transacted at the meeting other than that specified in the notice.

Agenda

- 3.9 Agendas will be sent to members at least five (5) clear days before the meeting. Supporting papers shall accompany the agenda, save in an emergency. An agenda shall be presumed to have been served two days after posting.
- 3.10 The Board shall use its annual reporting cycle and actions arising from previous Board meetings to determine the main content of the agenda.
- 3.11 A Board member desiring other matters to be included on an agenda shall make his request known to the Chairman, in writing at least fourteen (14) clear days before the meeting. The Board member should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than fourteen (14) clear days but more than five (5) clear days before a meeting such item of business may, at the discretion of the Chairman, be included and shall be tabled as an agenda item at the commencement of the relevant meeting.

Petitions

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

Chairing of Meetings

- 3.13 The Chairman of the Trust or, in his absence, the Vice Chairman of the Board is to chair meetings of the Board. If both the Chairman and the Vice Chairman are absent, the Board members present shall choose a Non-Executive Director who is present to chair the meeting.
- 3.14 If the Chairman stands down temporarily, on the grounds of a declared conflict of interest, the Vice Chairman, if present, shall chair that part of the meeting. If the Chairman and Vice Chairman are both absent, or disqualified from participating on the grounds of a declared conflict of interest, the Board members present shall choose a Non-Executive Director who is present to chair the meeting.

Notices of motion

- 3.15 A member of the Board desiring to move or amend a motion shall send a written notice thereof at least 14 clear days before the meeting to the Chairman. The Chairman shall insert in the agenda for the meeting all notices so received. This Standing Order 3.15 shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda.

Withdrawal of motion or amendments

- 3.16 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 Chairman.

Motion to rescind a resolution

- 3.17 Notice of motion to amend or rescind any resolution, or the general substance of any resolution passed within the preceding 6 calendar months, shall bear the signature of the member who gives it and also the signature of 4 other Board members. When any such motion has been disposed of by the Board, it shall not be competent for any member other than the Chairman to propose a motion to the same effect within 6 months; the Chairman may do so, however, if he considers it appropriate.

Motions

- 3.18 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.19 When a motion is under discussion, or immediately prior to discussion, it shall be open to a member to move:
- 3.19.1 an amendment to the motion
 - 3.19.2 the adjournment of the discussion or the meeting
 - 3.19.3 the appointment of an ad hoc Committee to deal with a specific item of business
 - 3.19.4 that the meeting proceed to the next business
 - 3.19.5 that the motion be now put
 - 3.19.6 a motion resolving to exclude the public, including the press

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No

amendment to the original motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the original motion. In the case of motions under Standing Order 3.19.4 and Standing Order 3.19.5, to ensure objectivity motions may only be put by a member who has not previously taken part in the debate on the original motion.

Chairman's ruling

- 3.20 Statements of directors made at meetings of the Board must be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final and observed at the meeting.

Voting

- 3.21 Subject to the following provisions of this Standing Order 3.21, questions arising at a meeting of the Board shall be decided by a majority of votes.
- 3.21.1 In case of an equality of votes the person presiding as Chairman shall have a second and casting vote.
- 3.21.2 No resolution of the Board shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.
- 3.22 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the members present so request.
- 3.23 If at least one-third of the members present so request, the voting (other than by paper ballot), on any question may be recorded to show how each member present voted or abstained.
- 3.24 If a member so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.25 In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.26 An officer who has been appointed formally by the Board to act up for an executive director of the Board during his absence, or to cover a vacant executive director post, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board to represent an executive director 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.

Minutes

- 3.27 Minutes of every meeting of the Board must be kept. Minutes of meetings will be read and agreed at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of that meeting.
- 3.28 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at such next meeting.
- 3.30 Minutes shall be circulated in accordance with members' wishes and information will be available in accordance with the Freedom of Information Act 2000 .

