

# **North Tees and Hartlepool NHS Foundation Trust**

## **Constitution**

[updated: July 2019]

**North Tees and Hartlepool NHS Foundation Trust Constitution  
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## **1. Name**

The name of the foundation trust is North Tees and Hartlepool NHS Foundation Trust (the “trust”).

## **2. Principal purpose**

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

2.1 The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and service for any other purposes.

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

2.2.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

2.2.2 the promotion and protection of public health.

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

## **3. Powers**

3.1 The powers of the trust are set out in the 2006 Act.

3.2 The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

3.3 The powers of the Board of Directors, which may be delegated to a committee of directors or to an executive director, are detailed in the 2006 Act and in the trust’s reservation of powers to the board and delegations of powers.

## **4. Membership and constituencies**

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

4.1.1 a public constituency; and

4.1.2 a staff constituency

4.2 In deciding which areas are to comprise the public constituency, or in deciding whether there should be a patients’ constituency, the trust shall have regard to the need for those eligible for such membership to be representative of those to whom the trust provides services.

## **5. Application for membership**

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

## **6. Public constituency**

- 6.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 6.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the public constituency.
- 6.3 The minimum number of members in each area for the public constituency is specified in Annex 1.
- 6.4 For the avoidance of doubt, individuals who solely fulfil an unpaid voluntary role with the trust shall form part of the public constituency.

## **7. Staff constituency**

- 7.1 An individual who is employed by the Trust and / or a subsidiary organisation, under a contract of employment may become or continue as a member of the Trust provided:
  - 7.1.1 they are employed by the Trust and / or a subsidiary organisation under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or  
or
  - 7.1.2 They have been continuously employed by the Trust and / or a subsidiary organisation, under a contract of employment for at least 12 months.
- 7.2 Individuals, who exercise functions for the purposes of the trust (which for the avoidance of doubt shall not include non-executive directors), otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 7.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the staff constituency.
- 7.4 The minimum number of members in the staff constituency is specified in Annex 2.
- 7.5 Automatic membership by default – staff  
  
An individual who is:
  - 7.5.1 eligible to become a member of the staff constituency, and
  - 7.5.2 invited by the trust to become a member of the staff constituency.shall become a member of the trust as a member of the staff constituency and without an application being made, unless they inform the trust that they do not wish to do so.

## **8. Restriction on membership**

- 8.1 An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2 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.
- 8.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 – Further Provisions.
- 8.4 An individual must be at least 16 years old to become a member of the trust.

## **9. Council of Governors – composition**

- 9.1 The trust shall have a Council of Governors, which shall comprise both elected and appointed governors.
- 9.2 The composition of the Council of Governors is specified in Annex 3.
- 9.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 1 and Annex 3.

## **10. Council of Governors – election of governors**

- 10.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the model rules for elections, as may be varied from time to time by NHS Providers or its successor body.
- 10.2 The model rules for elections, as may be varied from time to time by NHS Providers or its successor body, form part of this constitution and those current at the date of the trust's authorisation are attached at Annex 4.
- 10.3 For the avoidance of doubt, any such amendments made to the model rules for elections from time to time do not require consultation and/or approval in accordance with paragraph 37 of this constitution. For the avoidance of doubt, the trust cannot amend the model rules for elections.
- 10.4 An election, if contested, shall be by secret ballot.
- 10.5 Election of lead governor
  - 10.5.1 The Council of Governors will elect a lead governor from among their number, who shall on any occasion when direct contact with the Regulator is required, facilitate that contact between the governors and the Regulator.

- 10.5.2 If a lead governor ceases to hold the office for any reason, the company secretary shall send out nominations forms for appointment as lead governor not less than 15 clear days prior to the next meeting of the Council of Governors. (If a lead governor ceases to hold the office less than 15 clear days before a scheduled meeting of the Council of Governors, the company secretary shall send out nominations forms not less than 15 clear days before the next following meeting of the Council of Governors.) Each nomination shall be made in writing by the governor seeking appointment and must be returned to the principal place of business of the trust addressed to the company secretary to arrive not less than 3 days before the meeting.
- 10.5.3 If there are two or more nominations for appointment a secret ballot shall be held of all the governors present at the meeting with each governor present having one vote. Nominees may not vote.
- 10.5.4 The meeting shall adjourn while the ballot is taken and the governor whose nomination receives the largest number of votes shall be appointed as lead governor.
- 10.5.5 In the event of an equality of votes the chairman of the meeting shall have a casting vote.
- 10.5.6 The result of the ballot shall be announced at the meeting.
- 10.5.7 This appointment shall be made from the public governors.
- 10.5.8 This appointment shall be for the remaining term of office of the governor elected.
- 10.5.9 The lead governor may resign from the office at any time by giving written notice to the company secretary, and shall cease to hold the office if they cease to be a governor.
- 10.5.10 The duties of the lead governor are as defined in the NHS foundation trust code of governance.

## **11. Council of Governors – tenure**

Subject to the provisions of paragraph 12:

- 11.1 An elected governor may hold office for a period of up to 3 years initially.
- 11.2 An elected governor shall be eligible for re-election at the end of their term.
- 11.3 Following completion of six years service, an elected governor may state their intention to be considered for re-election to the Chairman, Lead Governor and Company Secretary subject to satisfactory performance, and every three years thereafter.
- 11.4 . An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.



11.5 An appointed governor shall remain in office unless notified otherwise by the appointing organisation.

**12. Council of Governors – disqualification and removal**

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

12.1.1 a person who has within the preceding 2 years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

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

12.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;

12.1.4 a person who within the preceding 5 years has been convicted in the UK or Europe of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on them;

12.1.5 a person who has been convicted of any offence of violence against or dishonesty in relation to a member of the trust's staff or the trust itself.

12.1.6 a member of staff who is under investigation for gross misconduct, subject to disciplinary action or has been suspended in the course of their duties until the matter is spent.

12.1.7 In addition to those criteria listed above, further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5, paragraph 3.

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

**13. Council of Governors – meetings of governors**

13.1 The chairman of the trust (that is, the chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 20.1) or, in their absence the deputy chairman (appointed in accordance with the provisions of paragraph 21 below), shall preside at meetings of the Council of Governors. The Council of Governors is to meet at least 3 times per year.

13.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons including:

13.2.1 during the consideration of any material or discussion in relation to a named person employed by or proposed to be employed by the trust;

- 13.2.2 during the consideration of any material or discussion in relation to a named person who is or has been or is likely to become a patient of the trust or a carer in relation to such patient;
- 13.2.3 during the consideration of any matter which, by reason of its nature, the Council is satisfied should be dealt with on a confidential basis;
- 13.2.4 those matters which would be deemed to be confidential for the purposes of the Freedom of Information Act 2000.

**14. Council of Governors – standing orders**

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

**15. Council of Governors - conflicts of interest of governors**

- 15.1 If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The standing orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

**16. Council of Governors – travel expenses**

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

**17. Council of Governors – further provisions**

- 17.1 Further provisions with respect to the Council of Governors are set out in Annex 5.

**18. Board of Directors – composition**

- 18.1 The trust shall have a Board of Directors, which shall comprise both executive and non-executive voting directors.
- 18.2 The Board of Directors is to comprise:
  - 18.2.1 a non-executive chairman
  - 18.2.2 5 other non-executive directors; and
  - 18.2.3 5 executive directors.
- 18.3 One of the executive directors shall be the chief executive.
- 18.4 The chief executive shall be the Accounting Officer.

