

# **Constitution of South Tyneside NHS Foundation Trust (A Public Benefit Corporation)**

(updated as per the Health and Social Care Act 2012)

Amended June 2017

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## 1. INTERPRETATION AND DEFINITIONS

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

1.2. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

“The 2003 Act”	Is the Health and Social Care (Community Health and Standards) Act 2003
“The 2006 Act”	is the National Health Service Act 2006;
“The 2012 Act”	is the Health & Social Care Act 2012
“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 this constitution;
“Constitution”	means this constitution and all annexes to it;
“Council of Governors”	means the Council of Governors as constituted in this constitution, which has the same meaning as the 'board of governors' in the 2006 Act;
“Director”	means a member of the Board of Directors;
“Elected Governors”	means those Governors elected by the public constituencies and the classes of the staff constituency;
“Financial year”	means: a) a period beginning with the date on which the Trust is authorised and ending with the next 31 March; and b) each successive period of twelve months beginning with 1 April
“Governor”	means a member of the Council of Governors;
“Local Authority”	means section 270 of the Local Government Act 1972;
“Membership Strategy”	the document setting out the Trust approach to encouraging membership of the Trust;
“Monitor”	is the corporate body known as Monitor, as provided by Section 61 of the 2012 Act;
“Partner”	means, in relation to another person, a member of the same household living together as a family unit;
“Public Governor”	means a Governor elected by the members of the public constituency;
“Secretary”	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
“Staff Governor”	means a Governor elected by members of one of the classes of the staff constituency;

## 2. NAME

The name of the trust is South Tyneside NHS Foundation Trust (the Trust).

## 3. PRINCIPAL PURPOSE

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

3.2 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 services for any other purposes.

- 3.3 The Trust may provide goods and services for any purposes related to:-
- 3.3.1 The provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness and the promotion and protection of public health
- 3.3.2 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.

#### **4. POWERS**

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust. Any of these powers may be delegated to a committee of Directors or to an Executive Director.

#### **5. MEMBERSHIP AND CONSTITUENCIES**

- 5.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:-
- 5.1.1.A public constituency
- 5.1.2.A staff constituency

#### **6. APPLICATION FOR MEMBERSHIP**

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

#### **7. PUBLIC CONSTITUENCY**

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

#### **8. STAFF CONSTITUENCY**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- 8.1.1.he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 8.1.2.he has been continuously employed by the Trust under a contract of employment for at least 12 months
- 8.2 Individuals, who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

- 8.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into two descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

## **9. AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF**

- 9.1 An individual who is:
- 9.1.1 Eligible to become a member of the Staff Constituency, and
- 9.1.2 Invited by the trust to become a member of the Staff Constituency (and a member of the appropriate class within the Staff Constituency)

shall become a member of the trust as a member of the Staff Constituency (and appropriate class within the Staff Constituency) without an application being made, unless he informs the trust that he does not wish to do so.

## **10. RESTRICTION ON MEMBERSHIP**

- 10.1 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.
- 10.2 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.
- 10.3 An individual must be at least 16 years old to become a member of the trust.
- 10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 5.

## **11. ANNUAL MEMBERS' MEETING**

- 11.1 The Trust shall hold an annual meeting of its members (Annual Members' Meeting). The Annual Members' Meeting shall be open to members of the public.
- 11.2 Further provisions about the Annual Members' Meeting are set out in Annex 9 – Annual Members' Meeting.

## **12. COUNCIL OF GOVERNORS – COMPOSITION**

- 12.1 The Trust is to have a Council of Governors which shall comprise both elected and appointed governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or where appropriate, by each class of each constituency, is specified in Annex 3.
- 12.4 The composition of the Council of Governors, subject to the 2006 Act, shall seek to ensure that:

- 12.4.1 the interests of the community served by the Trust are appropriately represented;
- 12.4.1 the level of representation of the Public Constituency and the classes of the Staff Constituency and the nominating organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs; and,
- 12.5 The Council of Governors shall at times review its composition to ensure it takes account of the need for representativeness in line with its membership strategy.
- 12.6 Further provisions with respect to the Council of Governors are set out in Annex 5.

### **13. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS**

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules, as published from time to time by the Department of Health, form part of this constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 4.
- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 46 of the constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.

### **14. COUNCIL OF GOVERNORS – TENURE**

- 14.1 An elected governor may hold office for a period of up to three years.
- 14.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.3 An elected governor shall be eligible for re-election at the end of their term.
- 14.4 An appointed governor may hold office for a period of up to three years.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 14.6 An appointed governor shall be eligible for re-appointment at the end of their term.

### **15. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL**

- 15.1 The following may not become or continue as a member of the Council of Governors:
  - 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 15.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it;
  - 15.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 15.2 Governors must be at least 16 years of age at the date they are nominated for election.

- 15.3 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.

## **16 COUNCIL OF GOVERNORS – TERMINATION OF TENURE**

- 16.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Trust Secretary.
- 16.2 If a Governor fails to attend three meetings of the Council of Governors in any 12 month period, their tenure of office is to be immediately terminated unless the Governors are satisfied that:-
- 16.2.1 The absence was due to a reasonable cause, and
- 16.2.2 He will be able to start attending meetings of the trust again within such a period as they may consider reasonable
- 16.3 A Governor's tenure of office may be terminated if the Council of Governors considers, after due consideration in accordance with the procedures set out in standing orders and the Code of Conduct that he is unfit to discharge the functions of a Governor.

## **17 COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS**

- 17.1 The general duties of the Council of Governors are:-
- 17.1.1 To hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors and
- 17.1.2 To represent the interests of the members of the trust as a whole and the interests of the public
- 17.2 The trust must take steps to secure that the governors are equipped with the skills and knowledge that they require in their capacity as such:
- 17.2.1 to appoint or remove the Chairman and the other Non-Executive Directors;
- 17.2.2 to approve an appointment (by the Non-Executive Directors) of the Chief Executive;
- 17.2.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
- 17.2.4 to appoint or remove the Trust's financial auditor;
- 17.2.5 to receive the report of any other external auditor appointed to review and report on any other aspect of the Trust's affairs; and
- 17.2.6 to be presented with the annual accounts, any report of the financial auditor on them and the annual report;
- 17.2.7 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Trust's forward planning;
- 17.2.8 to respond as appropriate when consulted by the Board of Directors in accordance with this Constitution;
- 17.2.9 to undertake such functions as the Board of Directors shall from time to time request; and

## **18 COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**

- 18.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 27 or paragraph 28 below) or, in their absence, the Vice Chairman of the Board of Directors (appointed in accordance with the provisions of paragraph 29 below) shall preside at meetings of the Council of Governors.
- 18.2 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.



- 18.3 For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance) the Council of Governors may require one or more of the directors to attend a meeting.

## **19 COUNCIL OF GOVERNORS – STANDING ORDERS**

- 19.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

## **20 COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL**

- 20.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing:-

20.1.1 To act in accordance with its constitution, or

20.1.2 To act in accordance with provision made by or under Chapter 5 of the 2006 Act

- 20.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

## **21. COUNCIL OF GOVERNORS – CONFLICTS OF INTEREST OF GOVERNORS**

- 21.1 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.

## **22. COUNCIL OF GOVERNORS – TRAVEL EXPENSES**

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

2.2 Governors are not to receive remuneration.

## **23. COUNCIL OF GOVERNORS – FURTHER PROVISIONS**

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

## **24. THE BOARD OF DIRECTORS – COMPOSITION**

- 24.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

24.2 The Board of Directors is to comprise:

24.2.1 a Non-Executive Chairman;

24.2.2 a minimum of 5 other Non-Executive Directors; and

24.2.3 a minimum of 5 Executive Directors.