Suspension of Standing Orders by the Board

- 3.31 Except where this would contravene any statutory provision, any direction made by the Regulator, or any term or condition set out in the Trust's constitution, 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 director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.
- 3.32 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.33 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and members of the Board.
- 3.34 No formal business may be transacted while Standing Orders are suspended.
- 3.35 The Audit Committee shall review every decision to suspend Standing Orders.

Variation and amendment of Standing Orders by the Board

- 3.36 These Standing Orders shall be amended, subject to approval by the Regulator and only if:
 - 3.36.1 A notice of motion under Standing Order 3.15 has been given; and
 - 3.36.2 It has been approved by two thirds of those Directors present and voting at a meeting of the Board of Directors ; and

3.36.3 The variation proposed does not contravene a statutory provision, a direction made by the Regulator, or any term or condition set out in the constitution.

Record of attendance at Board meetings

3.37 The names of the Chairman, the Board members present, and individuals in attendance at each Board meeting shall be recorded and this record shall be made available to the Council of Members upon its request.

Quorum

3.38 Five Board members, including not less than two Executive Directors, one of whom must be the Chief Executive or another executive director nominated by the Chief Executive and not less than three Non-Executive Directors, one of whom must be the Chairman of the Trust or the Vice Chairman of the Board, shall form a quorum.

3.39 An officer in attendance for an executive director but without formal acting up status may not count towards the quorum.

3.40 If the Chairman or other member 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 (see Standing Order 7 or 8 or 9), he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the 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. The requirement at 3.38 for at least two Executive Directors to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting, or part of a meeting; for example when the Board considers the recommendations of the remuneration Committee.

3.41 The Board may agree that its members can participate in its meeting by telephone or video link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

Review of Chairman

3.42 As part of a process for the appraisal of the Chairman, which should be agreed with the Council of Members, the Non-Executive Directors, led by the Senior Independent Director, should meet at least annually without the Chairman to evaluate the Chairman's performance.

4. Committees

Appointment

- 4.1 Subject to such directions as may be given by the Regulator, the Board may and, if directed by the Regulator to do so, shall establish Committees of the Board consisting wholly or partly of members of the Board or wholly of persons who are not members of the Board. However, the Board may delegate its powers only to committees of members of the Board
- 4.2 A Committee appointed under Standing Order 4.1 may, subject to such directions as may be given by the Regulator, appoint Sub-Committees consisting wholly or partly of members of the Committee or wholly of persons who are not members of the Committee.
- 4.3 The Board shall have the power to dismiss the members of any Committee or Sub-Committee that is established under the power afforded to the Board under Standing Order 4.1 or under the power afforded to Committees at Standing Order 4.2, from that Committee or Sub-Committee as applicable.

Applicability of Standing Orders

- 4.4 The Standing Orders of the Trust, so far as they are applicable, shall apply with appropriate alteration to meetings of any Committees established by the Board. In which case the term Chairman is to be read as a reference to the Chairman 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 for Committees or Sub-Committees, established under Standing Order 4.1 and Standing Order 4.2, to hold meetings in public.

Terms of Reference

- 4.5 Each Committee established by the Board or Sub-Committee shall have terms of reference and powers and be subject to such conditions, such as to reporting back to the Board, as the Board shall decide and shall act in accordance with any legislation and regulation or direction issued by the Regulator.

Delegation of powers to Sub-Committees

- 4.6 Where Committees established by the Board are authorised to establish Sub-Committees they may not delegate executive powers to the Sub-Committee unless expressly authorised by the Board.
- 4.7 The Board shall approve the appointments to each of the Committees, which it has formally constituted. Where the Board determines, that

persons, who are neither members nor officers, shall be appointed to a Committee the Board shall define the powers of such appointees and may agree allowances, including reimbursement for loss of earnings, and/or expenses.

- 4.8 The Board may, at any time, elect to change the Committees and Sub-Committees as necessary, save that the Trust shall at all times have an Audit Committee and a Remuneration Committee.