- 18.5 Where more than one individual is appointed jointly to a post of director, those individuals shall count for the purposes of this paragraph 18 as one person.
- 18.6 One of the executive directors shall be the finance director.
- 18.7 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 18.8 One of the executive directors is to be a registered nurse or a registered midwife.
- 18.9 A fifth voting executive director shall be a designate from the remaining executive director cohort.

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

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

- 19.1 They are a member of the public constituency of the trust, and
- 19.2 They meet the fit and proper persons requirements outlined within Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.
- 19.3 They are not disqualified by virtue of paragraph 23 below.

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

- 20.1 The Council of Governors has the responsibility to appoint or remove the chairman and other non-executive directors. The Council of Governors will request that the nominations committee undertakes such activities, and provide a recommendation for the whole of the Council of Governors to consider and agree, this would be undertaken at a general meeting of the Council of Governors.
- 20.2 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 20.3 The appointment of the chairman and non-executive directors will be for an initial term of 3 years, further extensions for the chairman will be taken to the nominations committee by the chief executive or the company secretary on behalf of the chief executive, and further extensions for the non-executive directors will be taken by the chairman. The extensions will be in line with the code of governance.
- 20.4 The Council of Governors has the power to appoint Associate Non-Executive Directors in a non-voting capacity as deemed necessary to support the work of the Board of Directors. The appointment process will be delegated to the nominations committee.

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

- 21.1 The Board of Directors shall recommend to the Council of Governors, at a general meeting of the Council of Governors, that one of the non-executive directors is appointed as a deputy chairman.
- 21.2 Any non-executive director so appointed may at any time resign from the office of deputy chairman by giving notice in writing to the chairman.
- 21.3 Where the chairman of the trust has ceased to hold office, or they are unable to perform their duties owing to illness or any other cause, the deputy chairman shall act as chairman until a new chairman is appointed or the existing chairman has resumed their duties. References to the chairman in this constitution shall, so long as there is no chairman able to perform the relevant duties, be deemed to include references to the deputy chairman.
- 21.4 Following consultation with the Council of Governors the Board of Directors shall inform the Council of Governors, at a general meeting of the Council of Governors, that one of the non-executive directors is appointed as a senior independent director.
- 21.5 Any non-executive director so appointed may at any time resign from the office of senior independent director by giving notice in writing to the chairman.

**22. Board of Directors - appointment and removal of the chief executive and other executive directors**

- 22.1 The non-executive directors shall appoint or remove the chief executive. All appointments must satisfy the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.
- 22.2 The appointment of the chief executive shall require the approval of the Council of Governors.
- 22.3 A committee consisting of the chairman, the chief executive and the other non-executive directors shall appoint or remove the other executive directors. All appointments must satisfy the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.

**23. Board of Directors – disqualification**

- 23.1 The following may not become or continue as a member of the Board of Directors:
- 23.1.1 A person who has within the preceding 2 years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 23.1.2 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 23.1.3 The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland.

- 23.1.4 The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986(1).
  - 23.1.5 A person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it.
  - 23.1.6 A person who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.
  - 23.1.7 The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland.
  - 23.1.8 The person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment.
  - 23.1.9 A person who within the preceding 5 years has been convicted in the British Islands and/or the European Union of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on them.
  - 23.1.10 A person has been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity.
  - 23.1.10 A non-executive director who is no longer a member of the public constituency.
  - 23.1.11 A person who is unable or unwilling to sign an annual declaration that they continue to meet the Care Quality Commission's Fit and Proper Persons regulations.
- 23.2 The trust may suspend or agree leave of absence in the event of any investigation into matters associated with an executive director.

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

- 24.1 The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

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

- 25.1 Each director has a duty to avoid a situation in which the director has or can have a direct or indirect interest that conflicts or possibly may conflict with the interests of the trust. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or if the matter has been authorised in accordance with this constitution.

- 25.2 Each director has a duty not to accept a benefit from a third party by reason of being a director or doing or not doing anything in that capacity. This duty is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 25.3 If a director is aware that they have in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, they shall disclose the nature and extent of that interest to the other directors as soon as they are aware of it and in all cases, before the trust enters into the transaction or arrangement. If any declaration proves to be or becomes inaccurate or incomplete, the director shall make a further declaration.
- 25.4 A director need not declare an interest:
- 25.4.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 25.4.2 if, or to the extent that, all the directors are already aware of it;
  - 25.4.3 if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered;
    - (a) by a meeting of the Board of Directors; or
    - (b) by a committee of the directors appointed for that purpose under this constitution.
- 25.5 The Board of Directors shall adopt standing orders specifying the arrangements for excluding directors from discussion or consideration of the contract or other matter as appropriate.

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

- 26.1 The Council of Governors has the responsibility to review the remuneration and allowances, and the other terms and conditions of office, of the chairman and other non-executive directors, but shall delegate this responsibility to the nominations committee, who will report back to the whole of the Council of Governors for final approval at a general meeting of the Council of Governors.
- 26.2 The trust shall establish a remuneration 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.

## **27. Registers**

The trust shall have:

- 27.1 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;
- 27.2 a register of members of the Council of Governors;
- 27.3 a register of interests of governors;

- 27.4 a register of directors; and
- 27.5 a register of interests of the directors.

**28. Registers – inspection and copies**

- 28.1 The trust shall make the registers specified in paragraph 27 available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 28.2 The trust shall not make any part of its registers available for inspection by members of the public which shows details of:
  - 28.2.1 any member of the trust, if the member so requests.
- 28.3 So far as the registers are required to be made available:
  - 28.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 28.3.2 a person who requests a copy or extract from the registers is to be provided with a copy or extract.
- 28.4 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.

**29. Documents available for public inspection**

- 29.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 29.1.1 a copy of the current constitution;
  - 29.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
  - 29.1.3 a copy of the latest annual report; and
- 29.2 The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
  - 29.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
  - 29.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 29.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

- 29.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 29.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 29.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 29.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 29.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
  - 29.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
  - 29.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 29.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 29.4 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.

### **30. Auditor**

- 30.1 The trust shall have an auditor.
- 30.2 The Council of Governors shall appoint or remove the auditor to the trust. The Council of Governors will request that the governor external audit working group undertake this activity, and provide a recommendation to the whole Council of Governors to consider and agree at a general meeting of the Council of Governors.

### **31. Audit committee**

- 31.1 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.

### **32. Accounts**

- 32.1 The trust must keep proper accounts and proper records in relation to the accounts.
- 32.2 The Regulator may with the approval of the secretary of state give directions to the trust as to the content and form of its accounts.



- 32.3 The accounts are to be audited by the trust's auditor.
- 32.4 The trust shall prepare in respect of each financial year annual accounts in such form as the Regulator may with the approval of the secretary of state direct.
- 32.5 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 32.6 The trust shall:
- 32.6.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament;
  - 32.6.2 send copies of those documents to the Regulator within such period as the Regulator may direct; and
  - 32.6.3 send copies of any accounts prepared pursuant to paragraph 33.2, and any report of an auditor on them to the Regulator within such period as the Regulator may direct.

**33. Annual report, forward plans and non NHS work**

- 33.1 The trust shall prepare annual reports and send them to the Regulator and parliament.
- 33.4 The trust shall give information as to its forward planning in respect of each financial year to the Regulator.
- 33.5 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors who in doing so shall have regard to the views of the Council of Governors.
- 33.6 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 33.7 The forward planning information must include information about –
- 33.7.1 the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
  - 33.7.2 the income it expects to receive from doing so.
- 33.8 Where the forward planning information contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 33.7.1 the Council of Governors must –
- 33.8.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and
  - 33.8.2 notify the directors of the trust of its determination.