24.3 One of the executive Directors shall be the Chief Executive.

24.4 The Chief Executive shall be the Accounting Officer.

24.5 One of the executive Directors shall be the finance Director.

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

24.7 One of the executive Directors is to be a registered nurse or a registered midwife.

**25. BOARD OF DIRECTORS – GENERAL DUTY**

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

**26. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON EXECUTIVE DIRECTOR**

26.1 A person may be appointed as a non-executive director only if he is a member of the Public Constituency

26.2 A person may be appointed as a non-executive director only if he is not disqualified by virtue of paragraph 32 below

26.3 A person may be appointed as a non-executive director if he/she has not been disqualified by virtue of paragraph 32 of the Constitution.

**27. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS**

27.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.

27.2 Removal of the Chairman or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.

27.3 If the Chairman is unable to discharge their office as Chairman of the Trust, the Vice-Chairman of the Board of Directors shall be acting Chairman of the Trust.

27.4 Non-Executive Directors are to be appointed in line with a clear policy/process to be developed by the Appointments and Review Sub-Committee and approved by the Council of Governors.

27.5 Subject to paragraph 27.2 above, the removal of the Chairman or another non-executive Director shall be in accordance with the following procedures:

27.5.1 any proposal for removal must be proposed by a Governor or the Chairman and seconded by not less than ten Governors including at least two elected Governors and two appointed Governors;

27.5.2 written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons;

27.5.3 in making any decision to remove a non-executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairman; and

27.5.4 if any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

**28. BOARD OF DIRECTORS – APPOINTMENT OF VICE CHAIRMAN**

28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive directors as Vice Chairman of the Board of Directors.

**29 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

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

29.2 The appointment of the Chief Executive shall require the approval of the majority of the Council of Governors.

29.3 The initial Chief Executive is to be appointed in accordance with paragraph 31 below.

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

**30 BOARD OF DIRECTORS – DISQUALIFICATION**

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

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

30.1.2 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;

30.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;

30.1.4 they are a member of the Council of Governors, or a Governor or Director of an NHS body or another NHS Foundation Trust other than City Hospitals Sunderland NHS Foundation Trust;

30.1.5 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;

30.1.6 they are a member of a local authority's Scrutiny Committee (or similar body) covering health matters;

30.1.7 in the case of a Non-Executive Director, they are no longer a member of a public constituency;

30.1.8 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

30.1.9 they are a person whose tenure of office as a 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;

30.1.10 they have had their name removed, by a direction under part 7 of the 2006 Act from any list prepared under chapter 6 of that Act, and have not subsequently had their name included in such a list;

30.1.11 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

30.1.12 in the case of a non executive Director they have refused to fulfil any training requirement established by the Board of Directors; or

30.1.13 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

**31 BOARD OF DIRECTORS – MEETINGS**

31.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

- 31.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

## **32 BOARD OF DIRECTORS – STANDING ORDERS**

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

## **33 BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS**

- 33.1 The duties that a director of the trust has by virtue of being a director include in particular:
- 33.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.
  - 33.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if –
- 33.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 33.2.2 The matter has been authorised in accordance with the constitution.
- 33.3 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4 In sub-paragraph 33.1.2, “third party” means a person other than –
- 33.4.1 The trust, or
  - 33.4.2 A person acting on its behalf.
- 33.5 If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 33.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 33.9 A director need not declare an interest –
- 33.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 33.9.2 If, or to the extent that, the directors are already aware of it;
  - 33.9.3 If, or to the extent that, it 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.

#### **34 BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

- 34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors. These are to be disclosed in the annual report.
- 34.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive Directors. These are to be disclosed in the annual report
- 34.3 Further provisions with respect to the Board of Directors are set out in Annex 8.

#### **35 REGISTERS**

- 35.1 The trust shall have:
- 35.1.1 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;
- 35.1.2 a register of members of the Council of Governors;
- 35.1.3 a register of interests of governors;
- 35.1.4 a register of directors; and
- 35.1.5 a register of interests of the directors.

#### **36 REGISTERS – INSPECTION AND COPIES**

- 36.1 The trust shall make the registers specified in paragraph 37 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.
- 36.3 So far as the registers are required to be made available:
- 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
- 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

#### **37 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION**

- 37.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 37.1.1 a copy of the current constitution,
- 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
- 37.1.3 a copy of the latest annual report.

- 37.1.4 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:
  - 37.1.5 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.
  - 37.1.6 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 37.1.7 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 37.1.8 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 37.1.9 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
  - 37.1.10 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.
  - 37.1.11 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 37.1.12 a copy of any final report published under section 65I (administrator's final report),
  - 37.1.13 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.
  - 37.1.14 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.3 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

## **38 AUDITOR**

- 38.1 The trust shall have an auditor.
- 38.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

## **39 AUDIT COMMITTEE**

- 39.1 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.

## **40 ACCOUNTS**

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 40.3 The accounts are to be audited by the trust's auditor.
- 40.4 The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct

40.5 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

#### **41 ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK**

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

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

41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.

41.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

41.5 Each forward plan must include information about:

41.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and

41.5.2 the income it expects to receive from doing so.

41.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 43.5.i the Council of Governors must:

41.6.1 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

41.6.2 notify the directors of the trust and its determination.

41.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England may implement the proposal only if more than half of the members of council of governors of the trust voting approve its implementation.

#### **42. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

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

42.1.1 the annual accounts

42.1.2 any report of the auditor on them

42.1.3 the annual report

42.2 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.

42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 44.1 with the Annual Members' Meeting.

#### **43 INSTRUMENTS**

43.1 The Trust shall have a seal

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

#### **44 AMENDMENT OF THE CONSTITUTION**

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

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

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

44.2 Amendments made under paragraph 46.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

44.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust):

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

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

44.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.

44.5 Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

44.6 The Council of Governors shall from time to time, and not less than every three years review the policy for the composition of the Council of Governors; and when appropriate shall propose amendments to this Constitution.

#### **45 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

45.1 The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the full council of governors.

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

45.3 The Constitution does not contain any descriptions of the term "Significant transaction" for the purposes of section 51A of the 2006 Act (Significant Transactions).



## ANNEX 1 – THE PUBLIC CONSTITUENCIES

### 1. PUBLIC CONSTITUENCIES

- 1.1 An individual who lives in an area specified below as an area for a public constituency may become or continue as a member of the Trust:

Area for public constituency:	Electoral Area
South Tyneside Area	All electoral wards within the Borough of South Tyneside
Sunderland Area	All electoral wards within the City of Sunderland
Gateshead Area	All electoral wards within the City of Gateshead
Rest of North East of England	Covering: Northumberland; County Durham; Tyne and Wear; and Tees Valley)

- 1.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 1.3 The minimum number of members in each area of the Public Constituency is to be four.

## ANNEX 2 – THE STAFF CONSTITUENCY

### 1. Staff Constituency

- 1.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- 1.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 1.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 1.2 Individuals who exercise functions for the purposes of the Trust, (including individuals appointed in an honorary capacity) otherwise than under a contract of employment with the Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. This does not include those who assist or provide services on a voluntary basis.
- 1.3 The Staff Constituency shall be divided into the following two descriptions of individuals who are eligible for membership of the Staff Constituency, and being referred to as a class within the Staff Constituency.

#### Class One

Clinical, which shall include the following staff:

- i. nursing, midwifery, health visiting and assistants;
- ii. medical and dental and assistants;
- iii. allied health professionals and helpers; and
- iv. scientific and professional and assistants.