Committees Established by the Board

- 4.9 The Committees and Sub-Committees to be established by the Board shall include the following:

4.9.1 Audit Committee

An Audit Committee shall be established and constituted to provide the Board with an independent and objective review on its internal control systems, to direct and review the work of internal audit, to review the work of external audit and to review compliance with relevant laws and guidance. The Terms of Reference will be approved by the Board and reviewed on a periodic basis.

In accordance with the NHS Foundation Trust Code of Governance, a minimum of three Non-Executive Directors shall be appointed, of which one must have significant, recent and relevant financial experience.

The duties and decisions to be taken by the Committee are contained in the relevant part of section 4 in the schedule of reservation and delegation of powers.

4.9.2 Remuneration Committee

A Remuneration Committee shall be established and constituted to determine, on behalf of the Board appropriate remuneration and terms of service for the Chief Executive and other Executive Directors, including:

4.9.2.1 all aspects of salary (including any performance related elements/bonuses).

4.9.2.2 provisions for other benefits, including pensions and cars

4.9.2.3 arrangements for termination of employment and other contractual terms.

In accordance with the NHS Foundation Trust Code of

Governance, the Committee shall be comprised exclusively of Non-Executive Directors, and shall include at least three Non-Executive Directors.

4.9.3 Other Committees

The Board may also establish such other Committees as required to discharge the Trust's responsibilities.

Confidentiality

4.10 Subject to Standing Order 4.11 a member of a Committee established by the Board or any member of any Sub-Committee shall not disclose a matter dealt with by, or brought before the Committee or its Sub-Committee without its permission until the Committee or Sub-Committee (as applicable) shall have reported to the Board or shall otherwise have concluded on that matter.

4.11 A director of the Trust or a member of the Committee shall not disclose any matter reported to the Board or otherwise dealt with by the Committee or the Board notwithstanding that the matter has been reported or action has been concluded if the Board or Committee shall resolve that it is confidential.

5. Arrangements for the exercise of Functions by Delegation

5.1 The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee of Directors or by an Executive Director, in each case subject to such restrictions and conditions as the Board thinks fit.

Emergency Powers

5.2 The powers, which the Board has retained to itself within these Standing Orders, may in emergency be exercised by the Chief Executive and the Chairman, after having consulted with at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board for ratification.

Delegation to Committees

- 5.3 The Board shall agree from time to time to the delegation of executive powers to be exercised by committees, or sub-committees, of Directors formally constituted in accordance with Standing Order 4. The constitution and terms of reference of these committees or sub-committees and their specific executive powers shall be approved by the Board.

Delegation to Officers

- 5.4 Those functions of the Trust, which have not been retained as reserved by the Board or delegated to a committee or sub-committee of Directors, shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Board.
- 5.5 The Chief Executive shall prepare a scheme of delegation identifying his proposals, which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendments to the scheme of delegation that shall also be considered and approved by the Board.
- 5.6 Nothing in the scheme of delegation shall impair the discharge of the direct accountability to the Board of the director responsible for finance to provide information and advise the Board in accordance with statutory or Regulator requirements. Outside these statutory requirements the role of the director responsible for finance shall be accountable to the Chief Executive for operational matters.

Non Compliance with Standing Orders

- 5.7 If for any reason these Standing Orders are not complied with, full details of the non-compliance, any justification for non-compliance and the circumstances surrounding the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

6. Other Trust Policy Statements/Procedures

- 6.1 The Board will from time to time agree and approve policy statements/procedures, which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in appropriate Board minutes and will be deemed where appropriate to be an integral part of these Standing Orders and SFIs.