33.9 Where the trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purpose of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

**34. Presentation of the annual accounts and reports to the governors and members**

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

34.1.1 the annual accounts;

34.1.2 any report of the auditor on them;

34.1.3 the annual report.

34.2 The documents shall also be presented to the members of the trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance. The trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 34.1 with the Annual Members' Meeting.

34.4 Where an amendment has been made to this constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust), at least one governor shall attend the next Annual Members' Meeting to be held, at which the governor shall present the amendment and the members shall be entitled to vote on whether they approve the amendment.

34.5 If more than half the members voting to approve the amendment, the amendment shall continue to have effect; otherwise it shall cease to have effect and the trust shall take such steps as are necessary as a result.

**35. Significant Transactions**

35.1 North Tees & Hartlepool NHS Foundation Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering in to the transaction. The threshold for a significant transaction differs depending upon whether the transaction relates to UK or non UK healthcare investment or disinvestment.

35.2 There are three types of transactions that may trigger the significant transaction threshold:

35.2.1 investment/disinvestment in income – Where the income attributable to the asset or the contract associated with the transaction is greater than 25% when divided by the income of the trust. (For non-healthcare/international transactions the threshold is reduced by 50% for investments only).

35.2.2 acquisition or disinvestment of assets of the business – Where the gross assets subject to the transaction is greater than 25% when divided by the gross assets of the trust.

35.2.3 investment of a capital nature - Where the gross capital of the company or business being acquired/divested is greater than 25% when divided by the total capital of the trust following completion of the effects on the total capital of the trust resulting from the transaction.

### **36. Instruments**

36.1 The trust shall have a seal.

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

36.3 The seal shall be kept by the company secretary.

36.4 Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers of the trust duly authorised by the chief executive and not also from the originating department or directorate, and shall be attested by them.

36.5 The chief executive shall keep a register in which they, or another manager of the trust authorised by them, shall enter a record of the sealing of every document.

36.6 A report of all sealing shall be made to the Board of Directors at least quarterly. The report shall contain the description of the document and the date of sealing.

36.7 In land transactions, the signing of certain supporting documents may be delegated to managers as set out clearly in the scheme of delegation. Such delegation shall not include the main or principal documents effecting the transfer (for example, the sale/purchase agreement, lease, contracts for construction works and main warranty agreements) or any document which must be executed as a deed.

### **37. Interpretation and definitions**

37.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 and amended by the Health and Social Care Act 2012.

37.3 In the case of a dispute in relation to the interpretation of this constitution, the chairman's decision will be final.

**the 2006 Act** is the National Health Service Act 2006.

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

**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.

**Board of Directors** means the board of directors as constituted in accordance with the terms of this constitution.

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

**Council of Governors** means the council of governors as constituted in accordance with the terms of this constitution.

**The Regulator** is the body corporate known as Monitor, as provided by section 61 of the 2012 Act or its successor.

**voluntary organisation** is a body, other than a public or local authority, the activities of which are not carried on for profit.

### **38. Amendment to constitution**

38.1 The trust may make amendments to this constitution only if:

38.1.1 more than half the members of the Council of Governors voting, approve the amendments.

38.1.2 more than half the members of the Board of Directors voting, approve the amendments.

38.2 Amendments take effect as soon as the conditions in paragraph 38.1 are satisfied, but an amendment shall have no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

38.3 The trust shall inform the Regulator of amendments to the constitution.

38.4 If an amendment relates to the powers or duties of the Council of Governors (or is otherwise with respect to the role that the Council of Governors has as part of the trust), paragraphs 34.4 and 34.5 of the constitution shall apply.

### **39. Law and guidance**

This constitution must be read in conjunction with all relevant law and any relevant guidance issued by the Regulator or the secretary of state for Health.

### **40. Acquisition, Merger, Separation and Dissolution**

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

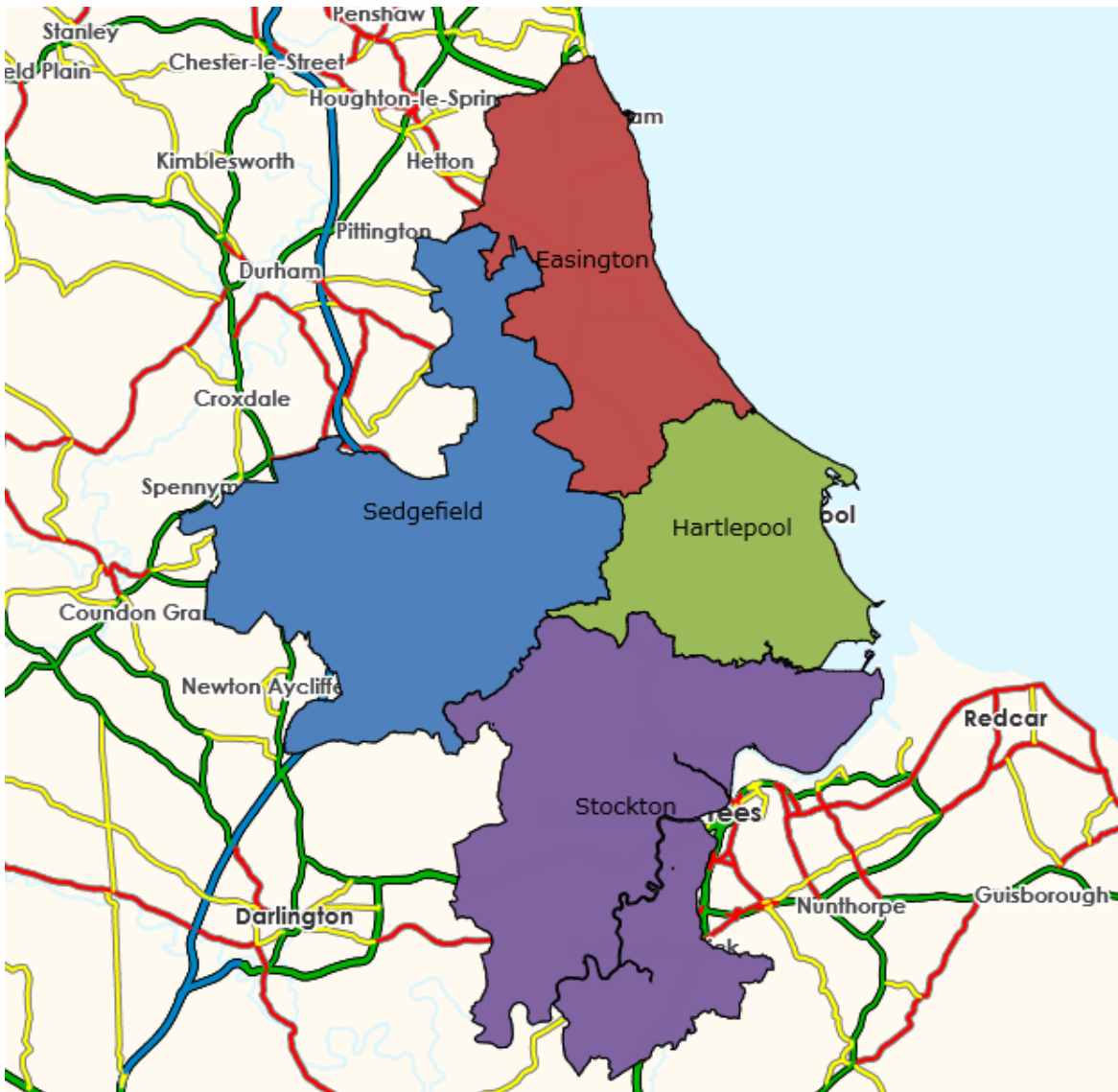
## ANNEX 1

### THE PUBLIC CONSTITUENCY

Name of Constituency	Area	Minimum Number of Members	Number of Governors
Stockton	Stockton	52	11
Hartlepool	Hartlepool	28	6
Easington	Easington	10	2
Sedgefield	Sedgefield*	10	2
Other Areas	Any area of England other than Stockton, Hartlepool, Easington or Sedgefield	1	1

Each of these areas comprises local authority wards and parliamentary constituencies for the purpose of local government elections in England. (\*Sedgefield comprises those local authority electoral wards and parliamentary constituencies which are geographically aligned to the trust's catchment area).