#### Class Two

Non-clinical, which shall include the following staff:

- i. senior managers (with no direct clinical contact);
- ii. administrative and clerical;
- iii. ancillary;
- iv. maintenance;
- v. estates officers; and
- vi. medical electronics

- 1.4 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 1.5 The minimum number of members in each class of the Staff Constituency is to be four.
- 1.6 All individuals who begin employment under a contract of employment with the Trust or begin to exercise functions for the purposes of the Trust on or after the date of authorisation of the Trust and are entitled under this Constitution to become members of one of the classes of the Staff Constituency, and who:

1.6.1 have been invited by the Trust to become a member of the appropriate class, and

1.6.2 have not informed the Trust that they do not wish to do so s

shall become members of the appropriate class.

1.7 A person who is eligible to be a member of one of the classes of the Staff Constituency may not become or continue as a member of the Public Constituency.

1.8 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Staff Constituency.

### ANNEX 3 - COMPOSITION OF COUNCIL OF GOVERNORS

1. The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors and appointed Governors who will include Commissioner Governors, Local Authority Governors, Community and Voluntary Sector Governors and an Education Governor.
2. The number of Public Governors is to be more than half of the total number of members of the Council of Governors.
  - 2.1 The Council of Governors of the Trust is to comprise:
    - 2.1.1 nine Public Governors from the South Tyneside Area;
    - 2.1.2 four Public Governors from the Sunderland Area;
    - 2.1.3 four Public Governors from the Gateshead Area;
    - 2.1.4 One Public Governor for the Rest of North East Area;
    - 2.1.5 six Staff Governors:
      - (a) four to represent Clinical Staff; and
      - (b) two to represent Non Clinical Staff;
    - 2.1.6 One Commissioner Governor who may be appointed by South Tyneside Clinical Commissioning Group (or any other successor body whose remit relates to the same geographical area) in accordance with a process agreed with the Secretary;
    - 2.1.7 three Local Authority Governors in total, comprised of one from each of: South Tyneside Council, Gateshead Council, and City of Sunderland Council. It will be for the appointing organisation to nominate an appointed Governor to represent them, following invitation to do so by the Company Secretary;
    - 2.1.8 three Community and Voluntary Sector Governors who may be appointed in accordance with a process agreed with the Company Secretary, giving due consideration to representativeness. It will be for the appointing organisation to nominate an appointed Governor to represent them, following an invitation to do so by the Company Secretary; and
    - 2.1.9 one Education Governor who may be appointed by a local University. It will be for the appointing organisation to nominate an appointed Governor to represent them, following an invitation to do so by the Company Secretary.

## **ANNEX 4 – FURTHER PROVISIONS IN RELATION TO BEING A GOVERNOR**

### **1. ELIGIBILITY TO BE A GOVERNOR**

- 1.1 A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if:
- 1.1.1 they are under sixteen years of age;
  - 1.1.2 in the case of an elected governor, they cease to be a member of the constituency, or area of the constituency, by which they were elected;
  - 1.1.3 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of them
  - 1.1.4 they are a Director of the Trust, or a Governor or Director of another NHS Trust or NHS foundation Trust;
  - 1.1.5 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - 1.1.6 they are a member of a Local Authority's Scrutiny Committee covering health matters;
  - 1.1.7 being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a Governor;
  - 1.1.8 Is a person whose name has been added to, and not removed from, a list prepared under the Sexual Offences Act 1997;
  - 1.1.9 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body; or
  - 1.1.10 as a staff governor, they have a current and unexpired written warning which has been imposed following disciplinary action by the trust. For the avoidance of doubt, a member will not be precluded from eligibility as a Governor by reason of their suspension or as the subject of an ongoing disciplinary procedure and/or fact finding investigation;
  - 1.1.11 they are a vexatious complainant or have received a Trust 'Red Card';
  - 1.1.12 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; or
  - 1.1.13 they have had their name removed, by a direction under part 7 of the 2006 Act from any list prepared under chapter 6 of that Act, and have not subsequently had their name included in such a list.
  - 1.1.14 Is a person who is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council, in accordance with the Medical Act, or has been suspended from that register, and not subsequently has their name returned to the register.
  - 1.1.15 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986

### **2 VACANCIES AMONGST GOVERNORS**

- 2.1 Unless determined otherwise by the Board of Directors, where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 2.2 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 2.3 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:

- 2.3.1 to call an election within three months to fill the seat for the remainder of that term of office, or
- 2.3.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office to fill the seat for the remainder of the term of office.

### **3 APPOINTMENT OF LEAD GOVERNOR OF THE COUNCIL OF GOVERNORS**

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

### **4 TERMINATION OF OFFICE AND REMOVAL OF GOVERNORS**

- 4.1 A person holding office as a Governor shall immediately cease to do so if:
  - 4.1.1 they resign by notice in writing to the Secretary;
  - 4.1.2 they fail to attend three meetings of the Council of Governors within a 12 month period, unless the other Governors are satisfied that:
    - 4.1.2.1 the absences were due to reasonable causes; and
    - 4.1.2.2 they will be able to start attending meetings of the Trust again within such a period as they consider reasonable;
  - 4.1.3 in the case of an elected Governor, they cease to be a member of the constituency or class of the constituency by which they were elected;
  - 4.1.4 in the case of a appointed Governor, the appointing organisation terminates the appointment;
  - 4.1.5 they have refused to undertake any training which the Council of Governors requires all Governors to undertake;
  - 4.1.6 They have refused to disclose any conflict of interest required to be disclosed in meetings of the Council of Governors
  - 4.1.7 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors; or
  - 4.1.8 they are removed from the Council of Governors under paragraph 15 of the Constitution.

### **5 DISCLOSURE OF INTERESTS**

- 5.1 If a Governor has a pecuniary (financial), personal or family interest, whether that interest is actual or potential, direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he/she becomes aware of it.
- 5.2 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:
  - 5.2.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
  - 5.2.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 5.3 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 5.4 Subject to the exceptions detailed in 5.4, a material interest is:
  - 5.4.1 any Directorship of a company, including Non-Executive directorships held in limited companies (with the exception of dormant companies);

- 5.4.2 any interest held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
  - 5.4.3 any interest in a voluntary or other organisation providing health and social care services to the National Health Service;
  - 5.4.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or
  - 5.4.5 any connection with any organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.
- 5.5 The exceptions which shall not be treated as material interests are as follows:
- 5.5.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - 5.5.2 an employment contract held by Staff Governors;
  - 5.5.3 an employment contract with a Local Authority held by a Local Authority Governor; or
  - 5.5.4 an employment contract with a partnership organisation held by a Voluntary Sector Governor or Education Governor.
- 5.6 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.
- 5.7 An elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Council of Governors. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected Governors.

## **6 REMOVAL OF A GOVERNOR**

- 6.1 A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:
- 6.1.1 they have committed a serious breach of the code of conduct, or
  - 6.1.2 they have acted in a manner detrimental to the interests of the Trust, and
  - 6.1.3 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor.

## **7 MEETINGS OF THE COUNCIL OF GOVERNORS**

- 7.1 The Council of Governors is to meet at least three times in each financial year in addition to the Annual Members' Meeting. Conduct and procedure for Council of Governors meetings are provided in Annex 7 Standing Orders.
- 7.2 13 Governors, a majority of which should represent the Public Constituency, shall form a quorum.