7. Declarations of Interests and Registers of Interests

Declaration of Interests

- 7.1 The constitution requires Board members to declare interests, which are relevant and material to the Board of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment.
- 7.2 The responsibility for declaring an interest is solely that of the director concerned and shall be declared to the Secretary:
- 7.2.1 Within 28 days of appointment; or
- 7.2.2 If arising later, within 7 days of the director becoming aware of the interest.
- 7.3 Interests which should be regarded as relevant and material are:
- 7.3.1 Any interest in a company, excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total number of shares issued in such company;
- 7.3.2 Any position held by a director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust;
- 7.3.3 Any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Trust;
- 7.3.4 Any interest in an organisation providing health and social care services to the National Health Service;
- 7.3.5 A position of authority in a charity or voluntary organisation in the field of health and social care;
- 7.3.6 Any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 7.4 Any director who has an interest in a matter to be considered by the Board (whether because the matter involves a firm, company, business or organisation in which the director or his spouse or partner has a material interest or otherwise)
- 7.4.1 shall declare such interest to the Board and shall withdraw

from the meeting and play no part in the relevant discussion or decision;

7.4.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted); and

7.4.3 details of any such interest shall be recorded in the register of interests of the directors.

7.5 Any director who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining directors and in the case of a Non-Executive Director, by a majority of the Council of Members.

7.6 At the time Board members' interests are declared they should be recorded in the Board minutes. Any changes in interests should be declared at the Board meeting following the change occurring.

7.7 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman.

Register of Interests

7.8 The Chief Executive will ensure that a register of interests is established to record formally declarations of interests of Board members.

7.9 These details will be kept up to date by means of an annual review of the register in which any changes to interests declared during the preceding twelve months will be incorporated.

7.10 The register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it.

8. Disability of Chairman and Members of the Board of Directors on account of Pecuniary Interest

8.1 Subject to the following provisions of this standing order, if the Chairman or a member of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter, and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he 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.

8.2 The Board may exclude the Chairman or a member of the Board from a meeting of the Board while any contract, proposed contract or other

matter in which he has a pecuniary interest, is under consideration.

- 8.3 Any remuneration, compensation or allowances payable to the Chairman or a member of the Board by virtue of their appointment or employment shall not be treated as a pecuniary interest for the purpose of this standing order.
- 8.4 For the purpose of this standing order the Chairman or a member of the Board shall be treated, subject to Standing Order 8.6 and Standing Order 8.7, as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:
- 8.4.1 He, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- 8.4.2 He is a partner of, 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.
- 8.5 In the case of persons cohabiting as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this standing order to be also an interest of the other.
- 8.6 The Chairman or Board member shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of:
- 8.6.1 his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
- 8.6.2 an interest in any company, body or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Board member in the consideration or discussion of or in voting on, any question with respect to that contract or matter
- 8.7 Where the Chairman or a Board member 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 body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this standing order shall not prohibit him from taking part in the consideration or discussion of the

contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

- 8.8 This Standing Order 8 applies to Committees established by the Board and to Sub-Committees as it applies to the Board and applies to all members of any such Committee or Sub-Committee whether or not he is also a member of the Board, as it applies to a member of the Board.

9. Standards of Business Conduct

Policy

- 9.1 Directors of the Trust shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board for the guidance of all staff employed by the Trust.
- 9.2 Directors of the Trust must behave in accordance with the NHS Foundation Trust Code of Governance.
- 9.3 Each director will uphold the seven principles of public life as detailed by the Nolan Committee.

Interests of Officers in Contracts

- 9.4 If it comes to the knowledge of any officer of the Trust that a contract in which he has any pecuniary interest, not being a contract to which he is or is not himself a party to, has been, or is proposed to be, entered into by the Trust, he shall at once give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of persons cohabiting as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 9.5 An officer should also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.

Canvassing of and Recommendations by Members of the Board in relation to Appointments

- 9.6 Canvassing of members of the Board or of any Committee established by the Board or Sub-Committee of the Board, either directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this Standing Order 9.6 shall be included in application forms or otherwise brought to the attention of applicants.
- 9.7 A member of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment. This

Standing Order 9.7 shall not, however, preclude a member of the Board from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

- 9.8 Informal discussions outside appointments panels or Committees, whether solicited or unsolicited, should be declared to the panel or Committee.