The trust will ensure that (taken as a whole) the actual membership of its public constituency is representative of those eligible for such membership.



**ANNEX 2**

**THE STAFF CONSTITUENCY**

The minimum number of members required for the staff constituency is to be 50.

## ANNEX 3

### COMPOSITION OF COUNCIL OF GOVERNORS

#### **1. Council of Governors structure**

1.1 The Council of Governors of the trust shall include:

1.1.1 21 public governors selected by the public constituency;

1.1.2 1 other areas public governor elected by the public constituency;

1.1.3 6 staff governors elected by the staff constituency;

1.1.4 8 Governors appointed by stakeholders comprising;

1.1.4.1 3 partnership governors from regional universities;

1.1.4.2 2 clinical commissioning groups (CCGs) governors;;

1.1.4.3 3 local authority governors.

1.2 It would be the trust's responsibility to write to each of the above to invite representation on the trust's Council of Governors.

1.3 The public governors must total more than half of the total membership of the Council of Governors.

1.4 The chairman of the Trust shall chair the Council of Governors.

#### **2. Public governors**

2.1 Members of the public constituency may elect any of their number to be a public governor.

2.2 If contested, the election must be by secret ballot.

2.3 The model rules for elections, including:

2.3.1. the specified forms of, and period for, declarations to be made by candidates standing for office and members as a condition of voting; and

2.3.2 the process if the election is uncontested

are set out in Annex 4.

2.4 A person may not stand for election to the Council of Governors as a public governor unless they have made a declaration in the form specified in and within the time period stated in Annex 4. The particulars of their qualification to vote as

a member of the public constituency for which the election is being held and the fact that they are not prevented from being a member of the Council of Governors by paragraph 8 to Schedule 7 of the 2006 Act or by paragraph 1 of Annex 8 below (disqualification) need to be stated. It is an offence to knowingly or recklessly make a declaration under section 60 of the 2006 Act which is false in a material particular.

### **3. Staff governors**

3.1 Members of the staff constituency may elect any of their number to be a staff governor.

3.2 If contested, the election must be by secret ballot.

3.3 The model rules for elections, including:

3.3.1 the specified forms of, and periods for, declaration to be made by candidates standing for office and members as a condition of voting; and

3.3.2 the process if the election is uncontested

are set out in Annex 4.

3.4 A person may not stand for election to the Council of Governors as a staff governor unless they have made a declaration, in the form specified in and within the time stated in Annex 4, that they are not prevented from being a member of the Council of Governors by paragraph 8 to Schedule 7 of the 2006 Act or by paragraph 1 of Annex 8 below (disqualification).

## **4 Appointed Governors**

4.1 The following organisations (“Partnership Organisations”) are specified for the purposes of sub-paragraph 9(7) of Schedule 7 to the 2006 Act and may each appoint one member of the Council of Governors:

## **5 Partnership organisations**

5.1 The organisations which are partnership organisations are the;

5.1.1 University of Newcastle upon Tyne;

5.1.2 University of Sunderland; and

5.1.3 University of Teesside.

5.2 Partnership governors will be appointed by the partnership organisations in accordance with the process agreed with the company secretary.

## **6. Clinical commissioning group (CCG) governors**

6.1 The following Clinical commissioning groups (CCGs) may each appoint one CCG governor:

6.1.1 NHS Hartlepool and Stockton-on-Tees Clinical Commissioning Group; and



6.1.2 NHS Durham, Dales, Easington and Sedgefield Clinical Commissioning Group.

6.2 These governors will be appointed in accordance with a process to be agreed between the trust and the CCG.

**7. Local authority governors**

7.1 The following local authorities may each appoint one Local Authority governor:

7.1.1 Hartlepool Borough Council;

7.1.2 Stockton on Tees Borough Council; and

7.1.3 Durham County Council.

7.2 These governors will be appointed in accordance with a process to be agreed between the local authority and the trust.

## **ANNEX 5**

### **ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

- 1 A person may not vote at an election for a public governor unless within the specified period they have made a declaration in the specified form stating the particulars of their qualification to vote as a member of the constituency for which an election is being held. It is an offence to knowingly or recklessly to make such a declaration which is false in a material particular.
2. CCG governors, local authority governors and partnership governors, as the case may be, shall cease to hold office where the relevant appointing organisation notifies the company secretary of the withdrawal of their appointment of them.
3. Subject to paragraph 3A below and in addition to those criteria listed in paragraph 12.1 of the constitution a person may not become or continue as a governor of the trust if:
  - 3.1 They have within the preceding 2 years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body.
  - 3.2 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.
  - 3.3 They are an executive or non-executive director of the trust, or a non-executive director, chairman or chief executive or executive director of another NHS organisation.
  - 3.4 They have been removed from membership of a professional body or from a list of registered medical, dental, nursing or other health care practitioners as a result of disciplinary action or any conclusion that the continued inclusion of that person's name on any such list or membership of any such professional body would be prejudicial to the efficiency of the services to which the professional body or list relates and has not subsequently been re-instated to membership or such a list.
  - 3.5 They are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs.
  - 3.6 The Council of Governors reasonably considers that they are unfit to discharge the functions of a governor.
  - 3.7 They have been disqualified from membership of their profession by the professional or regulatory body.
  - 3.8 They bring the trust into disrepute or their actions are detrimental to the interests of the trust.
  - 3.9 They have had their name placed on the registers of Schedule 1 offenders pursuant to the Sex Offenders Act 1977 and/or the Children's and Young Person's Act 1993.

- 3.10 They fail to confirm acceptance of the Council of Governors code of conduct, and/or a breach of the code of conduct.
- 3.11 They are a member of parliament.
- 3A. Further to paragraph 3, a person may not become or continue as a public governor if they are a governor in another NHS organisation.
- 3B. Where a person has been elected or appointed to be a governor and they become disqualified for appointment under paragraph 12.1 of the constitution and/or paragraph 3 or 3A above they shall notify the company secretary in writing of such disqualification.
- 3C. If it comes to the notice of the trust at the time of their appointment or later that the governor is so disqualified, the trust shall immediately declare that the person in question is disqualified and notify them in writing to that effect.
- 3D. Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and they shall cease to act as a governor.
- 3E. The nominations committee on behalf of the Council of Governors will decide whether a governors position should be terminated in the event of any of the above actions occurring or a breach of the Council of Governors code of conduct has occurred. The sub-committee shall subsequently call a general meeting of the Council of Governors to approve their decision for the removal of a governor.
- 3F A staff governor who is suspended from staff duties for any reason will also be suspended from their role as a governor for the duration of their suspension. Whilst a staff governor is under investigation, they cannot attend meetings of the Council of Governors in any capacity, but missing any meetings of the Council of Governors will not count as failure to attend for the purpose of 4.2 below.