## ANNEX 5 – ADDITIONAL PROVISIONS IN RELATION TO TRUST MEMBERSHIP

### Termination of membership

1. A member shall cease to be a member if:
  - 1.1 they resign by notice to the Secretary;
  - 1.2 they die;
  - 1.3 they are expelled from membership under this Constitution;
  - 1.4 they cease to be entitled under this Constitution to be a member of the Public Constituency or any of the classes of the Staff Constituency; or
2. A member may be expelled by a resolution approved by not less than two-thirds of the Governors attending and voting at a general meeting. The following procedure is to be adopted:
  - 2.1.1.any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust;
  - 2.1.2.if a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
    - a) dismiss the complaint and take no further action; or
    - b) for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this Constitution; or
    - c) arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
  - 2.1.3.If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
  - 2.1.4.At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
  - 2.1.5.If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
3. A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
4. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors who are present at a General Meeting.



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**ANNEX 6 - MODEL ELECTION RULES 2014**

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

**SOUTH TYNESIDE NHS FOUNDATION TRUST**

## **FOREWORD**

This document provides a regulatory and business framework for the conduct of the Council of Governors and is part of the South Tyneside NHS Foundation Trust's Constitution.

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## **1 INTRODUCTION**

### **1.1 Main principle**

- 1.1.1 Every NHS Foundation Trust will have a Council of Governors which is responsible for reflecting the interests of NHS Foundation Trust members, and partner organisations in the local health economy in the governance of the NHS Foundation Trust.
- 1.1.2 Governors must act in the best interests of the NHS Foundation Trust and should adhere to its values and code of conduct. The Council of Governors should hold the Non-Executive Directors to account for the performance of the Board, including ensuring the Board of Directors act so that the Trust does not breach the terms of its authorisation/Provider Licence.
- 1.1.3 Governors are responsible for regularly feeding back information about the trust, its vision and its performance to the constituencies and the stakeholder organisations that either elected or appointed them.

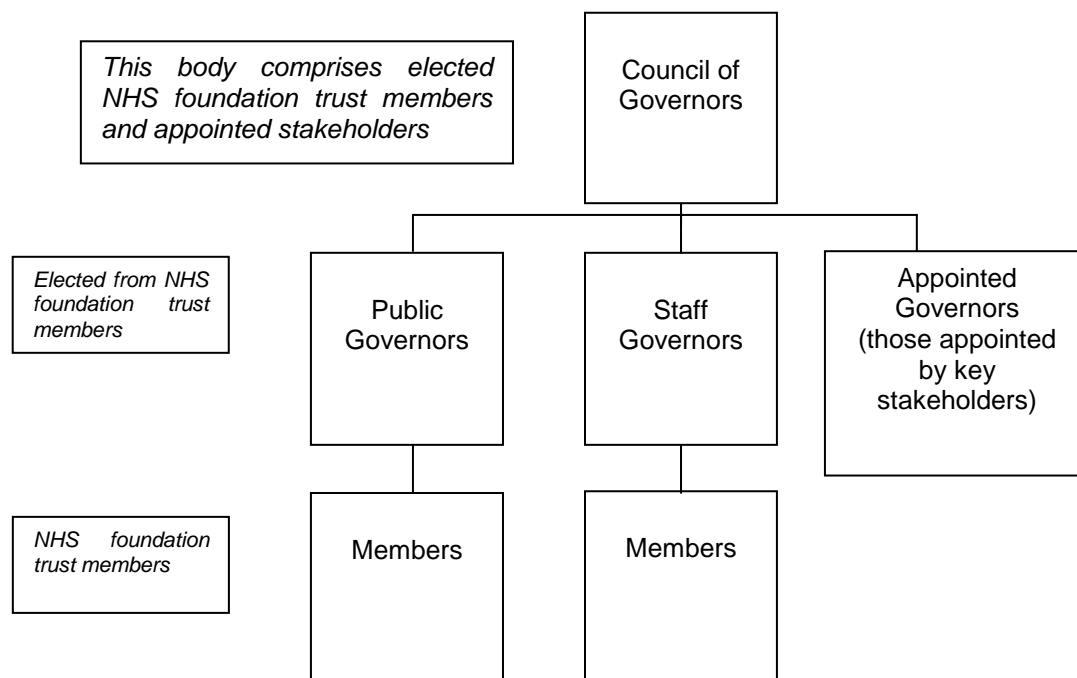
### **1.2 Statutory Framework**

- 1.2.1 The South Tyneside NHS Foundation Trust (the Trust) is a Public Benefit Corporation that was established by the granting of Authorisation by Monitor, the Independent Regulator of NHS Foundation Trusts (NHS Improvement as of October 2016).
- 1.2.2 The statutory functions conferred on the Trust are set out in the National Health Service Act 2006 and in the Trust's Terms of Authorisation/Provider Licence issued by Monitor/NHS Improvement. The governance of the Trust is dictated by its constitution and rules regarding membership of the Council of Governors and other constitutional issues relating to the Governors are also set out in the constitution.
- 1.2.3 As a Public Benefit Corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee of various charitable trusts previously administered by the NHS Trust. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

### **1.3 NHS Framework**

- 1.3.1 The Constitution requires the Council of Governors to adopt its own Standing Orders for its practice and procedure.

## 1.4 Illustration of a Council of Governors



## 2 THE COUNCIL OF GOVERNORS

### 2.1 Roles and Responsibilities of Governors

2.1.1 The roles and responsibilities of the Council of Governors are set out in the Constitution and are further described in Monitor's reference guide for NHS foundation trust Governors.

### 2.2 Composition of the Council of Governors

2.2.1 The composition of the Council of Governors shall be as set out in Annex 3 of the Trust's Constitution.

## 3. MEETINGS

### 3.1 Notice of Meetings

3.1.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, approved by the Chairman or any officer of the Trust authorised by the Chairman, shall be delivered to every Governor at their usual place of residence, so as to be available to them at least five working days before the meeting.

3.1.2 At any meeting of the Council of Governors the Chairman of the Trust shall preside. If the Chairman of the Trust is absent from the meeting (including absence due to a declared conflict of interest) the Vice Chairman of the Board of Directors, or another Non-Executive Director shall preside. Otherwise, the Lead Governor of the Council of Governors will chair the meeting.

3.1.3 The Council of Governors is to meet a minimum of three times in each financial year, in addition to the Annual Members' Meeting. Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give at least five clear days written notice of the date, place and time of the meeting to all Governors.

3.1.4 Meetings will be called by the Chairman. Notice of meetings are to be given by the following:

3.1.4.1 Notice sent by post, or by electronic mail where the Governor has provided an e-mail address;

3.1.4.2 Notice on the Trust's website; and

3.1.4.3 By any other method approved by the Council of Governors

3.1.5 Meetings of the Council of Governors may be called in exceptional circumstances by ten Governors (including at least two elected Governors and two appointed Governors), and only with the approval of the Chairman, who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business.

## **3.2 Record of Attendance**

3.2.1 The names of the Governors present at a meeting shall be recorded in the minutes of the meeting.

## **3.3 Minutes**

3.3.1 Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

## **3.4 Quorum**

3.4.1 Before a Council of Governors meeting can conduct business there must be a quorum present. A quorum will be 13 Governors present and entitled to vote at the meeting, with a majority of Governors from the Public Constituency.

3.4.2 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall be adjourned to the same day, time and place of the following week, or any other such date as may be deemed appropriate. Notice of any adjournment shall be communicated to all Governors. If a quorum is not present within half an hour of the start of the adjourned meeting, the number of Governors present during the meeting is deemed to be a quorum.

3.4.3 Members of the Council of Governors can participate in meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

3.4.4 Should any member of the Council of Governors participate in meetings by telephone or video link for a specific item on the agenda, they must participate at the commencement of the agenda item, and remain present until the Chairman has deemed the item closed.