Relatives of Members of the Board or Officers of the Trust

- 9.9 Candidates for any appointment under the Trust shall, when making applications, disclose in writing to the Trust whether they are related to any member of the Board or a holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 9.10 The Chairman and every member of the Board and officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- 9.11 Prior to acceptance of an appointment as an executive director, Executive Directors of the Board should disclose to the Board whether they are related to any other member of the Board or holder of any office in the Trust. Any Non-Executive Director shall, on appointment, disclose to the Board whether they are related to any other member of the Board or holder of any office within the Trust.
- 9.12 Where the relationship to a member of the Board is disclosed, Standing Order 8 may apply.

Gifts and Hospitality

- 9.13 Members of the Board and officers of the Trust are expected to maintain high standards of personal conduct in all work related business. Under the Prevention of Corruption Acts they must not accept from any organisation, firm or individual any inducement or reward which might influence them to make a decision not in the best interests of the Trust. Any breach of the Acts renders the employee liable to instant dismissal. Staff should ensure they comply with the relevant Trust policy/ies.
- 9.14 Any gifts received from or offer of gifts by an individual, contractor or potential contractor must be reported immediately to the Chief Executive. In the context of these instructions contractor means any supplier of goods, and/or services to the Trust.
- 9.15 Similarly, all offers of hospitality must be treated on the same basis. Visits to contractors or potential contractors or to another site to inspect their installations must be made at the Trust's expense not the

contractor's. Exception to this rule may be granted by the Chief Executive where reasonable. Otherwise only minimal hospitality should be accepted from a contractor or potential contractor and immediate explanation must be given to the Chief Executive if a breach of the rules occurs.

Relationships

- 9.16 Members of the Board and officers of the Trust should, as far as is reasonable, avoid private transactions with contractors if they have official dealings with them. Obtaining or receiving additional discounts, at lower than usual price or free services by virtue of the officer's business contacts is not permissible except at a trivial level.
- 9.17 There are a number of circumstances where employees may have a personal employment or commercial relationship with a contractor to the Trust, or other interest in such a contractor. It is important that not only should the full circumstances be reported to the Chief Executive, but that the officer also demonstrates that, as far as possible, the relationship has not and will not have any adverse effect on the Trust. Advice should also be sought where the relationship may lead to some form of patent, copyright or other form of development rights, prior to entering into any agreement with the contractor.
- 9.18 The Chief Executive will ensure that a record of incidents concerning gifts and hospitality, and a register of second employments with, or interests in, contractors by employees, are maintained.

Patents and Copyrights

- 9.19 Any officer or independent contractor (whether alone or with any other person) in the course of the duties of his employment or other duties specifically assigned to him originates any design (whether registrable or not) or other work in which copyright may subsist he shall promptly disclose it to Chief Executive and at the request and expense of the Trust do all things necessary or desirable to substantiate the rights of the Trust} in relation to such design or other work.
- 9.20 Subject to the provisions of the Patents Act 1977 if at any time during his employment any officer or independent contractor makes or discovers or participates in the making or discovery of any invention or improvement upon or addition to an invention ('the invention') which is applicable to the business for the time being carried on by the Trust that officer shall promptly disclose it to the Chief Executive and it shall be the absolute property of the Trust.
- 9.21 All arrangements relating to patents and copyrights include the development of computer software.

