

AUTHORISATION OF TAMESIDE HOSPITAL NHS FOUNDATION TRUST

Schedule 1

The Constitution (and Annexures)

CONSTITUTION OF
TAMESIDE HOSPITAL NHS
FOUNDATION TRUST

A Public Benefit Corporation

TAMESIDE HOSPITAL NHS FOUNDATION TRUST CONSTITUTION

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1. Name

The name of the Foundation Trust is Tameside Hospital NHS Foundation Trust (the Trust).

2. Principal Purpose

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

3. Other Purposes

3.1 The purpose of the Trust (as required by the 2006 Act) is to provide goods and services for purposes related to the provision of health care in accordance with its statutory duties and the terms of the Independent Regulator's authorisation.

3.2 In so doing, on its own or in co-operation with others, the Trust is to promote the positive economic, environmental and social impact of its activities on its area such that the public health of the area will be enhanced.

3.3 The Trust may also carry on activities other than those mentioned above subject to any restrictions in the Independent Regulator's authorisation. These activities must be for the purpose of making additional income available in order to improve the carrying out of the Trust's principal purpose.

3.4 References to goods and services in this section includes the provision of education, training, accommodation and other facilities.

4. Powers

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

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

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

5. Framework

5.1 A Board of Directors will be responsible for ensuring that the Foundation Trust complies with its Authorisation, all relevant statutory and mandatory obligations, and all contractual obligations at all times.

A Council of Members will be drawn from those membership constituencies described in sections 8 and 9 of this Constitution and representatives from organisations closely connected with the goods and services of the Trust.

6. Membership and Constituencies

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

- 6.1 a Public Constituency; and
- 6.2 a Staff Constituency

7. Application for membership

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

8. Public Constituency

- 8.1 An individual who lives in the areas specified in **Annex 1** as an area for the Public Constituency, may become, or continue as, a member of the Trust.
- 8.2 Those individuals who live in an area specified in an area for any Public Constituency are referred to collectively as "The Public Constituency".
- 8.3 The minimum number of members in each area of the Public Constituency is specified in **Annex 1**.

9. Staff Constituency

- 9.1 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:
 - 9.1.1 he/she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 9.1.2 he/she has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 9.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, and have done so for at least 12 months may become or continue as members of the Staff Constituency.
- 9.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 9.4 The Staff Constituency shall be divided into six classes on the basis of the Trust's management structure, and shall comprise individuals who are eligible for membership of the Staff Constituency, as described within **Annex 2** and being referred to as a class within the Staff Constituency.
- 9.5 The minimum number of members in each class of Staff Constituency is specified in **Annex 2**.

Automatic membership by default – staff

9.6 An individual who is:

9.6.1 eligible to become a member of the Staff Constituency, and

9.6.2 invited by the Trust to become a member of the Staff Constituency for the appropriate class within the Staff Constituency

shall become a member of the Trust as a member of the Staff Constituency for the appropriate class without an application being made, unless he/she informs the Trust that he/she 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 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 3**.

11. Council of Members – composition

11.1 The Trust is to have a Council of Members, which shall comprise both elected and appointed Members of Council.

11.2 The composition of the Council of Members is specified in **Annex 4**.

11.3 The Council of Members, other than the appointed Members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Members to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in **Annex 4**.

12. Council of Members – election of Members

12.1 Elections for elected Members of the Council of Members shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

12.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at **Annex 5**.

12.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the Trust cannot amend the model rules.

12.4 Elections for the Council of Members shall be conducted in accordance with any regulations which may be made under Section 59 of the 2006 Act.

12.5 An election, if contested, shall be by secret ballot.

13. Council of Members - tenure

13.1 An elected Member of Council may hold office for a period of up to 3 years.

13.2 An elected Member of Council shall cease to hold office if he ceases to be a Member of the constituency or class by which he was elected.

13.3 An elected Member of Council shall be eligible for re-election at the end of his 3-year term.

14. Council of Members – disqualification and removal

14.1 The following may not become, or continue as, a Member of the Council of Members:

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

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

14.1.3 a person who within the preceding five years has been convicted in the British Isles 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.

14.2 Members of Council must be at least 16 years of age at the date they are nominated for election or appointment.

14.3 Further provisions as to the circumstances in which an individual may not become or continue as a Member of Council are set out in **Annex 6**.

14.4 Provision for the termination of tenure of Members of Council is set out in **Annex 7**.

15. Council of Members – meetings of the Council

15.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or paragraph 23 below) or, in his absence the Deputy Chair (appointed in accordance with the provisions of paragraph 24 below), shall preside at meetings of the Council of Members.

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

16. Council of Members: Roles, Responsibilities and Standing Orders

The Standing Orders for the practice and procedure of the Council of Members, as may be varied from time to time, are attached at **Annex 8**.

17. Council of Members - conflicts of interest

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

18. Council of Members – travel expenses

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

19. Council of Members – further provisions

Further provisions with respect to the Council of Members are set out in **Annex 9**.

20. Board of Directors – composition

20.1 The Foundation Trust is to have a Board of Directors.

20.2 The Board is to include:-

20.2.1 The following non executive Directors:-

20.2.1.1 a Chairman (see 22 below)

20.2.1.2 five other non executive directors (see 22 below)

20.2.2 Not less than four, and not more than five executive Directors

20.2.2.1 One of the Executive Directors shall be the Chief Executive

20.2.2.2 The Chief Executive shall be the Accounting Officer

20.2.2.3 One of the Executive Directors shall be the Finance Director,

20.2.2.4 One of the Executive Directors shall be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984),

20.2.2.5 One of the Executive Directors shall be a registered nurse or registered midwife

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

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

- 21.1 he/she is a member of the Public Constituency, or
- 21.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, he/she exercises functions for the purposes of that university, and
- 21.3 he/she is not disqualified by virtue of paragraph 27 below.