## **3.5 Voting**

3.5.1 A resolution put to a vote at the meeting of the Council of Governors shall, except where a poll is demanded, be decided upon by a show of hands.

3.5.2 On a show of hands every Governor present is to have one vote. In the case of an equality of votes, the Chairman of the meeting is to have a casting vote, unless there is a conflict of interest, in which case, the acting Chairman will have a casting vote only. The results of the vote are to be declared by the Chairman and recorded in the minutes of the meeting.

- 3.5.3 Save as set out in 3.6.2, the Chairman of the Council of Governors or acting Chairman shall not have a vote at a meeting of the Council of Governors.
- 3.5.4 A poll may be directed by the Chairman or demanded either before or immediately after a vote by show of hands by not less than one-third of the Governors present at the meeting. A poll shall be taken immediately.
- 3.5.5 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 3.5.6 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

### **3.6 Notice of Motion**

- 3.6.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least 10 working days before the meeting to the Chairman, who shall, if he is satisfied that they are proper business and properly proposed, insert in the agenda for the meeting all notices so received. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to para 3.10.

### **3.7 Motions**

- 3.7.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.7.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- a) An amendment to the motion
  - b) The adjournment of the discussion or the meeting
  - c) That the meeting proceed to the next business (\*)
  - d) That appointment of an ad hoc committee to deal with a specific item of business
  - e) That the motion be now put (\*)

\* In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

- 3.7.3 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.

### **3.8 Notice to Rescind a Resolution**

- 3.8.1 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 Governor who gives notice and also the signature of 2 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 6 months, however, the Chairman may do so if he/she considers it appropriate.



### **3.9 Chairman's Ruling and the Conduct of Meetings**

3.9.1 The conduct of business at meetings of the Council of Governors shall be under the control of the Chairman, who shall have power to decide in his discretion any question which arises including any question as to:

3.9.1.1 Whether any motion or topic is to be discussed and in what order business is to be dealt with

3.9.1.2 Whether any Governor shall be permitted to speak on any issue and for how long

3.9.1.3 Whether comments or submissions made by a Governor are relevant to the issue under discussion

3.9.1.4 The conduct of a Governor at a meeting.

3.9.2 Governors shall act in accordance with directions and rulings of the Chairman and will conduct themselves in accordance with the Code of Conduct. (Annex 8)

### **3.10 Persons Entitled to attend meetings**

3.10.1 All meetings of the Council of Governors are to be open to the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds as set out in the constitution. The Chairman may exclude any member of the public and representatives of the press from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

3.10.2 The Council of Governors may invite the Chief Executive or any other representatives of the Board of Directors, or a representative of the trust's External Auditors or other advisors to attend a meeting of the Council of Governors.

### **3.11 Members' Meetings**

3.11.1 The Trust is to hold an Annual Members' Meetings within 9 months of the end of each financial year. The purpose and role of the Annual Members' Meetings is set out in para 9 of the Constitution.

## **4 COMMITTEES**

4.1 The Council of Governors may form advisory sub committees under a written Terms of Reference, approved by the Council of Governors. Advisory meetings may include members of the Board, and Trust representatives nominated by the Board. The Council of Governors may appoint the membership and Chairman of any advisory committees. All acts any proceedings of advisory committees shall be reported to the Council of Governors.

4.2 The Council of Governors will establish an Appointments and Review Committee for the purpose of making recommendations to the Council of Governors on the appointment, remuneration and terms and conditions of the Chairman and Non-Executive Directors. The Committee will be chaired by the Chairman of the Trust, or Senior Independent Director (subject to the matter under discussions and conflicts of interest) and be comprised on Governor representatives elected by the Council of Governors, under a formal approved written Terms of Reference.

## **5 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS**

5.1 In accordance with Annex 4, section 5 of the Constitution, Governors who have a material interest in a matter as defined under the section shall declare such an interest to the Council of Governors and shall withdraw from the meeting and play no part in the relevant discussion or decisions.

5.2 The Trust is to have a Register of Interests of Governors. The Company Secretary shall record any declaration of interest in a Register of Interests. Any interest declared at a meeting shall also be recorded in the minute of the meeting.

5.3 The Register shall be made available for inspection by members of the public free of charge, at a reasonable time. Any person who requests it must be provided with a copy or extract from the Register. If the person requesting a copy or extract is not a member of the Trust then a charge may be made for doing so.

## **6 STANDARDS OF BUSINESS CONDUCT**

6.1 Public Service values must be at the heart of the NHS. High standards of corporate and personal conduct based on a recognition that patients come first, have been a requirement throughout the NHS since its inception. A copy of the Code of Conduct for Governors is attached at Annex 8.

## **7 MISCELLANEOUS**

### **7.1 Review of Standing Orders**

7.1.1 Standing orders shall be reviewed every two years by the Council of Governors. The requirement for review extends to the Trust Constitution in its entirety.

### **7.2 Vice Chairman**

7.2.1 In relation to any matter touching or concerning the Council of Governors or a Governor outside a meeting of the Council of Governors which arises during the Chairman's absence or unavailability, at the request of the Chief Executive, the Vice-Chairman of the Board of Directors or Senior Independent Director may exercise such power as the Chairman would have in those circumstances.

### **7.3 Notice**

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

### **7.4 Confidentiality**

7.4.1 A Governor of the Trust shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.

7.4.2 All information and documents brought to a meeting of the Council of Governors which is not held in public and all discussion at any such meeting shall be confidential unless the Council of Governors decides otherwise. No public statement shall be made by any Governor about the business conducted at any such meeting other than a statement approved by the Council of Governors.

7.4.3 Where differences of opinion exist, the Council of Governors may if it thinks fit, approve a statement reflecting those differences of opinion.

## **8 USEFUL DOCUMENTS**

8.1 If further clarity is required, readers may wish to refer to the following documents:

- Your Statutory Duties: A reference guide for NHS foundation trust Governors (2009)
- The NHS Foundation Trust Code of Governance (2010)

## ANNEX 8 – CODE OF CONDUCT FOR GOVERNORS

## CODE OF CONDUCT

### 1. Introduction

Public service values must be at the heart of any NHS organisation. High standards of corporate and personal conduct based on a recognition that patients come first, have been a requirement throughout the NHS since its inception. There is an expectation, therefore, that individuals who work in, and/or represent the health service, have a duty to conduct NHS business with probity and to demonstrate high ethical standards of personal conduct. Foundation Trusts have a special and direct relationship with the people they serve, which carries with it a particular public responsibility.

### 2. Principles

There are three crucial public service values which must underpin the work of the NHS Foundation Trust: accountability; probity; and openness. These principles are further reinforced by the Nolan Committee's First Report on Standards of Public Life which identified the Seven Principles of Public Life which should be observed by all Governors:

- Selflessness – holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or friends.
- Integrity – holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- Objectivity – in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- Accountability – holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness – holders of public office should be seen to be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty – holders of public office have a duty to declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership – holders of public office should promote and support these principles by leadership and example.

### 3. Role of the Council of Governors

The Council of Governors fulfil their statutory duties as a collective body. Governors should not act individually, or in informal groupings to take decisions on Council of Governor business on an ad hoc basis, outside the constitutional framework of the meetings of the Council and its committees.