Second Employments

- 9.22 For full time staff their main employment necessarily takes precedence over any other paid or voluntary activities undertaken. Officers should not engage in any second or spare time job which affects in any way their performance or the discharge of their duties with the Trust.
- 9.23 Second or spare time jobs are permissible, subject to Standing Order 9.24 without the need for registration or authorisation, and may only be pursued where permitted under any officer of the Trust's employment contract and where the activity is not with a supplier or contractor to the Trust or with any other NHS organisation. Where an officer has reason to believe that his second employer has any business dealings whatsoever with the Trust the facts must be reported to the Chief Executive.
- 9.24 Subject to the terms of any employees employment contract second or spare time jobs, whether regular or occasional, may not be with a supplier or contractor to the Trust unless specifically approved by the Chief Executive who will keep a register detailing the personnel, the activity, the employer, and any other such details as are deemed desirable. Details of such situations must be submitted as and when these arise and confirmed on an annual basis.
- 9.25 Particular care must be taken to disclose any employment, even if only on a temporary or supply basis, with another NHS or private health care body.

Register of Commercial Interests and Affiliations

- 9.26 The Trust shall keep a register of commercial interests and affiliations, the register being held by the Chief Executive. It is essential that any member of staff who feels there may be conflict of interest makes an appropriate submission to the Chief Executive.

Disciplinary Action

- 9.27 Failure to follow the principles and guidance in these Standing Orders may result in disciplinary action.

10. Custody of Seal, Sealing and Signature of Documents

Custody of Seal

- 10.1 The common seal of the Trust shall be the responsibility of the Secretary and kept in a secure place.

Sealing of Documents

- 10.2 The seal of the Trust shall not be fixed to any documents unless the

sealing has been authorised by a resolution of the Board or of a Committee established by the Board where the Board has delegated its powers to authorise the application of the Trust's seal.

- 10.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance, or an officer nominated by him and authorised and countersigned by the Chief Executive, or an officer nominated by him who shall not be within the originating directorate.
- 10.4 All deeds entered into by the Trust and all documents conveying an interest in land must be executed by the application of the Trust's seal.

Register of Sealing

- 10.5 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board at least annually. The report shall contain details of the seal number, the description of the document and date of sealing.

Signature of Documents

- 10.6 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive or nominated executive director unless any enactment or otherwise requires or authorises, or the Board shall have delegated the necessary authority to some other person for the purpose of such proceedings.
- 10.7 The Chief Executive or nominated officer shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any Committee established by the Board with delegated authority or any Sub-Committee with delegated authority.

11 Miscellaneous

Standing Orders to be given to members of the Board and officers of the Trust.

- 11.1 It is the duty of the Chief Executive to ensure that existing Board members and officers of the Trust and all new appointees are notified of and understand their responsibilities within the Standing Orders, schedule of reservation and delegation of powers and standing financial instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate.

12. Review of Standing Orders

- 12.1 Standing Orders shall be reviewed periodically by the Board. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

ANNEX 8 – FURTHER PROVISIONS - MEMBERS

1. Disqualification from membership

- 1.1. A person may not become or continue as a member of the Trust if s/he is or has been the subject of a Sexual Offences Prevention Order, a Foreign Travel Order or a Risk of Sexual Harm Order made under the provisions of the Sexual Offences Act 2003.
- 1.2. A person may not become a member of the Trust if s/he is under 14 years of age.
- 1.3. A person may not become or continue as a member of the Trust if s/he does not agree to comply with the Trust's aims and values.
- 1.4. Where the Trust is placed on notice that a member may be disqualified from membership, or may no longer be eligible to be a member, the Secretary shall give the member 14 days written notice to show cause why his/her name should not be removed from the register of members. If such information is not supplied by the member within 14 days, the Secretary may, if s/he considers it appropriate, remove the member from the register of members. In the event of any dispute the Secretary shall refer the matter to the Council of Members to determine.
- 1.5. All members of the Trust shall notify the Secretary of any change in their particulars, which may affect their entitlement to be a member.

2. Termination of membership

- 2.1. A member shall cease to be a member if:
 - 2.1.1. S/he dies;
 - 2.1.2. S/he resigns by notice to the Secretary;
 - 2.1.3. S/he ceases to be entitled under this constitution to be a member of any of the Trust's Constituencies;
 - 2.1.4. S/he is expelled under this constitution;
 - 2.1.5. It appears to the Secretary that s/he no longer wishes to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Members, s/he fails to establish that s/he wishes to continue to be a member of the Trust.