22. Board of Directors – appointment and removal of Chairman and other non-executive directors

- 22.1 The Council of Members at a general meeting of the Council of Members shall appoint or remove the Chair of the Trust and the other non-executive directors.
- 22.2 The Council of Members will establish a Nominations Committee, comprising the Chairman and three Members of Council, to assist the Council with the appointment of the Non – Executive Directors. The Chairman of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee. In the case of the appointment of the Chairman, this committee will be chaired by the Deputy Chair. The Nominations Committee will consult the Chief Executive.
- 22.3 Removal of the Chairman or another non-executive director shall require the approval of three-quarters of the Council of Members.
- 22.4 The initial Chairman and the initial non-executive directors are to be appointed in accordance with paragraph 23 below.

23. Board of Directors – appointment of initial Chairman and initial other non-executive directors

- 23.1 The Chairman of the former Tameside & Glossop Acute Services NHS Trust shall be appointed as the initial Chairman of the Foundation Trust if he/she wishes to be appointed.
- 23.2 The power of the Council of Members to appoint the other non-executive directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Trust any of the non-executive directors of the former Tameside & Glossop Acute Services NHS Trust (other than the Chair) who wish to be appointed.

23.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 21 above (other than disqualification by virtue of paragraph 27 below) do not apply to the appointment of the initial Chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

23.4 An individual appointed as the initial Chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his/her term of office as Chair or (as the case may be) non-executive director of the former Tameside & Glossop Acute Services NHS Trust; but if, on appointment, that period is less than 12 months, he/she shall be appointed for 12 months.

24 Board of Directors – appointment of Deputy Chairman

The Deputy Chair of the former Tameside & Glossop Acute Services NHS Trust shall be appointed as the initial Deputy Chair of the Foundation Trust if he/she wishes to be appointed.

25. Board of Directors - appointment and removal of the Chief Executive and other executive directors

25.1 The Chair and non-executive directors shall appoint or remove the Chief Executive.

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

25.3 The initial Chief Executive is to be appointed in accordance with paragraph 26 below.

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

26. Board of Directors – appointment and removal of the initial Chief Executive

26.1 The chief officer of the former Tameside & Glossop Acute Services NHS Trust shall be appointed as the initial Chief Executive of the Foundation Trust if he/she wishes to be appointed.

26.2 The appointment of the chief officer of the former Tameside & Glossop Acute Services NHS Trust as the initial Chief Executive of the Foundation Trust shall not require the approval of the Council of Members.

27. Board of Directors – disqualification

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

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

- 27.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it,
- 27.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.

28. Board of Directors: Standing Orders

The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at **Annex 10**.

29. Board of Directors - conflicts of interest of directors

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

30. Board of Directors – remuneration and terms of office

- 30.1 The Council of Members at a general meeting of the Council of Members shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.
- 30.2 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.

31. Registers

The Trust shall have:

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

32. Registers – inspection and copies

- 32.1 The Trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

- 32.2 The Trust shall not make any part of its registers available for inspection by members of the public which show details of any member of the Trust, if the member so requests.
- 32.3 So far as the registers are required to be made available:
- 32.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 32.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 32.4 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.

33. Documents available for public inspection

- 33.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 33.1.1 a copy of the current constitution;
 - 33.1.2 a copy of the current authorisation;
 - 33.1.3 a copy of the latest annual accounts and of any report of the auditor on them;
 - 33.1.4 a copy of the latest annual report;
 - 33.1.5 a copy of the latest information as to its forward planning; and
 - 33.1.6 a copy of any notice given under section 52 of the 2006 Act.
- 33.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 33.3 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.

34. Auditor

- 34.1 The Trust shall have an auditor.
- 34.2 The Council of Members shall appoint or remove the auditor at a general meeting of the Council of Members.

35. Audit Committee

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

36. Accounts

- 36.1 The Trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.
- 36.2 The accounts shall be audited by the trust's auditor.

36.3 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the HM treasury direct.

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

37. Annual Report and forward plans

37.1 The Trust shall prepare an Annual Report and send it to Monitor.

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

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

37.4 In preparing the document, the directors shall have regard to the views of the Council of Members.

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

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

38.1 the annual accounts

38.2 any report of the auditor on them

38.3 the Annual Report

39. Instruments

39.1 The Trust shall have a seal.

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

40. Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.

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

In this Constitution:-

The 2006 Act - is the National Health Service Act 2006.

The area of the Trust - means the area specified in Annex 1 of the Constitution.

Area - the parts of the Public Constituency, further defined at Annex 1.

Board of Directors – means the Board of Directors as constituted in accordance with the Constitution.

Class – the parts of the Staff Constituency, further defined at Annex 2.

Council of Members – means the Council of Members as constituted in accordance with the Constitution. This term is synonymous with the term “Board of Governors”, the body referred to in the 2006 Act. It consists of 15 elected Public Members of Council, 6 elected Staff Members of Council and 6 appointed Members of Council, and is further defined in Annex 4. Members of Council, where not referred to explicitly as such, are referred to as Members, with upper case initial letter.

Council Member – means any Member of the Council of Members as defined above.

Director – means a director on the Board of Directors (see above).

Member – means a member of the Trust who is not a Member of Council, denoted by lower case initial letter.

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

PCT – Abbreviation for “Primary Care Trust”.

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

The Trust – means the Tameside Hospital NHS Foundation Trust

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

The **Accounting Officer** for the Trust is the Chief Executive of the Trust.

41. Dissolution of the Trust

The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.