The general duties of the Council of Governors are to: hold the Non-Executive Directors, individually and collectively to account, for the performance of the Board of Directors; and represent the interests of the members of the Trust as a whole, and the interests of the public. In carrying out its work, the Governors need to take account of, and respect, the statutory responsibilities, and liabilities, of the Board of Directors and individual Directors. To carry out their collective role, Governors should commit to:

- Supporting the Trust in achieving its overarching vision and strategic objectives;
- Acting in the best interests of the Trust, patients, service users, staff and stakeholders at all times;
- Acknowledging that other than when attending meetings and events as a Governor, they have no other rights or privileges over and above any other member of the Trust or service user;
- Valuing and respecting Governor colleagues, members of Trust staff, patients and service users at all times;

#### **4. Personal conduct**

Governors are required to adhere to the highest standards of personal conduct in performing their duties. In respect to their interactions with others (including members of the public and Trust staff), they are required to:

- Acknowledge that the Trust is an apolitical organisation;
- Recognise that should they be elected to the Council of Governors *[for elected Governors only]*, they will not represent any other organisation with which they have an affiliation, but will be representing the constituents, public or staff, who elected them;
- Be honest and act with integrity at all times;
- Respect and treat with dignity and fairness, other Governors, the public, service users, staff and stakeholders;
- Commit to working as team member by working with colleagues in the NHS and wider community in a collaborative way;
- Ensure no-one is discriminated against because of their religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social or economic status or national origin;
- Not make, or knowingly allow to be made, untrue or misleading statements in relation to the Trust or their role as a Governor;
- Uphold the Nolan Principles of Public Life.

#### **5. Conflicts of Interest**

Governors must avoid a situation in which they have a direct, or indirect, interest that conflicts the interests of the Trust. They must not accept a benefit from third parties by reason of being a Governor, and must not offer a benefit to a third party by reason of being a Governor. They should not use their position as a Governor for personal or professional advantage, or seek to gain preferential treatment. They are required to declare any interest at the earliest opportunity and should not vote on any matter related to their interest. Further details on conflicts of interests can be found in the Trusts Constitution and advice may be sought from the Company Secretary.

#### **6. Council of Governor meetings**

Governors have a responsibility to attend meetings of the Council of Governors. When this is not possible, they should submit an apology to the Company Secretary in advance of the meeting to ensure the Trust is able to carry out its business, particularly in terms of decision-making. Persistent absence from Council of Governors meetings may be grounds for dismissal from the Council of Governors, unless other remaining Governors are satisfied that absences were due to reasonable causes.

The Trust is committed to providing appropriate training and development opportunities for Governors to enable them to carry out their role effectively and Governors are expected to participate in these opportunities, where possible.

#### **7. Concerns raised by Governors**

A Governor must advise the Company Secretary immediately of any situation they find themselves in which affects their ability to comply with this Code to seek support from the Trust to deal with the

issue. If a Governor becomes concerned regarding the conduct of another Governor, or member of the Trust, either public or staff, they must submit a written statement outlining those concerns to the Company Secretary. The process for dealing with allegations of misconduct by a Governor/member is outlined in Appendix B.

A Governor with concerns regarding any matter relating to the activities of the Council of Governors, the Board of Directors, or services within the Trust should raise the matter formally through the proper internal channels i.e., through the Company Secretary in the first instance. In such a situation, the concern will be addressed promptly and it is expected that Governors do not refer such matters to the media. Such action, unless it can be soundly justified, is likely to breach the Governors duty of confidentiality.

Should a Governor be approached by the media to comment on any matter of Trust affairs, activities or developments, it is expected that individual Governors will not feel it appropriate to make a personal statement or response, but will refer the media contact to the Company Secretary.

Should the views of the full Council of Governors be sought by the media on any matter of Trust business, such a view should be formulated by the Council of Governors as a whole and issued on their behalf by the Company Secretary.

If the Governors concern is about the Chairman, this should be raised with the Senior Independent Director or Vice-Chair in their absence.

## **8. Confidentiality**

All Governors are required to respect the confidentiality of the information they are made privy to as a result of their membership of the Council of Governors. Disclosing confidential information will result in their dismissal from the Council of Governors.

## **9. Fit and Proper Persons Test**

It is a condition of the Trust's Provider Licence that each Governor serving on the Council of Governors is a 'Fit and Proper Person' (as defined by the CQC Registration requirements). These requirements are outlined in Appendix C.

## **10. Reimbursement of Expenses**

Governors will not receive payment for their role, however, they will receive reimbursement for any out of pocket expenses incurred as a result of carrying out their role as a Governor.

## **11. Non-compliance with the Code of Conduct**

Where any suggested breaches of this Code cannot be dealt with informally between the individual(s) and the Chairman (supported by the Company Secretary), any significant breach of this Code may result in the process outlined in Appendix B being enacted.

## **Appendix A – Vision and Strategic Objectives of South Tyneside NHS Foundation Trust**

### **Our Purpose, Aims and Objectives**

Our vision as a Foundation Trust is to provide the best care for our patients, in the best place, at the right time. Our vision is underpinned by our aims and values, which are:-

#### Aims:

- To deliver high quality and safe services for our patients
- To continuously improve our services
- To ensure our financial performance is strong
- To deliver excellent partnerships for the benefits of our patients
- To be an excellent employer
- To always listen, learn and act, by adopting a “you said/we did” approach

#### Values:

- We CHOOSE to go further to achieve patient outcomes
- We CHOOSE to go further to improve patient safety
- We CHOOSE to go further to provide compassionate care
- We CHOOSE to go further to value our staff
- We CHOOSE to go further to work in partnership

## **Appendix B – Process for addressing allegations of misconduct by a Governor/member**

Should any allegations of misconduct against any member(s) of the Council of Governors, or member of the Trust be made, the following process should be followed:

### Stages:

1. Any allegations of misconduct or concerns should be submitted in writing to the Chairman and/or Company Secretary.
2. Where misconduct is alleged, it shall be open to the Council of Governors to decide at a meeting held in confidence, by three-quarters of those in attendance and eligible to vote, to lay a formal charge of misconduct and request the remainder of this process to commence.
3. The Company Secretary will formally notify the individual in writing of the charge detailing the specific behaviour which is considered to be detrimental to the Trust, Council of Governors, patients, service users, stakeholders or staff, and invite them to provide a formal response within a timeframe reasonably defined by the Council of Governors at Stage 2 above.
4. Invite the individual to address the full Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence at stage 3 above.
5. After considering the charge and subsequent response, the Council of Governors must decide by a minimum of three-quarters of those present and eligible to vote at a meeting in confidence, whether to uphold the charge of misconduct and approve any reasonable actions as a consequence of the misconduct.

Actions taken at the conclusion of the process will range from the issue of a written warning as to their future conduct, to their removal from the Council of Governors and/or membership.

In order to aid participation of all parties, it is imperative that all Governors observe the points of view of others, and conduct likely to give offence will not be permitted. The Chairman will reserve the right to ask any Governor who (in their opinion), fails to observe the Code to leave the meeting.



## **Appendix C – Fit and Proper Persons Test**

A person may not continue as a member of the Council of Governors if they are:

- A person who has been adjudged bankrupt or whose estate has been sequestrated (in either case) has not been discharged;
- A person who has made a composition or arrangements with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- A person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them;
- Subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.