#### 4. **Termination of Tenure**

- 4.1 A governor may resign from office at any time during the term of that office by giving notice in writing to the company secretary.
- 4.2 If a governor fails to attend for 3 consecutive meetings of the Council of the Governors their tenure of office is to be immediately terminated unless the other governors are satisfied that:
  - 4.2.1 the absence was due to a reasonable cause; and
  - 4.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 4.3 In the event that the governor failed to attend further meetings they may be terminated after consideration by the nominations committee.

#### 5. **Temporary Vacancies**

- 5.1 The validity of any act of the trust is not affected by any vacancy among the governors or by any defect in the appointment of any governor.

- 5.2 A temporary vacancy is a vacancy that arises because a governor does not complete their term of office for any reason. A vacancy that arises because the term of office of a governor has expired and they have not been re-elected or re-appointed is not a temporary vacancy.
- 5.3 Where there is a temporary vacancy for whatever reason:
- 5.3.1 If the vacancy is for an elected governor, the next highest polling candidate at the most recent elections to fill the seat will be invited to take up the seat within 3 months of the preceding elections for the remainder of the period of office at which time he may seek re-election;
- 5.3.2 If the vacancy is for an appointed governor, the appointing organisations will be requested to appoint a replacement to hold office for the remainder of the term in accordance with the agreed appointment processes.
- 5.4 Where membership of the Council of Governors ceases for one of the reasons set out in paragraph 12.1 of the constitution or paragraph 3 or 3A above, public, and staff governors shall be replaced by by-elections, in accordance with the model rules for elections set out in Annex 4, and CCG governors, local authority governors and partnership governors are to be replaced in accordance with the processes agreed pursuant to the terms of this constitution.
- 6. Roles and responsibilities of Council of Governors at a general meeting**
- 6.1 In addition to those powers contained elsewhere in this constitution the roles and responsibilities of the governors at a general meeting are:
- 6.2 To approve the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors.
- 6.3 To appoint or remove the trust's auditor.
- 6.4 To both consider and be presented with the annual accounts, any report of the auditor on them, and the annual report at the annual general meeting of the trust.
- 6.5 To give the views of the Council of Governors to the 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.
- 6.6 To respond as appropriate when consulted by the directors in accordance with this constitution.
- 6.7 The Regulator
- 6.9 Such other duties as may be agreed with the directors from time to time.
- 6.10 At the annual general meeting, the Council of Governors are to receive and consider the annual accounts, any report of the auditor on them, and the annual report.
- 6.11 A governor elected to the Council of Governors by the public constituency or the staff constituency may not vote at a meeting of the Council of Governors unless, within one month of election or by the date of the next Council of Governors

Meeting after their election (whichever is the sooner) they have made a declaration in the form found at Annex 4 that they are a member of the public constituency, or the staff constituency and are not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or is otherwise prevented under this constitution.

#### 6.12 Committees and Sub-Committees

6.12.1 the Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.

6.12.2 these committees or sub-committees may, where appropriate and reasonable, call upon outside advisers to help them in their tasks.

#### 6.13 Code of conduct

The Council of Governors shall at all times comply with the provisions of the trust's Council of Governors code of conduct as varied by the Board of Directors from time to time.

## ANNEX 6

### STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

#### 1. **Meetings of the Council of Governors**

- 1.1 Admission of the public and the press - The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

"That representatives of the press and other members of the public be excluded from the remainder of this meeting because the confidential nature of the business to be transacted is such that publicity would be prejudicial to the public interest".

- 1.2 The chairman (or deputy chairman) shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Council of Governors' business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows:

"That in the interests of public order the public withdraw from the meeting for (the period to be specified) to enable the Council of Governors to complete business without the presence of the public".

- 1.3 Nothing in these standing orders shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Council of Governors.

- 1.4 Calling meetings - ordinary meetings of the Council of Governors shall be held at such times and places as the Board of Directors may determine.

- 1.5 The chairman may call a meeting of the Council of Governors at any time. If the chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of governors, has been presented to them, or if, without so refusing, the chairman does not call a meeting within 7 days after such requisition has been presented to them, at the trust's headquarters, such one third or more governors may forthwith call a meeting.

- 1.6 Notice of meetings - Before each meeting of the Council of Governors, 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 their behalf shall be delivered to every governor, or sent by post to the usual place of residence of such governor, so as to be available to them at least 6 days before the meeting.

- 1.7 Lack of service of the notice on any governor shall not affect the validity of a meeting.
- 1.8 In the case of a meeting called by governors in default of the chairman, the notice shall be signed by those governors and no business shall be transacted at the meeting other than that specified in the notice.
- 1.9 Failure to serve such a notice on more than 3 governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post, and by electronic means.
- 1.10 Setting the agenda - The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted. Such matters may be identified within these standing orders or following subsequent resolution shall be listed in an appendix to the standing orders.
- 1.11 A governor desiring a matter to be included on an agenda shall make their request in writing to the chairman at least 14 days before the meeting, subject to standing order 1.8. Requests made less than 8 days before a meeting may be included on the agenda at the discretion of the chairman, and if agreed would be taken under any other business.
- 1.12 Chairman of meeting - At any meeting of the trust, the chairman, if present, shall preside. If the chairman is absent from the meeting the deputy chairman, if there is one and they are present, shall preside. If the chairman and deputy chairman are absent, the senior independent director or the lead governor shall preside.
- 1.13 If the chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the deputy chairman, if present, shall preside. If the chairman and deputy chairman are absent, or are disqualified from participating, the senior independent director or the lead governor shall preside.
- 1.14 Annual public meeting - The trust will publicise and hold an annual public meeting.
- 1.15 Notices of motion - A governor of the trust desiring to move or amend a motion shall send a written notice there of at least 10 days before the meeting to the chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being in compliance with these standing orders. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to standing order 1.8.
- 1.16 Withdrawal of motion or amendments - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the chairman.
- 1.17 Motion to rescind a resolution - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of

the governors who gives it and also the signature of 3 other governors. When any such motion has been disposed of by the trust, it shall not be competent for any governor other than the chairman to propose a motion to the same effect within 3 months; however the chairman may do so if he considers it appropriate.

- 1.18 Motions - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment there to.
- 1.19 When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
- an amendment to the motion;
  - the adjournment of the discussion or the meeting;
  - that the meeting proceed to the next business;
  - the appointment of an ad hoc committee to deal with a specific item of business;
  - that the motion be now put.

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.

- 1.20 Chairman's ruling - Statements of governors made at meetings of the trust 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, relevance, regularity and any other matters shall be observed at the meeting.
- 1.21 Voting - Save where all public governors present are unanimous in opposing a motion, every question at a meeting shall be determined by a majority of the votes of the governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote. In the event that a motion is opposed by all public governors present, that motion shall not be passed.
- 1.22 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 governors present so request, and the chairman agrees such a request.
- 1.23 If at least one-third of the governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each governor present voted or abstained.
- 1.24 If a governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 1.25 In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.



- 1.26 Minutes - The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where, if approved at the meeting, they will be signed by the person presiding at it.
- 1.27 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 meeting subsequent to the meeting to which the minutes relate.
- 1.28 Where providing a record of a public meeting the minutes shall be made available to the public (required by the code of practice on openness in the NHS).
- 1.29 Suspension of standing orders - Except where this would contravene any statutory provision any one or more of the standing orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present, including one staff governor and one public governor, and that a majority of those present vote in favour of suspension.
- 1.30 A decision to suspend standing orders shall be recorded in the minutes of the meeting.
- 1.31 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the governors.
- 1.32 No formal business may be transacted while standing orders are suspended.
- 1.33 The audit committee shall review every decision to suspend standing orders.
- 1.34 Variation and amendment of standing orders - These standing orders shall be amended only if:
- a notice of motion under standing order 1.15 has been given;
  - no fewer than half the total of the trust's public governors vote in favour of amendment;
  - at least two-thirds of the governors are present; and
  - the variation proposed does not contravene a statutory provision.
- 1.35 Record of attendance - The names of the governors present at the meeting shall be recorded in the minutes.
- 1.36 Quorum - No business shall be transacted at a meeting of the Council of Governors unless at least one-third of the whole number of the governors are present, including at least 4 public governors.
- 1.37 If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see standing order 4.5) they 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.