THE AREA OF THE TRUST AND THE PUBLIC CONSTITUENCY OF THE TRUST

1. The area of the Trust shall be:-
 - a. The Metropolitan Borough Council of Tameside
 - b. The wards of the Borough of the High Peak coterminous with the Glossop area served by the Trust
 - c. The England and Wales area

2. The areas of the Public Constituency shall be:-
 - a. The Metropolitan Borough Council of Tameside

Ashton under Lyne (covering the electoral wards of Ashton Hurst, Ashton St Michael's, Ashton St Peter's, Ashton Waterloo)

Audenshaw (covering the electoral ward of Audenshaw)

Denton (covering the electoral wards of Denton North East, Denton South and Denton West)

Droylsden (covering the electoral wards of Droylsden East and Droylsden West)

Dukinfield (covering the electoral wards of Dukinfield and Dukinfield Stalybridge)

Hyde (covering the electoral wards of Hyde Godley, Hyde Newton, and Hyde Werneth)

Longendale (covering the electoral ward of Longendale)

Mossley (covering the electoral ward of Mossley)

Stalybridge (covering the electoral wards of Stalybridge North and Stalybridge South)
 - b. The wards of the Borough of the High Peak coterminous with the Glossop area served by the Trust

Glossop (covering the electoral wards of Hadfield North, Hadfield South, Gamesley, Simmondley, Tintwistle, St John's, Dinting, Old Glossop, Howard Town, Whitfield, and Padfield)

c. England and Wales

All areas of England and Wales excluding the areas mentioned at 1a and 1b above.

3. Members of the Trust who are members of the Public Constituency are to be individuals who are aged sixteen years and over:-
 - (a) who live in one of the areas listed at 1a, 1b or 1c above;
 - (b) who endorse the values and principles of the Trust;
 - (c) who are not eligible to become a member of the Staff Constituency or otherwise disqualified from membership under Annex 6; and
 - (d) who have made an application for membership to the Trust.

4. The minimum number of members required for each area of the Public Constituency, is to be the number given in the table below, which is derived from 25% of the Trust's 'target' membership for each area in the first year of its authorisation. This table also identifies the number of Members of Council each area will be represented by.

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

Area	Population (circa)	Target share (2000)	Minimum size of membership	No. of Members of Council
Ashton u Lyne	45,000	375	94	2
Audenshaw	11,000	92	23	1
Denton	34,000	283	71	2
Droylsden	23,000	192	48	1
Dukinfield	23,000	192	48	1
Hyde	34,000	283	71	2
Longdendale	10,000	83	21	1
Mossley	10,000	83	21	1
Stalybridge	22,000	183	46	1
Glossop	28,000	233	59	2
England and Wales	53,000,000	n/a	50	1

THE STAFF CONSTITUENCY

1. The Staff Constituency is to be divided into 6 classes, on the basis of the Trust's management and service delivery structure, as follows:
 - (a) Emergency Services and Critical Care;
 - (b) Diagnostic and Therapeutic Services;
 - (c) Women's and Children's Services;
 - (d) Elective Services;
 - (e) Facilities;
 - (f) Corporate Services.

2. Members of the Trust who are members of the Staff Constituency are to be individuals who are aged sixteen years and over and -
 - (a) who endorse the values and principles of the Trust;
 - (b) who are employed under a contract of employment by the Trust, or
 - (c) who are not employed by the Trust but who nevertheless exercise functions for the purposes of the Trust; and
 - (d) who have been invited by the Trust to become a member of that constituency as a member of the appropriate class and have not informed the Trust that they do not wish to do so.

3. The Executive Director responsible for membership shall make a final decision about the class of which an individual shall be eligible to be a member.

4. The minimum number of members required for each of the classes of the Staff Constituency is to be 50% of the eligible staff in the constituency. Based on the current configuration of the organisation, the minimum number of members is as follows:-

Emergency Services and Critical Care	296
Diagnostic and Therapeutic Services	152
Women's and Children's Services	168
Elective Services	282
Facilities	78
Corporate services	142

5. A person who is eligible to be a member of the Staff Constituency may not become or continue as a member of the Public Constituency and may not become or continue as a member of more than one class.

ANNEX 3 DISQUALIFICATION FROM MEMBERSHIP

1. A person may not be a member of the Trust if such person:-
 - (a) has been identified by the Trust as a vexatious complainant in accordance with relevant Trust policy;
 - (b) has verbally or physically assaulted an employee of the Trust or other persons who exercise functions for the purposes of the Trust, including registered volunteers, or a patient or visitor to the Trust;
 - (c) has been dismissed from the employment of the Trust, any of its subcontractors or any other health service body, save where such dismissal is on the grounds of redundancy or determined to have been unfair by a competent tribunal;
 - (d) been red or yellow-carded under the Trust's Zero Tolerance Policy;
 - (e) been registered as a sex offender;
 - (f) fails to agree to abide by the Trust's values and principles;
 - (g) has made a false application for membership;
 - (h) made a false statement or false declaration of eligibility in the process of being nominated, elected or appointed as Member of Council; or
 - (i) acted in a manner that is contrary to the Trust's principles and objectives.
2. It is the responsibility of the member to ensure his/her eligibility, not that of the Trust.
3. Decisions regarding disqualification shall be made by the Chairman, advised by the Chief Executive and Board of Directors.
4. The Membership Office shall manage the disqualification process, which will involve a formal letter explaining the reasons for disqualification and the individual's right of appeal.