**ANNEX 9 – ANNUAL MEMBERS MEETING**

## ANNUAL MEMBERS' MEETING

1. The Annual Members' meeting is open to all members of the Trust, Governors and Directors, and representatives of the Trust's financial auditor. Members of the public and representatives of the media may attend and the Council of Governors can invite any experts or advisors, whose attendance they consider to be in the best interests of the Trust. However, the Chairman may exclude anyone from such a meeting if they are interfering with or preventing the proper conduct of that meeting.
2. The Annual Members' meeting is to be convened by the Company Secretary by order of the Council of Governors.
3. The Council of Governors may decide where the Annual Members' Meeting is to be held and may also for the benefit of members:
  - 3.1. arrange for the Annual Members' Meeting to be held in different venues each year;
  - 3.2. make provisions for any further special members' meetings
  - 3.3. Members can participate in meetings by telephone or video link where reasonable. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
4. At the Annual Members' Meeting:
  - 4.1. the Board of Directors shall present to the members:
    - 4.1.1. the annual accounts;
    - 4.1.2. any report of the financial auditor;
    - 4.1.3. any report of any other external auditor of the Trust's affairs; and
    - 4.1.4. forward planning information for the next financial year;
  - 4.2. the Council of Governors shall present to the members:
    - 4.2.1. a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the Staff Constituency is representative of those eligible for such membership;
    - 4.2.2. the progress of and changes to the Membership Strategy; and
    - 4.2.3. any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors; and
  - 4.3. the results of the election and appointment of Governors and the appointment of Non-Executive Directors will be announced.
5. Notice of the Annual Members' Meeting is to be given:
  - 5.1. by notice to all members;
  - 5.2. by notice prominently displayed at the head office and at all of the Trust's places of business; and
  - 5.3. by notice on the Trust's website;
  - 5.4. at least 14 working days before the date of the meeting. The notice must:
    - 5.4.1. be given to the Council of Governors and the Board of Directors, and to the financial auditor;
    - 5.4.2. state whether the meeting is an annual or special members' meeting;
    - 5.4.3. give the time, date and place of the meeting; and
    - 5.4.4. indicate the business to be dealt with at the meeting.

6. Before the Annual Members' Meeting can do business there must be a quorum present except where this Constitution says otherwise a quorum is six members from the Public Constituency and one member from each class of the Staff Constituency.
7. It is the responsibility of the Council of Governors, the Chairman of the meeting and the Company Secretary to ensure that at any members' meeting:
  - 7.1. the issues to be decided are clearly explained; and
  - 7.2. sufficient information is provided to members to enable rational discussion to take place.
8. The Chairman of the Trust, or in their absence the Lead Governor, or in their absence, one of the other Public Governors shall act as chairman at all members' meetings of the Trust. If neither the Chairman nor the Lead Governor is present, the members of the Council of Governors present shall elect one of the Public Governors to be Chairman. If there is only one Governor present, they shall Chair the meeting.
9. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
10. A resolution put to the vote at a members' meeting shall be decided upon by a show of hands, unless a poll is demanded.
11. Every member present is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a casting vote.
12. The result of any vote will be declared by the Chairman and recorded in the minutes of the meeting

**ANNEX 10 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE  
OF THE BOARD OF DIRECTORS**

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## FOREWORD

This document provides a regulatory and business framework for the conduct of the Board of Directors and is part of the South Tyneside NHS Foundation Trust's Constitution.

## **1 INTRODUCTION**

### **1.1 Statutory Framework**

- a) The South Tyneside NHS Foundation Trust (the Trust) is a Public Benefit Corporation that was established by the granting of Authorisation by the Independent Regulator of NHS Foundation Trusts (Monitor).
- b) The statutory functions conferred on the Trust are set out in the National Health Service Act 2006 and in the Trust's terms of Authorisation issued by Monitor. The governance of the Trust is dictated by its Constitution and rules regarding membership of the Board of Directors and other constitutional issues relating to the Directors are also set out in the Constitution.
- c) As a Public Benefit Corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee of various charitable trusts previously administered by the NHS Trust. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

### **1.2 The Trust**

- a) All business shall be conducted in the name of the Trust. The business of the Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Trust, subject to any contrary provisions of the Act given effect by the constitution.
- b) The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in 'Reservation of Powers to the Board and Delegation of Powers' and have effect as if incorporated into Standing orders.

### **1.3 NHS Framework**

- a) The Trust is to have a Board of Directors, which is to consist of executive and non executive Directors.
- b) The Constitution requires the Board of Directors to adopt its own Standing Orders covering for its practice and procedure.

## **1.4 BOARD OF DIRECTORS**

### **1.4.1 Role and Responsibilities of Directors**

The roles and responsibilities of the Board of Directors are set out in the Constitution and are further described in Monitor's reference guide for NHS foundation trust Governors.

### **1.4.2 Composition of Board of Directors**

The composition of the Board of Directors shall be as set out in paragraph 24 of the Constitution.

## **2 MEETINGS OF THE BOARD OF DIRECTORS**

### **2.1 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 his/her 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 him/her at least three clear days before the meeting.

Lack of service of the notice on any Director shall not affect the validity of a meeting.

## **2.2 Record of Attendance**

The names of the Directors present at a meeting shall be recorded.

## **2.3 Minutes**

Minutes of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

## **2.4 Notice of a 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, if he is satisfied that they are proper business and properly proposed, insert in the agenda for the meeting all notices so received. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to para 2.7.

## **2.5 Motions**

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

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

- a) An amendment to the motion
- b) The adjournment of the discussion or the meeting
- c) That the meeting proceed to the next business (\*)
- d) That appointment of an ad hoc committee to deal with a specific item of business
- e) That the motion be now put (\*)

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

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.

## **2.6 Notice 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 Director who gives notice and also the signature of 2 other Directors. When any such motion has been disposed of by the Trust, it shall not be competent of any Director other than the Chairman to propose a motion to the same effect within 6 months, however, the Chairman may do so if he/she considers it appropriate

## **2.7 Chairman's Ruling and the Conduct of Meetings**

The conduct of business at meetings of the Board of Directors shall be under the control of the Chairman, who shall have power to decide in his discretion any question which arises including any question as to:

- a) Whether any motion or topic is to be discussed and in what order business is to be dealt with.
- b) Whether any Director shall be permitted to speak on any issue and for how long.
- c) Whether comments or submissions made by a Director are relevant to the issue under discussion.
- d) The conduct of a Director at a meeting.

Directors shall act in accordance with directions and rulings of the Chairman and will conduct themselves in accordance with the Code of Conduct.

## **2.8 Suspension of Standing Orders**

Except where this would contravene any provision of the constitution or authorisation of any statutory provision or any direction made by the Independent Regulator, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two thirds of the Directors are present, including one executive Director and one non-executive Director, and that the majority of those present vote in favour of suspension.

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

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

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

The Audit and Risk Management Committee shall review every decision of the Board of Directors to suspend Standing Orders.

## **2.9 Joint Directors**

Where a post of Executive Director is shared by more than one person:

- a) both persons shall be entitled to attend meetings of the Board of Directors.
- b) either of those persons shall be entitled to vote in the case of agreement between them.
- c) In the case of disagreement between them no vote shall be cast.
- d) The presence of either or both of these persons shall count as one person for the purposes of a quorum.

## **3 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

**3.1 Delegation to a Committee of Directors or an Executive Director** Subject to the Constitution and such directions as may be given by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee of Directors or by an executive Director in each case subject to such restrictions and conditions as the Board thinks fit. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.

**3.2 Emergency Powers** – The powers which the Board has retained to itself within these Standing Orders (SO 1.2) may in emergency 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 the Chairman shall be reported to the next formal meeting of the Board for ratification.

- 3.3** The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.
- 3.4** Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance or other executive Director to provide information and advise the Board in accordance with any statutory requirements.
- 3.5** The arrangements made by the Board as set out in the 'Reservation of Powers to the Board and Delegation of Powers' shall have effect as if incorporated in these Standing Orders.

#### **4 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 it to the Board of Directors.

A Director of the Trust or 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.