- 1.38 The Council of Governors will receive, discuss and approve any proposed amendments to the constitution presented to them at a general meeting of the Council of Governors.

## **2. Committees**

- 2.1 Appointment of committees - The Council of Governors may appoint committees of the Council of Governors, consisting wholly or partly of governors.
- 2.2 A committee appointed under standing order 2.1 may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include governors).
- 2.3 These standing orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Council of Governors.
- 2.4 Each such committee or sub-committee shall have such terms of reference and powers in relation to the business of the Council of Governors, and be subject to such conditions (as to reporting back to the Council of Governors), as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into the standing orders.
- 2.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Council of Governors.
- 2.6 Confidentiality - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 2.7 A governor or a member of a committee shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee shall resolve that it is confidential.

## **3. Declarations of interests and register of interests**

- 3.1 Declaration of interests - The trust's constitution requires governors to declare interests which are relevant and material to the Council of Governors of which they are a member. All governors should declare such interests, and are required to review these each year.
- 3.2 Interests which should be regarded as "relevant and material" are:
  - 3.2.1 directorships, including non-executive directorships held in public or private limited companies (with the exception of those of dormant companies);

- 3.2.2 ownership or part-ownership of public or private limited companies, businesses, majority or controlling share holdings in organisations or consultancies likely or possibly seeking to do business with the NHS;
- 3.2.3 a position of authority in a charity or voluntary organisation in the field of health and social care;
- 3.2.4 any connection with a voluntary or other organisation contracting for NHS services.
- 3.2.5 any family connections with any of the above or any other NHS, voluntary, public or private body which provides services to the trust.
- 3.4 If governors have any doubt about the relevance of an interest, this should be discussed with the chairman.
- 3.5 At the time governors' interests are declared, they should be recorded in the Council of Governors minutes of the relevant meeting. Any changes in interests should be declared at the next Council of Governors' meeting following the change occurring.
- 3.6 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Council of Governors' annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 3.7 During the course of a Council of Governors' meeting, if a conflict of interest is established, the governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 3.8 For the purposes of this standing order 3 there is no requirement for the interests of governors' spouses or partners to be declared. Note that standing order 4 which is based on the Health Authorities (Membership and Procedure) Regulations 1996 requires that the interest of governors' spouses, if living together, in contracts should be declared.
- 3.9 Register of interests - The chief executive will ensure that a register of interests is established to record formally declarations of interests of governors. In particular the register will include details of all directorships and other relevant and material interests which have been declared by governors, as defined in standing order 3.2.
- 3.10 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 12 months will be incorporated.
- 3.11 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. To view the register, contact should be made to the company secretary.

#### 4. **Disability of governors in proceedings on account of pecuniary interest**

- 4.1 Subject to the following provisions of this standing order, if a governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Council of Governors at which the contract or other matter is the subject of consideration, they 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.
- 4.2 The secretary of state and/or the Regulator may, subject to such conditions as they may think fit to impose, remove any disability imposed by this standing order in any case in which it appears to either of them in the interests of the NHS that the disability shall be removed.
- 4.3 The Council of Governors shall exclude a governor from a meeting of the trust while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.
- 4.4 Any expenses payable to a governor by virtue of the consortium shall not be treated as a pecuniary interest for the purpose of this standing order.
- 4.5 For the purpose of this standing order the chairman or a governor shall be treated, subject to standing order 4.2 and standing order 4.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 4.5.1 they are, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
- or
- 4.5.2 they are 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; and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this standing order to be also an interest of the other.
- 4.6 A governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 4.6.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
- 4.6.2 of an interest in any company, body or person with which they are connected as mentioned in standing order 4.5 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 4.7 Where a governor:

- 4.7.1 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;
- 4.7.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less;
- 4.7.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class.

This standing order shall not prohibit them 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 their duty to disclose their interest.

- 4.8 Standing order 4 applies to a committee or sub-committee of the Council of Governors as it applies to the Council of Governors and applies to any member of any such committee or sub-committee (whether or not they are also a governor) as it applies to a governor.

## 5 **Role and Responsibilities of the Council of Governors**

- 5.1 The Council of Governors shall:
  - 5.1.1 hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and
  - 5.1.2 represent the interests of the members of the trust as a whole and the interests of the public.
- 5.2 The roles and responsibilities of the governors are at a general meeting or otherwise to:
  - 5.2.1 give the views of the Council of Governors to the 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;
  - 5.2.2 require one or more directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the trust's or directors' performance); and/or
  - 5.2.3 respond as appropriate when consulted by the directors.
- 5.3 The governors also have the specific role and function of:
  - 5.3.1 providing views to the Board of Directors on the strategic direction of the trust;
  - 5.3.2 developing membership; and

5.3.3 representing the interests of the members.

- 5.4 If the Regulator has appointed a panel for advising governors, a governor may refer a question to that panel as to whether the trust has failed or is failing to act in accordance with this constitution or Chapter 5 of the 2006 Act. A governor may only refer a question under this paragraph if more than half of the members of the Council of Governors voting approve the referral.
- 5.5 The trust will take steps to ensure that governors are equipped with the skills and knowledge they require in their capacity as governors of this trust.

## **ANNEX 7**

### **STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD**

#### **OF DIRECTORS**

##### **1. General Duty**

The general duty of the Board of Directors, and of each director individually, is to act with a view to promoting the success of the trust so as to maximise the benefits for the members of the trust as a whole and for the public.

##### **2. Meetings of the Board of Directors**

2.1 Admission of the public and the press – Meetings of the Board of Directors shall be open to the public and press, but members of the public and press shall be required to withdraw upon the Board of Directors resolving as follows:

"That representatives of the press and other members of the public be excluded from the remainder of this meeting because the confidential nature of the business to be transacted is such that publicity would be prejudicial to the public interest".

2.2 The chairman (or deputy chairman) shall give such directions as they think think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors' business shall be conducted without inappropriate interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:

"That in the interests of public order the public withdraw from the meeting for (the period to be specified) to enable the Board of Directors to complete business without the presence of the public".

2.3 Nothing in these standing orders shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board of Directors.

2.4 Calling meetings - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.

2.5 The chairman may call a meeting of the Board of Directors at any time. If the chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of the Board of Directors, has been presented to them, or if, without so refusing, the chairman does not call a meeting within 7 days after such requisition has been presented to them, at the trust's headquarters, such one third or more directors may forthwith call a meeting.

2.6 Notice of meetings - Before each meeting of the Board of Directors, 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 their behalf shall be delivered to every director, or sent by post to the usual place of residence of such director, so as to be available to them at least 5 clear days before the meeting.