TERMINATION OF MEMBERSHIP

1. A member shall cease to be a member if-
 - (a) he/she resigns by notice,
 - (b) he/she ceases to fulfil the requirements of membership as described in Annexes 1 and 2
 - (c) he/she become disqualified from membership by reason of Paragraph 1 above
 - (d) he/she dies

THE COUNCIL OF MEMBERS

1. The Trust is to have a Council of Members. It is to consist of elected Public Members of Council, elected Staff Members of Council and appointed Members of Council.
2. The Trust, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Members:-
 - (a) the interests of the community served by the Trust are appropriately represented,
 - (b) the level of representation of the Public Constituency, the Staff Constituency, PCT Members of Council, Local Authority Members of Council, and other appointed Members of Council, is appropriately balanced having regard to their legitimate interest in the business of the Trust.
3. The Council of Members to the Trust is to include-
 - (a) 15 Public Members of Council, as specified in Annex 1,
 - (b) 6 Staff Members of Council, one from each of the following classes:-
 - (i) Emergency Services and Critical Care;
 - (ii) Diagnostic and Therapeutic Services;
 - (iii) Women's and Children's Services;
 - (iv) Elective Services;
 - (v) Facilities;
 - (vi) Corporate Services.
 - (c) 6 appointed Members of Council as follows:-
 - (i) 1 Member from Tameside and Glossop PCT;
 - (ii/iii) 2 Local Authority Members, one each from the Metropolitan Borough Council of Tameside and the Borough of the High Peak
 - (iv) 1 Third Sector Coalition Partner;
 - (v) 1 Young Person Partner; and
 - (vi) 1 PFI Partner
- 3.1 The aggregate number of Public Members of Council is to be more than half the total membership of the Council of Members.

THE MODEL RULES FOR ELECTIONS TO THE COUNCIL OF MEMBERS

Part 1 – Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

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Part 1 - Interpretation

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

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

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

“the regulator” means the Independent Regulator for NHS foundation trusts; and

“the 2006 Act” means the National Health Services Act 2006.

(2) Other expressions used in these rules and in Schedule 7 to the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

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

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

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

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

Part 3 – Returning officer

4. Returning officer – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

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

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

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

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper for signature at the request of any member of the corporation,

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

10. Candidate's particulars – (1) The nomination paper must state the candidate's

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

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

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

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

12. Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

- (a) that he or she is not prevented from being a member of the Council of Members by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

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

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

14. Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination paper is invalid,
- (c) receives satisfactory proof that the candidate has died, or

- (d) receives a written request by the candidate of their withdrawal from candidacy.

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -

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

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

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

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

15. Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing, as given in their nomination paper.

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

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

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

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

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

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

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

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

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

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

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

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

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

(2) Every ballot paper must specify –

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

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

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

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

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

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

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

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

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

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

Action to be taken before the poll

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

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

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Members to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

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

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

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

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

(2) The covering envelope is to have –

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

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

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

The poll

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

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a –

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

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

- (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- (3) the returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

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

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

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

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

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

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

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

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

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

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

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

“continuing candidate” means any candidate not deemed to be elected, and not excluded,

“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule stv44(4) below,

“preference” as used in the following contexts has the meaning assigned below–

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule stv41 below,

“surplus” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable papers from the candidate who has the surplus,

“stage of the count” means –

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (c) the exclusion of one or more candidates at any given time,

“transferable paper” means a ballot paper on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“transferred vote” means a vote derived from a ballot paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

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

38. The count – (1) The returning officer is to –

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

Stv39. Rejected ballot papers – (1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

(2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

fpp39. Rejected ballot papers – (1) Any ballot paper –

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

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

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

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

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

(4) The returning officer is to –

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

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

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

stv40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

(2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

stv41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule stv44 has been complied with.

stv42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

- (a) according to next available preference given on those papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped –

- (a) according to the next available preference given on those papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

- (a) a transfer value calculated as set out in paragraph (4)(b) above, or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.

(8) Each transfer of a surplus constitutes a stage in the count.

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

(11) This rule does not apply at an election where there is only one vacancy.

stv43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

- (a) the surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare—
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

(3) All ballot papers transferred under rule stv42 or stv44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

stv44. Exclusion of candidates – (1) If—

- (a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule stv45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

- (a) ballot papers on which a next available preference is given, and
- (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

(4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

(5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(10) The returning officer shall after each stage of the count completed under this rule—

- (a) record –
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

- (d) compare—
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule stv42 and rule stv43.

(12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

(13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest—

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

stv45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

(2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

(3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

stv46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule stv42(10) above.

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

(3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that

stage shall be deemed to be the largest.

(4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Members from the constituency, or class within a constituency, for which the election is being held to be elected,
 - (b) give notice of the name of each candidate who he or she has declared elected–
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Tameside Hospital NHS Foundation Trust by Section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
 - (c) give public notice of the name of each candidate whom he or she has declared elected.
- (2) The returning officer is to make –
- (a) the total number of votes given for each candidate (whether elected or not), and
 - (b) the number of rejected ballot papers under each of the headings in rule fpp39(5), available on request.

stv47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –

- (i) where the election is held under a proposed constitution pursuant to powers conferred on the Tameside Hospital NHS Foundation Trust by Section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
- (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule stv39(1), available on request.

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

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

Part 8 – Disposal of documents

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

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

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

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

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

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

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

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

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

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

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

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

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

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

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

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

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

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

- (a) in giving its consent, the regulator, and
- (b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –
 - (i) that his or her vote was given, and
 - (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

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

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

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

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

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

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

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

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

stv54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –

- (a) publish a notice stating that the candidate has died, and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

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

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

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

57. Election expenses incurred by other persons – (1) No person may -

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

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

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

Publicity

58. Publicity about election by the corporation – (1) The corporation may –

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

as it considers necessary.