3. Expulsion

- 3.1. A member may be expelled by a resolution carried by the votes of two-thirds of the members of the Council of Members present and voting at a meeting of the Council. The following procedure is to be adopted:

- 3.2. Any member may complain in writing to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
- 3.3. If a complaint is made, the Council of Members 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; or
 - b. arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Members.
- 3.4. If a resolution to expel a member is to be considered at a meeting of the Council of Members, 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.
- 3.5. At the meeting the Council of Members will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 3.6. If the member complained of fails to attend the meeting without due cause, the meeting may proceed in their absence.
- 3.7. A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 3.8. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Members present and voting at a meeting of the Council.

4. Voting at Elections for Public Member Councillors

- 4.1. A person may not vote at an election for a Public Member Councillor unless within the specified period he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

AUTHORISATION OF 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

Schedule 2

Mandatory Goods and Services

Year: 2009-10

Sub care group	Currency	Learning disability 700	Adult mental illness 710	Child and adolescent psychiatry 711	Forensic psychiatry 712	Psychotherapy 713	Old age psychiatry 715
Community	Community Contact	-	5,115	12,772	2,569	-	-
CMHT	Community Contact	-	83,688	6,840	-	-	36,559
Outpatient	Community Contact	2,255	17,878	-	-	-	8,011
Community Forensic	Community Contact	-	2,632	-	-	-	-
Crisis resolution team	Community Contact	-	23,262	-	-	-	-
Other	Community Contact	10,616	314	-	-	-	9,717
Assertive Outreach Team	Community Contact	-	33,142	-	-	-	-
Early Intervention team	Community Contact	-	10,052	-	-	-	-
Eating Disorder	Community Contact	-	1,127	-	-	-	-
Other	Community Contact	-	11,976	-	-	-	243
Community	Community Contact	-	25,159	-	-	-	-
Other	Community Contact	-	11,597	-	-	-	-
Other	Community Contact	-	594	-	-	-	-
Inpatient	Bed Days	9,795	66,631	836	8,993	-	44,653
Day Care	Attendances	-	3,713	-	-	-	7,375
Community Forensic	Community Contact	-	59	-	3,935	-	-
Total		22,666	296,939	20,448	15,497	-	106,558

AUTHORISATION OF 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

Schedule 3

Mandatory Education and Training

5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST - MPET FUNDING 09/10
(REVISED OCTOBER 2009)

	2009/10
MPET Funding	£
NMET Funding Streams Contract	414,768
SIFT Contract	161,653
Medical and Dental Education Contract	1,045,037
Postgraduate Medical Education Funding	113,857
Total MPET Contract	1,735,314

AUTHORISATION OF 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

Schedule 4

Private Health Care

AUTHORISATION OF 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

PRIVATE HEALTH CARE

In 2002/03 the proportion of the total patient income derived from private health charges was 0.0%.

The Trust is designated as mental health foundation trust for the purposes of section 44 of the Act.

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 1.5%.

DEFINITION:

Private patient income

Total patient
related income

AUTHORISATION OF 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

Schedule 5

Limit on Borrowing

AUTHORISATION OF 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

PRUDENTIAL BORROWING LIMIT

Pursuant to section 46 of the Act and the Prudential Borrowing Code, the Prudential Borrowing Limit for the year 2009/10 is the sum of the following:

- (i) Maximum cumulative long term borrowing (Tier 1): £19.8 million;
- and
- (ii) Approved working capital facility: not to exceed £8.0 million.

AUTHORISATION OF 5 BOROUGH PARTNERSHIP NHS FOUNDATION TRUST

Schedule 6

Information

Full details of the information which the Trust shall disclose to Monitor directly and to any third parties as may be specified by the Secretary of State and as may be varied from time to time are set out on Monitor's website at www.monitor-nhsft.gov.uk.