- 2.7 Subject to standing order 2.9, lack of service of the notice on any director shall not affect the validity of a meeting.
- 2.8 In the case of a meeting called by directors in default of the chairman, the notice shall be signed by those directors and no business shall be transacted at the meeting other than that specified in the notice.
- 2.9 Failure to serve such a notice on more than three directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 2.10 Setting the agenda - The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any other business being conducted. Such matters may be identified within these standing orders or following subsequent resolution shall be listed in an appendix to the standing orders.
- 2.11 Before holding a meeting, the Board of Directors will send a copy of the agenda (but not supporting papers) to the Council of Governors.
- 2.12 A director desiring a matter to be included on an agenda shall make their request in writing to the chairman at least 5 clear days before the meeting, subject to standing order 1.8. Requests made less than 5 days before a meeting may be included on the agenda at the discretion of the chairman.
- 2.13 Chairman of meeting - At any meeting of the trust, the chairman, if present, shall preside. If the chairman is absent from the meeting the deputy chairman, if there is one and they are present, shall preside. If the chairman and deputy chairman are absent the directors present shall choose a non-executive director from among them to preside.
- 2.14 If the chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the deputy chairman, if present, shall preside. If the chairman and deputy chairman are absent, or are disqualified from participating, the directors present shall choose a non-executive director from among them to preside.
- 2.15 Notices of motion - A director of the trust desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion or amendment being moved during the meeting, without notice on any business mentioned on the agenda subject to standing order 2.9.
- 2.16 Withdrawal of motion or amendments - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the chairman.



- 2.17 Motion to rescind a resolution - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the directors who gives it and also the signature of three other directors. When any such motion has been disposed of by the trust, it shall not be competent for any director other than the chairman, or such other director as the chairman may at their discretion agree, to propose a motion to the same effect within 3 months; however the chairman may do so if they consider it appropriate.
- 2.18 Motions - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment there to.
- 2.19 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- an amendment to the motion;
  - the adjournment of the discussion or the meeting;
  - that the meeting proceed to the next business;
  - the appointment of an ad hoc committee to deal with a specific item of business;
  - that the motion be now put.

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.

- 2.20 Chairman's ruling - Statements of directors made at meetings of the trust 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, relevance, regularity and any other matters shall be observed at the meeting.
- 2.21 Voting - Save where all voting directors present are unanimous in opposing a motion, every question at a meeting shall be determined by a majority of the votes of the directors present and voting on the question.
- 2.22 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 directors present so request.
- 2.23 If at least one-third of the directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each director present voted or abstained.
- 2.24 If a director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).

- 2.25 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 2.26 Minutes - The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 2.27 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.
- 2.28 Minutes of all public meetings shall be made available to the public (required by the code of practice on openness in the NHS) on the trust's website.
- 2.29 The agendas and minutes of the public board meetings shall be sent to all members of the Council of Governors.
- 2.30 Suspension of standing orders - Except where this would contravene any statutory provision any one or more of the standing orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present and that a majority of those present vote in favour of suspension.
- 2.31 A decision to suspend standing orders shall be recorded in the minutes of the meeting.
- 2.32 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the directors.
- 2.33 No formal business may be transacted while standing orders are suspended.
- 2.34 The audit committee shall review every decision to suspend standing orders.
- 2.35 Variation and amendment of Standing Orders - These standing orders shall be amended only if:
- a notice of motion under standing order 1.14 has been given;
  - no fewer than half the total of the trust's directors vote in favour of amendment;
  - at least two-thirds of the directors are present;
  - the variation proposed does not contravene a statutory provision.
- 2.36 Record of attendance - The names of the directors present at the meeting shall be recorded in the minutes.
- 2.37 Quorum - No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the voting directors are present including at least one executive director and one

non-executive director. Where appropriate a director may join the meeting by video conference or telephone.

- 2.38 If a director 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 4.5) they 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.
- 2.39 Where a directors post is shared jointly by more than one individual:
- 2.39.1 any or all of those persons may attend or take part in meetings of the Board of Directors;
  - 2.39.2 if several of those individuals are present at a meeting they may cast 1 vote between them on any matter being considered if they agree;
  - 2.39.3 if several of those individuals are present at a meeting no vote shall be cast on any matter being considered if they disagree; and
  - 2.39.4 the presence of any number of those individuals is to count as the presence of one director for the purposes of determining whether the required quorum is present at a meeting of the Board of Directors.
- 2.40 The Board of Directors will ensure the constitution is kept up to date and will, where necessary update the constitution and bring proposals to the Council of Governors for approval.

### 3. **Committees**

- 3.1 Appointment of committees - The Board of Directors may establish committees of the Board of Directors, consisting wholly or partly of directors.
- 3.2 A committee appointed under standing order 2.1 may establish sub-committees consisting wholly or partly of members of the committee (whether or not they include directors).
- 3.3 These standing orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board of Directors.
- 3.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into the standing orders.

- 3.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board of Directors.
- 3.6 Confidentiality - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter in accordance with the terms of reference of that committee.
- 3.7 A director or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

#### **4. Declarations of interests and register of interests**

- 4.1 Declaration of interests - The trust's constitution requires directors to declare interests which are relevant and material to the Board of Directors and any committee or sub-committee of which they are a member. All existing directors should declare such interests. Any directors appointed subsequently should do so on appointment.
- 4.2 Interests which should be regarded as "relevant and material" are:
  - 4.2.1 directorships, including non-executive directorships held in public or private limited companies (with the exception of those of dormant companies);
  - 4.2.2 ownership or part-ownership (which shall be deemed to include majority or controlling shareholdings) of public or private limited companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
  - 4.2.3 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 4.2.4 any connection with a voluntary or other organisation contracting for NHS services.
- 4.3 If directors have any doubt about the relevance of an interest, this should be discussed with the chairman.
- 4.4 At the time directors' interests are declared, they should be recorded in the Board of Directors minutes of the relevant meeting. Any changes in interests should be declared at the next Board of Directors' meeting following the change occurring.
- 4.5 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board of Directors' annual report. The information should be kept up to date for inclusion in succeeding annual reports.

- 4.6 During the course of a Board of Directors' meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 4.7 There is no requirement for the interests of directors' spouses or partners to be declared. Note however that standing order 3 which is based on the Health Authorities (Membership and Procedure) Regulations 1996 requires that the interest of directors' spouses, if living together, in contracts should be declared.
- 4.8 Register of interests - The chief executive will ensure that a register of interests is established to record formally declarations of interests of directors. In particular the register will include details of all directorships and other relevant and material interests which have been declared by directors, as defined in standing order 3.2.
- 4.9 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 12 months will be incorporated.
- 4.10 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.
- 4.11 Where a director has a direct or indirect interest in a proposed transaction or arrangement with the trust, they should declare the nature and extent of the interest to the other directors.

If the declaration proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

Such declaration must be made before the Foundation trust enters into the transaction or arrangements.

Exceptions to the need to make a declaration apply where:

- the director is not aware of the interest or of the transaction or arrangement;
- the interest cannot reasonably be regarded as likely to give rise to a conflict of interest;
- the directors are already aware of the interest;
- the interest concerns terms of the director's appointment that have been or are to be considered by a meeting of the Board of Directors or by a committee of the directors appointed for the purpose under the constitution.

## 5. **Disability of directors in proceedings on account of pecuniary interest**

- 5.1 Subject to the following provisions of this standing order, if a director has any pecuniary interest, direct or indirect, in any contract, proposed

contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, they 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.