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

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

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

59. Information about candidates for inclusion with voting documents - (1)

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

(2) The information must consist of –

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

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

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

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

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

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

(4) The application must –

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

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

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

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

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

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

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

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

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

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

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

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

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

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

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

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

DISQUALIFICATION FROM COUNCIL OF MEMBERS

1. A person may not become or continue as a Member of Council of the Trust if–
 - (a) in the case of a Staff Member of Council or Public Member of Council he/she ceases to be a member of the constituency he/she represents;
 - (b) in the case of a PCT Member of Council, Local Authority Member of Council, or Partnership Member of Council, the sponsoring organisation withdraw their sponsorship of him/her;
 - (c) he/she has been adjudged bankrupt or his/her estate has been sequestrated and in either case he/she has not been discharged;
 - (d) he/she has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
 - (e) he/she has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him/her;
 - (f) he/she has within the preceding two years been dismissed, otherwise by reason of redundancy or where the dismissal has been determined unfair by a competent tribunal, from any paid employment with a the Trust, any of its subcontractors or any other health service body.
 - (g) he/she is 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 his/her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - (h) he/she is an Executive or Non-Executive Director of the Trust, or a Member of Council, Non-Executive Director, Chairman or Chief Executive Officer of another NHS Foundation Trust;
 - (i) he/she is incapable by reason of mental disorder, illness or injury of managing and administering his/her property and affairs;
 - (j) he/she has ever been convicted of an offence against children or is currently on the Register of Sexual Offenders;
 - (k) he/she has been identified by the Trust as a vexatious complainant in accordance with relevant Trust policy;
 - (l) he/she has been red or yellow-carded under the Trust's Zero Tolerance Policy.
2. Where a person has been elected or appointed to be a Member of Council and he/she becomes disqualified under Annex 3, paragraph 1, he/she shall notify the Membership Support Officer, in writing of such disqualification.
3. If it comes to the notice of the Membership Support Officer at the time of his/her appointment or later, that the Member of Council is so disqualified, he/she shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect.
4. Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and he/she shall cease to act as a Member of Council.

TERMINATION OF TENURE OF MEMBERS OF COUNCIL

1. A Member of Council may resign from office at any time during the term of that office by giving three months notice in writing to the Membership Support Officer.
2. If a Member of Council fails to attend 2 or more consecutive meetings of the Council of Members, his/her tenure of office is to be immediately terminated unless the other Members of Council are satisfied that -
 - (a) that the absence was due to a reasonable cause; and
 - (b) he/she will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
3. If a Member of Council fails to attend a training session for Members of Council, as recommended by the Chief Executive and approved by the Council of Members, within 6 months of becoming a Member of Council, his/her tenure of office is to be terminated within one month unless in the meantime the Member of Council has satisfied the Council of Members that–
 - (a) the absence was due to a reasonable cause; and
 - (b) he/she will be able to attend the training session within such a period as the Council of Members considers reasonable.
4. If the Council of Members determines that a Public or Staff Member of Council is at any time not representative of the constituency or class which they represent then they may, acting reasonably, terminate his/her tenure of office.
5. The Council of Members may agree to terminate a Member of Council's tenure of office for reasonable cause if it considers that his/her continuing as a Member of Council would or would be likely to –
 - (a) limit the ability of the Trust to fulfil its principal purpose or other of its other purposes under this constitution or otherwise to discharge its functions; or
 - (b) harm the Trust's work with other partners with whom it is engaged, or may be engaged, in the provisions of goods and services; or
 - (c) adversely affect public confidence in the Trust or the goods and services provided by the Trust; or
 - (d) otherwise bring the Trust into disrepute.
6. A Member of Council's tenure of office may be terminated by the Council of Members by a resolution approved by a majority of the remaining Members of Council on the grounds that –
 - (a) he/she has breached the code of conduct; or
 - (b) he/she has acted in a manner detrimental to the interests of the Trust.

7. A Member of Council will have the opportunity to make representations on his/her own behalf to the Council of Members but shall not be entitled to vote on the issue of termination of his/her tenure of office.

ROLES, RESPONSIBILITIES AND STANDING ORDERS FOR THE COUNCIL OF MEMBERS

1. Introduction

The Constitution of Tameside Hospital NHS Foundation Trust prescribes in paragraph 16 that the Council are to have Standing Orders for the practice and procedure of the Council.

2. Interpretation

In this Annex:-

Board of Directors – means the Board of Directors as constituted in accordance with the Constitution.

The Chairman - means the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or paragraph 23 of the Constitution.

Class – the parts of the Staff Constituency, further defined at Annex 2.

Council of Members – means the Council of Members as constituted in accordance with the Constitution.

Council Member – means any Member of the Council of Members as defined above.

Deputy Chair – means the Deputy Chair of the Board of Directors appointed in accordance with the provisions of paragraph 24 of the Constitution.

Director – means a director on the Board of Directors (see above).

Non-Executive Director – means a member of the Board of Directors who does not hold an executive office of the Trust

The Trust – means the Tameside Hospital NHS Foundation Trust

3. Composition of the Council of Members

The Composition of the Council of Members as set out in Annex 4 of the Constitution shall be:-

- 15 Public Members of Council, as specified in Annex 1 of the Constitution,
- 6 Staff Members of Council, one from each of the six classes:-
- 6 appointed Members of Council as follows:-