#### **5 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS**

- 5.1** In accordance with paragraph 35 of the Constitution, any Director who has a material interest in a matter as defined below shall declare such an interest in writing to the Secretary within 7 days of the matter arising to the Board of Directors at the next meeting of the Board of Directors.
- a) Shall withdraw from the meeting and play no part in the relevant discussion or decisions
  - b) Shall not vote on the issue arising out of or connected with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).

Details of any such interest shall be recorded in the register of the interests of Directors.

Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by the requisite majority of the Council of Governors. If a Director is in doubt as to whether an interest should be disclosed they should discuss the position with the Chair.

#### **5.2 Register of Interests**

The Trust is to have a Register of Interests of Directors in accordance with paragraph 38 of the Constitution. The Secretary of the Trust shall record any declaration of interest in a Register of Interests. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.

The Register shall be made available by members of the public free of charge, at a reasonable time. Any person who requires it must be provided with a copy or extract from the Register. If the person requesting a copy or extract is not a member of the Trust then a charge may be made for doing so.

#### **6 DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 6.1** 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, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 6.2** The Trust may exclude a member or Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 6.3** For the purpose of this Standing Order the Chairman or Director shall be treated, subject to SO 5.2 and paragraph 35 of the Constitution, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- a) he/she, or a nominee of his/her, 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
  - b) he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

- 6.4** A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- a) of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
  - b) of an interest in any company, body or person with which he/she is connected as mentioned in SO 5.3 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.

## **7 STANDARDS OF BUSINESS CONDUCT**

Public Service values must be at the heart of the NHS. High standards of corporate and personal conduct based on a recognition that patients come first, have been a requirement throughout the NHS since its inception. A copy of the Code of Conduct for Directors is attached at Appendix A.

## **8 CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

Custody of Seal - The Common Seal of the Trust shall be kept by the Chief Executive.

### **8.1 Sealing of Documents**

The Seal of the Trust shall not be fixed to any document unless the sealing has been authorised by a resolution of the Board of Directors or a committee thereof, or where the Board of Directors has delegated its powers.

Before any building, engineering, property or capital document is sealed it must be approved and signed by the Executive Director of Finance and Corporate Governance (or

an official nominated by him/her) and authorised and countersigned by the Chief Executive (or an officer nominated by him/her who shall not be within the engineering division).

## **8.2 Register of Sealing**

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

## **8.3 Signature of Documents**

Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

## BOARD OF DIRECTORS

### CODE OF CONDUCT

#### 1. Introduction

- 1.1 Public service values must be at the heart of an NHS Foundation Trust. High standards of corporate and personal conduct based on a recognition that patients come first, have been a requirement throughout the NHS since its inception. There is an expectation, therefore, that individuals who work in the health service have a duty to conduct NHS business with probity and to demonstrate high ethical standards of personal conduct. Foundation Trusts have a special and direct relationship with people they service which carries with it a particular public responsibility.

#### 2 Principles

- 2.1 There are three crucial public service values which must underpin the work of the health service:-

- a) **Accountability** – everything done by those who work in the Trust must be able to stand the test of scrutiny, public judgement on propriety and professional codes of conduct.
- b) **Probity** – there should be an absolute standard of honesty in dealing with assets of the Trust: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and supplies, and in the use of information acquired in the course of Trust duties.
- c) **Openness** – there should be sufficient transparency about Trust activities to promote confidence between the NHS authorities or Trusts and its staff, patients and the public.

- 2.2 These principles have been further reinforced by the Nolan Committee's First Report on Standards in Public Life which identified the Seven Principles of Public Life which should be observed by all Governors.

- a) **Selflessness** – holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- b) **Integrity** – holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- c) **Objectivity** – in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- d) **Accountability** – holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- e) **Openness** – holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

- f) **Honesty** – holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- g) **Leadership** – holders of public office should promote and support these principles by leadership and example.

### 3 **Public Business and Private Gain**

- 3.1 Chairmen and Board Members should act impartially and should not be influenced by social or business relationships. No one should use their public position to further their private interests. Where there is a potential for private interests to be material and relevant to NHS business, the relevant interests should be declared and recorded in the board minutes and entered into a register which is available to the public. When a conflict of interest is established, the Board Member should withdraw and play no part in the relevant discussion or decision.

### 4 **Hospitality and Other Expenditure**

4.1 Board Members should set an example to their organisation in the use of public funds and the need for good value in incurring public expenditure. The use of NHS monies for hospitality and entertainment, including hospitality at conferences or seminars, should be carefully considered. All expenditure on these items should be capable of justification as reasonable in the light of general practice in the public sector. NHS Boards should be aware that expenditure on hospitality or entertainment is the responsibility of management and is open to be challenged by the internal and external auditors and that ill-considered actions can damage respect of the NHS in the eyes of the community.

### 5 **Relations with Suppliers**

- 5.1 NHS Board should have an explicit procedure for the declaration of hospitality and sponsorship offered by, for example, suppliers. Their authorisation should be carefully considered and the decision should be recorded. NHS Boards should be aware of the risks in incurring obligations to suppliers at any stage of a contracting relationship. The NHS Executive has issued guidance to NHS Trusts and authorities about standards of business conduct (ref: NHS(93)5).
- 5.2 Suppliers should be selected on the basis of quality, suitability, reliability and value for money.

### 6 **Staff**

- 6.1 NHS Boards should ensure that staff have a proper and widely publicised procedure for voicing complaints or concerns about maladministration, breaches of this Code and other concerns of an ethical nature. The Board and Non Executive Directors in particular must establish a climate that enables staff to have confidence in the fairness and impartiality of procedures for registering their concerns.

### 7 **Compliance**

- 7.1 Board members should satisfy themselves that the actions of the Board and its members in conducting board business fully reflect the values in this Code and, as far as is reasonably practicable, that concerns expressed by staff or others are fully investigated and acted upon. All Board Members of NHS Authorities and Trusts are required, on appointment, to subscribe to the Code of Conduct.

## **Appendix B – Further Provisions for the Board of Directors**

### **1. Secretary**

- 1.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
  - 1.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
  - 1.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
  - 1.1.3 keeping the register of members and other registers and books required by this Constitution to be kept;
  - 1.1.4 having charge of the Trust's seal;
  - 1.1.5 acting as returning officer in any elections;
  - 1.1.6 publishing to members in an appropriate form information which they should have about the Trust's affairs; and
  - 1.1.7 preparing and sending to the Monitor and any other statutory body all returns which are required to be made.
- 1.2 Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 1.3 The Secretary is to be nominated and removed by the Board of Directors.

### **2. Meeting of Directors**

- 2.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Board of Directors to all Directors.
- 2.2 Three times in every Financial Year, the meeting of the Board of Directors shall be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of such meeting for reasons of commercial confidentiality or on other proper grounds. Other meetings of the Board of Directors shall be held in private. The Chairman may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 2.3 Meetings of the Board of Directors are called by the Secretary, or by the Chairman, or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.



- 2.4 Five Directors including not less than two executive Directors (one of whom must be the Chief Executive or the Deputy Chief Executive, and not less than two Non Executive Directors (one of whom must be the Chairman or the Vice-Chairman of the Board) shall form a quorum.
- 2.5 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 2.6 The Chairman of the Trust or, in their absence, the Vice-Chairman of the Board of Directors, is to chair meetings of the Board of Directors.
- 2.7 Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes:
  - 2.7.1 in case of an equality of votes the Chairman shall have a second and casting vote unless they are prevented from voting; and
  - 2.7.2 no resolution of the Board of Directors shall be passed if it is opposed by all of the non executive Directors present or by all of the executive Directors present.
- 2.8 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.