- 5.2 The secretary of state and/or the Regulator may, subject to such conditions as they may think fit to impose, remove any disability imposed by this standing order in any case in which it appears to each of them in the interests of the NHS that the disability shall be removed.
- 5.3 The Board of Directors shall exclude a director from a meeting of the trust while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.
- 5.4 Any expenses payable to a director in accordance with this constitution shall not be treated as a pecuniary interest for the purpose of this standing order.
- 5.5 For the purpose of this standing order the chairman or a director shall be treated, subject to standing order 5.2 and standing order 5.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 5.5.1 they, or a nominee of theirs, 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
- 5.5.2 they are a partner of, or are in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;
- and in the case of married persons, civil partners and or people living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this standing order to be also an interest of the other.
- 5.6 A director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 5.6.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
- 5.6.2 of an interest in any company, body or person with which they are connected as mentioned in standing order 5.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 5.7 Where a director:

- 5.7.1 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
- 5.7.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- 5.7.3 if the share capital is of more than one class, the total nominal value of shares of any 1 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 them 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 their duty to disclose their interest.

5.8 Appointment to corporate or unincorporated associations

5.8.1 any director of the trust shall take directorships or other roles in corporate or unincorporated associations when nominated to do so by the Board of Directors;

5.8.2 unless otherwise determined by the Board of Directors, and subject to any statutory provisions to the contrary, all delegated powers and limits detailed in these standing orders and any other standing orders of the trust applying to individual directors shall also apply when they are acting in the capacity of a director, partner or leader in corporate or unincorporated associations approved by the Board of Directors.

5.9 Standing order 5 applies to a committee or sub-committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such committee or sub-committee (whether or not they are also a director) as it applies to a director.

**6. Delegation of powers**

6.1 Subject to Standing Order 5.2, the non-executive directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the trust. The non-executive directors may exercise collective authority when acting as members of or when chairing a committee or sub-committee of the trust which has delegated powers.

6.2 Subject to any directions as may be given by the Regulator, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions by a committee or sub-committee appointed in accordance with standing order 2, or by a committee of directors or an executive director as delegated by the Board of Directors of the trust, in each case subject to such restrictions and conditions as the Board of Directors deems appropriate.

- 6.3 The chairman has certain delegated executive powers and must comply with the terms of their appointment and these standing orders in respect of exercising such delegated executive powers.
- 6.4 Subject to standing order 5.7, certain powers and decisions may only be exercised by the Board of Directors in formal session. Such powers and decisions are set out in the trust's "schedule of matters reserved to the board" document.
- 6.5 Further provisions relating to the delegation of the Board of Directors' powers are set out in the trust's "reservation of powers to the board and delegation of powers" document.
- 6.6 Directors shall exercise their authority in accordance with the terms of the constitution and the following documents:
- 6.6.1 Standing financial instructions;
  - 6.6.2 Reservation of powers to the board and delegation of powers;
  - 6.6.3 Schedule of matters reserved to the board;
  - 6.6.4 Scheme of delegation.
- All of which are to have effect as if incorporated into these standing orders.
- 6.7 The powers which the Board of Directors has reserved to itself may in an emergency or for an urgent decision be exercised by the chief executive and the chairman after having consulted at least two non-executive directors. The exercise of such powers by the chief executive and chairman shall be reported to the next meeting of the Board of Directors for formal ratification.
- 6.8 Those functions of the trust which have not been reserved to the Board of Directors or expressly delegated shall be exercised on behalf of the Board of Directors by the chief executive. The chief executive shall determine which function they will perform personally and shall nominate officers of the trust to exercise the remaining functions for which the chief executive will retain accountability to the trust.
- 6.9 The chief executive shall prepare the scheme of delegation which shall be subject to the approval of the Board of Directors. The chief executive may periodically propose amendments to the scheme of delegation which shall be subject to the approval of the Board of Directors.
- 6.10 The powers of the trust established under statute shall be exercised by the Board of Directors meeting in public, except as otherwise provided for in the constitution.

## **7. Finance director**

- 7.1 The trust's finance director shall be responsible for the provision of the financial advice to the trust and to its directors and for the supervision of financial control and accounting systems.



## **8. Chairman**

- 8.1 The chairman shall be responsible for the leadership of the Board of Directors and the Council of Governors.
- 8.2 The chairman shall take responsibility either directly or indirectly for and oversee the induction of the non-executive directors, their portfolios of interests and assignments and their performance.
- 8.3 The chairman shall work closely with the chief executive and shall ensure that key and appropriate issues are discussed by the Board of Directors and/or the Council of Governors (as appropriate) in a timely manner, with all the necessary information and advice being made available to the Board of Directors and/or the Council of Governors (as appropriate) to inform debate and subsequent resolutions.

## **9. Policy statements and procedures**

- 9.1 The Board of Directors and/or duly appointed committees/sub-committees will from time to time agree and approve policy statements and/or procedures which will apply to activities undertaken by the trust and to all or specific groups of staff employed, and subcontractors, agents, suppliers and consultants engaged by or exercising functions on behalf of, the trust. The decisions to approve such policy statements and procedures shall be recorded in an appropriate minute of the relevant meeting of the Board of Directors, committee or sub-committee and will be deemed, where appropriate, to be an integral part of the constitution.
- 9.2 The following policy statement and procedures of the trust:
  - 9.2.1 the standards of business conduct for trust staff policy; and
  - 9.2.2 the disciplinary policy and procedureshall have an effect as if incorporated into these standing orders.

## **ANNEX 8**

### **FURTHER PROVISIONS**

#### **1. Disqualification for membership**

1.1 A person may not be a member of the trust if they:

1.1.1 are under the age of 16 years;

1.1.2 have been convicted of any offence of violence against or dishonesty in relation to a member of the trust's staff or the trust itself or;

1.1.3 if the Council of Governors reasonably considers that they:

1.1.3.1 are unable or unfit to discharge the functions of a member;

1.1.3.2 may bring the trust into disrepute; and

1.1.3.3 has habitually and persistently and without reasonable grounds instituted complaints against the trust.

and the Council of Governors so resolves at a general meeting. No person who has been prevented or expelled from membership under this paragraph 1.1.3 shall be readmitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting.

1.1.4 It is the responsibility of the members to ensure their eligibility and not the trust, but if the trust is on notice that a member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case. Members must be proactive and notify the trust immediately upon becoming aware of any issues concerning their or any member's eligibility.

#### **2. Termination of membership**

2.1 A member shall cease to be a member if they:

2.1.1 resign by notice to the company secretary;

2.1.2 fulfil any of the criteria set out at 1.1 above.

#### **3. Board of Directors' termination of tenure and disqualification**

3.1 A non-executive director may resign from that office at any time during their term of office by giving notice to the company secretary.

3.2 A director shall cease to be a director if:

3.2.1 in the case of a non-executive director, they are no longer a member of the public constituency;

- 3.2.2 they are a person whose tenure of office as a chairman or as a member of or director of a health service body has been terminated on the grounds that their appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 3.2.3 they have been removed from membership of a professional body or from a list of registered medical, dental, nursing or other health care practitioners as a result of disciplinary action or any conclusion that the continued inclusion of that person's name on any such list or membership of any such professional body would be prejudicial to the efficiency of the services to which the professional body or list relates and has not subsequently been re-instated to membership or such a list;
- 3.2.4 they have within the preceding 2 years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 3.2.5 they fail to meet the fit and proper persons requirements outlined within Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation;
- 3.2.6 they become a member of the Council of Governors.

#### 4. **Other**

##### 4.1 Indemnity

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

##### 4.2 Dispute resolution procedures

- 4.2.1 Any unresolved dispute which arises out of this constitution between the trust and -
  - 4.2.1.1 a member; or
  - 4.2.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
  - 4.2.1.3 any person bringing a claim under this constitution; or
  - 4.2.1.4 an office-holder of the Trust;

is to be submitted to an arbitrator agreed by the parties to the dispute. The arbitrator's decision will be binding and conclusive on all parties concerned.