- (i) 1 Member from Tameside and Glossop PCT;
 - (ii/iii) 2 Local Authority Members, one each from the Metropolitan Borough Council of Tameside and the Borough of the High Peak
 - (iv) 1 Third Sector Coalition Partner;
 - (v) 1 Young Person Partner; and
 - (vi) 1 PFI Partner
4. The role of the Council of Members shall be to represent the interests of the Trust to its members and vice-versa.
5. Specific roles and responsibilities of Members of Council include –
- (a) at a General Meeting –
 - (i) to appoint or remove the Chairman and the other Non-Executive Directors. The initial Chairman appointed by the Council of Members is to be the Chairman of the former Tameside & Glossop Acute Services NHS Trust if he/she wishes to be appointed. The other initial Non-Executive Directors appointed by the Council of Members are, so far as possible, to be the Non-Executive Directors (other than the Chairman) of the former Tameside & Glossop Acute Services NHS Trust who wish to be appointed. The removal of a Non-Executive Director requires the approval of three-quarters of the Council of Members,
 - (ii) To decide the remuneration and allowance, and the other terms and conditions of office, of the Non-Executive Directors,
 - (iii) to appoint or remove the Trust's Auditor at a general meeting of the Council of Members,
 - (iv) to be presented with the annual accounts, any report of the Auditor on them and the annual report;
 - (b) to approve (by a majority of the Members of Council voting) an appointment of the Chief Executive, other than the initial Chief Executive of the Trust appointed in pursuance of Paragraph 19(6) of Schedule 7 to the 2006 Act;
 - (c) to give the views of the Council of Members to the Board of Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be submitted to the Independent Regulator;
 - (d) to consider the Annual Accounts, any report of the Auditor on them and the Annual Report; and
 - (e) to respond as appropriate when consulted by the Directors of the Trust.

6. Role of Appointed Members

The role of Council Members appointed by the PCT, Local Authority and Partnership groups or organisations, shall, in addition to their general responsibilities as Council Members, be:

- (a) to bring to the Council of Members a greater understanding of the organisation/group they represent
- (b) to speak with authority for the organisation/group they represent and where appropriate be able to explain its policies
- (c) to support the role of the Council of Members
- (d) to represent the Trust to the organisation they represent.

7. Standing Orders for the Meetings of the Council of Members

7.1 The Chair of the Trust is to preside at meetings of the Council of Members, or the Deputy Chair in the absence of the Chair.

7.2 A meeting of the Council of Members shall be deemed quorate if:

- (a) a majority of the Public Members of Council are present;
and
- (b) not less than two Staff Members of Council are present;
and
- (c) not less than three appointed Members of Council are present.

7.3 Meetings of the Council of Members are to be open to members of the public unless the Council of Members resolves to exclude the public (in relation to all or part of a meeting) for reasons of commercial, staff or patient confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the Council of Members if they are interfering with or preventing the proper conduct of the meeting.

7.4 The Council of Members is to meet quarterly and at least three times per financial year.

7.5 At a general meeting of the Council of Members, which shall take place within six months of the end of each financial year, the Council of Members shall:

- (a) receive and consider the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- (b) receive and consider the draft strategic, financial and capital plans prepared by the Board of Directors.

Arrangements for Meetings -

- 7.6 the Chair (or Deputy Chair) shall give such directions as he/she thinks fit with regard to the arrangements for meetings of the Council of Members, and accommodation of members of the public and press to ensure that Council's business shall be conducted without interruption and disruption.
- 7.7 Notice of Meetings – before each meeting of the Council of Members a notice of the meeting, specifying the business to be transacted at the meeting, and signed by the Chair on an authorised paper of the Trust, shall be delivered to all Members of Council, posted to the usual place of residence of each Member of Council, to be available to him/her at least three clear working days before the date of the meeting.
- 7.8 Setting the agenda – the Chair may determine that certain items shall appear at every meeting of the Council of Members. Any Members of Council wishing to place an item of business on the agenda shall make his/her request to the Chair at least 10 clear days before the date of the meeting. Requests made later than 10 days can be included on the agenda at the discretion of the Chair.
- 7.9 Notice of Motion – a Member of Council desiring to move or amend a motion shall send a written notice of at least 10 clear days before the meeting, to the Chair, who shall insert in the agenda all notices so received. Motions, once moved, can be withdrawn by the proposer.
- 7.10 Discussion of Motions – when a motion is under discussion it is open to a Member of Council to move:-
- an amendment to the motion;
 - adjournment of discussion to the next meeting;
 - that the meeting should proceed to next business;
 - an appointment of an ad hoc committee to deal with the specific item of business
- The mover of the motion shall have the right of reply at the close of any discussion of the motion.
- 7.11 Chairman's Ruling – statements of Members of Council shall be relevant to the matter under discussion and the decision of the Chair –on questions of order, relevance, regularity and other matters, shall be observed at the meeting.
- 7.12 Voting – all questions put to the vote shall, at the discretion of the Chair, be determined by expression or by a show of hands and shall be determined by a majority of votes of Members of Council present.
- 7.13 Minutes – the minutes of the proceedings of the meeting shall be drawn up and submitted for agreement of the next ensuing meeting where they will be signed by the Chair or Deputy Chair, whoever is presiding. No discussion shall take place on the minutes except as to their accuracy. any amendment shall be agreed and recorded at the next meeting.

7.14 Record of Attendance – the names of the Members of Council present at the meeting shall be recorded in the minute.

7.15 Conflict of Interests – a Member of Council shall disclose any pecuniary, personal or family interest, direct or indirect, in any proposed contract or other matter which is under consideration or to be considered by the Council of Members. The potential conflict of interest shall be declared by the Member of Council as soon as he/she becomes aware of it to the Chair or Membership Support Officer. The Member of Council so declaring a conflict of interests shall be excluded from any discussion or consideration of the matter in which in interest has been disclosed.

8. Committees

8.1 The Council of Members may appoint, but not delegate its powers to, committees consisting of its members to assist it in carrying out its functions. Specific terms of reference will be established.

8.2 The Council of Members will establish a Nominations Committee, comprising the Chairman and three Members of Council, to assist the Council with the appointment of the Non – Executive Directors. The Chairman of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee. In the case of the appointment of the Chairman, this committee will be chaired by the Deputy Chair. The Nominations Committee will consult the Chief Executive.

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

9. Register of Interests

As per paragraph 31 of the Constitution, the Trust shall keep a Register of Interests for all Members of Council and review it annually. Members are required to declare formally in writing any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. If there are no interests to declare, Members must also make a written declaration to that effect.

10. Travel Expenses

The Trust may pay travelling and other reasonable expenses to the Council of Members at rates determined by the Trust. Travel expense claim forms are available from the Membership Office.

11. Code of Conduct

Members of Council of the Tameside Hospital NHS Foundation Trust are required to:-

- Commit to and actively support the Trust's vision and values
- Seek at all times to support the Trust in its aims and priorities and ensure that its needs and interests are foremost in decision - making
- Act with discretion and care in respect of difficult and confidential issues
- Maintain confidentiality with regard to information gained, following the Trust's Confidentiality Policy
- Uphold the seven principles of public life as detailed by the Nolan Committee (see below)
- Accept responsibility for their own actions
- Recognise that they will not be representing any organisations if they are a member of a trade union, political party or other organisation, but will be representing the public or staff that elected them
- Be honest and act with integrity and probity at all times
- Recognise that Tameside Hospital NHS Foundation Trust is an apolitical organisation
- Seek to ensure that the membership of the constituency they represent is properly informed and able to influence the hospital's plans and services
- Seek to ensure that the best interests of the public, patients, carers and staff are upheld in decision-making and decisions are not influenced by gifts or inducements
- Seek to ensure that no one is discriminated against because of their religion, belief, race, colour, gender, marital status, disability or health status, sexual orientation, age, social or economic status or national origin
- Show their commitment to team working with their colleagues in the NHS and wider community
- Seek to ensure that their Council of Member colleagues are valued, and that judgments about them are consistent, fair, unbiased and properly founded
- Comply at all times with the Constitution, Standing Orders and Standing Financial Instructions of the Trust, and all other relevant policies, principles and guidelines
- Support and assist the Accountable Officer (Chief Executive) of the Trust in their responsibility to answer to the Independent Regulator, Commissioners and the public in terms of fully and faithfully declaring and explaining the use of resources and the performance of the total NHS in putting national policy into practice and delivery targets.

NOLAN PRINCIPLES - THE SEVEN PRINCIPLES OF PUBLIC LIFE

Members of Council must behave in accordance with the seven principles for those in public office which were set out by the Nolan Committee and are as follows:-

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so to gain financial or other material benefits for themselves, their family or their 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 as open as possible about all the decisions and actions 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 to 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.

FURTHER PROVISIONS CONCERNING THE COUNCIL OF MEMBERS

1. PCT Members of Council

- 1.1 Tameside and Glossop Primary Care Trust is authorised to appoint a PCT Member of Council pursuant to a process agreed by the Primary Care Trust and the Trust.

2. Local Authority Members of Council

- 2.1 Tameside and Glossop Metropolitan Borough Council and the Borough of High Peak Council are authorised to appoint one Local Authority Member of Council each pursuant to a process agreed by those Local Authorities and the Trust.

3. Other Appointed Members of Council

- 3.1 The Young Person of Council will be appointed from nominations from the Trust's Children and Young People's Partnership Forum.
- 3.2 The PFI Partner Member is to be appointed by the Trust's PFI Partner and in accordance with a process agreed by the Trust and Consort
- 3.3 Third Sector Coalition Partnership Member of Council is to be appointed by the Third Sector Coalition, in accordance with a process agreed by the Trust and the Coalition.

4. Role of Appointed Members

The role of Council Members appointed by the PCT, Local Authority and Partnership groups or organisations, shall, in addition to their general responsibilities as Council Members, be:

- (a) to bring to the Council of Members a greater understanding of the organisation/group they represent
- (b) to speak with authority for the organisation/group they represent and where appropriate be able to explain its policies
- (c) to support the role of the Council of Members
- (d) to represent the Trust to the organisation they represent.

5. Terms of Office

5.1 Public Members of Council –

- (a) will hold office for a period of three years;
- (b) are eligible for re-election at the end of that period;
- (c) may not hold office for longer than nine consecutive years;
- (d) cease to hold office if they cease to be a member of the Public Constituency,
- (e) in the initial Public Member of Council elections, the terms of office will be staggered. Allocations of a two or three year term will be offered in equal proportion.

5.2 Staff Members of Council –

- (a) may hold office for a period of no more than three years;
- (b) are eligible for re-election at the end of that period;
- (c) may not hold office for longer than nine consecutive years;
- (d) cease to hold office if they cease to be a member of the Staff Constituency.
- (e) in the initial staff Member of Council elections, the terms of office will be staggered. Allocations of a two or three year term will be offered in equal proportion.

5.3 Appointed Members of Council (i.e. PCT, Local Authorities, Third Sector Coalition, PFI Partner, Young Person) -

- (a) may hold office for a period of no more than three years;
- (b) are eligible for re-appointment at the end of that period;
- (c) may not hold office for longer than nine years;
- (d) cease to hold office if the sponsoring organisation withdraws its sponsorship of them.

6. Vacancies amongst Members of Council

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

6.2 Where the vacancy arises amongst the appointed Members, the Trust shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

- 6.3 Where the vacancy arises amongst the elected Members, the Council of Members shall:
- 6.3.1 invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election or any unexpired period of the term of office, or
 - 6.3.2 if there is no next highest polling candidate for that seat willing to take office and the vacancy remains, be at liberty to call an election within three months to fill the seat for the remainder of the term of office.

ANNEX 10

Tameside Hospital NHS Foundation Trust

STANDING ORDERS, STANDING FINANCIAL INSTRUCTIONS AND RESERVATION AND DELEGATION OF POWERS OF THE BOARD OF DIRECTORS

2008

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SECTION A

1 CONSTITUTION, CONDUCT AND PRACTICE

- 1.1 The Constitution requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

The Constitution requires that, inter alia, Boards draw up a schedule of decisions reserved to the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation).

The 2006 Act requires the establishment of Audit and Remuneration Committees with formally agreed Terms of Reference.

- 1.2 The Code of Conduct makes various requirements concerning possible conflicts of interest between Council of Members and Board of Directors.
- 1.3 The Code of Practice on Openness in the NHS (to be revised in light of the Freedom of Information Act) sets out the requirements for public access to information on the NHS.
- 1.4 The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, and anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under the terms of its authorisation or any financial or performance thresholds which Monitor may specify from time to time.
- 1.5 **The Chairman, Chief Executive or any other person giving information to Parliament, or to a Member of Parliament on behalf of the Trust, shall ensure that they comply with the standards expected of Ministers of the Crown with regard to openness of dealings, the giving of accurate and truthful information and the correction of any inadvertent error at the earliest opportunity. Any question submitted to the Trust by a Member of Parliament shall be responded to by the Trust within the same timescale as that expected of Ministers with respect to Parliamentary questions.**

SECTION B

2 INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

- 2.1 Save as otherwise permitted by law at any meeting, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive).
- 2.2 Any expression to which a meaning is given in the National Health Service Act 2006, (**the 2006 Act**) and all other Acts and legislation applicable to NHS foundation trusts shall have the same meaning in these Standing Orders and Standing Financial Instructions.
- 2.2.1 "Accounting Officer" means** the NHS Officer responsible and accountable for funds entrusted to the Trust. The Officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust, it shall be the Chief Executive.
- 2.2.2 "Trust"** means the Tameside Hospital NHS Foundation Trust.
- 2.2.3 "Board" and "Board of Directors" mean the** Chairman, Executive and Non-Executive Directors of the Trust collectively as a body.
- 2.2.4 "Budget"** means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
- 2.2.5 "Budget Holder"** means the Director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.
- 2.2.6 "Chairman of the Board (or Trust)"** is the person appointed by the Council of Members to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman of the Trust" shall be deemed to include the Deputy Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.
- 2.2.7 "Chief Executive"** means the Chief Officer of the Trust.
- 2.2.8 "Clinical Governance Committee"** means a Committee whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of healthcare for which the Trust has responsibility.
- 2.2.9 "Commissioning"** means the process for determining the need for, and for obtaining, the supply of healthcare and related services by the Trust within available resources.

- 2.2.10 "Committee"** means a Committee or Sub-Committee created and appointed by the Trust.
- 2.2.11 "Committee Members"** means persons formally appointed by the Board to sit on or to chair specific Committees.
- 2.2.12 "Contracting and Procuring"** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance, and for disposal of surplus and obsolete assets.
- 2.2.13 "Director of Finance"** means the Chief Financial Officer of the Trust.
- 2.2.14 "Funds held on trust"** shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under the 2006 Act specifically section 51. and the Charities Acts such funds may or may not be Charitable.
- 2.2.15 "Executive Director"** means the directly employed officer of the Trust and member of the Board of Directors with specific and corporate responsibility for the effective management and operation of the Trust.
- 2.2.16 "Non-Executive Director"** means appointed Non-Executive Officer and member of the Board of Directors with responsibility for the scrutiny and assurance of the management and operation of the Trust.
- 2.2.17 "Nominated Officer"** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
- 2.2.18 "Officer"** means employee of the Trust or any other person holding a paid appointment or office with the Trust.
- 2.2.19 "SFIs"** means Standing Financial Instructions. SFIs regulate the conduct of the Trust's financial matters.
- 2.2.20 "Standing Orders"** means Standing Orders. SOs incorporate the constitution and regulate the business conduct of the Trust.
- 2.2.21 "Deputy Chairman"** means the non-executive officer member appointed by the Board to take on the Chairman's duties if the Chairman is absent for any reason.
- 2.2.22 "The Constitution"** means the Constitution of the Trust.
- 2.2.23 "Monitor"** means the Independent Regulator of NHS Foundation Trusts.
- 2.2.24 "Prudential Borrowing Code"** means the code set by Monitor to determine the limit on total amount of borrowing by the NHS Foundation Trust.

2.2.25 “Prudential Borrowing Limit” means the total amount of borrowing limit approved by Monitor.

2.2.26 “Terms of Authorisation” means the authorisation document issued by Monitor conferring Foundation Trust status on the organisation.

SECTION C – STANDING ORDERS

1 INTRODUCTION

1.1 *Statutory Framework*

Tameside Hospital NHS Foundation Trust (the Trust), is a statutory body which came into existence in accordance with the 2006 Act.

- (1) The principal place of business of the Trust is Tameside General Hospital, Fountain Street, Ashton under Lyne, OL6 9RW.
- (2) NHS Trusts are governed by Act of Parliament, mainly the 2006 Act.
- (3) The functions of the Trust are conferred by this legislation.
- (4) As a statutory body, the Trust has specified powers to contract in its own name and to act as a Corporate Trustee. In the latter role, it is accountable to the Charities Commission under the Charities Act 1993 for those funds deemed to be Charitable.
- (5) The Trust also has the power under the 2006 Act to fund projects jointly planned with local authorities, voluntary organisations and other bodies for the purposes of or in connection with its functions..
- (6) The Constitution requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

1.2 *NHS Framework*

- (1) In addition to the statutory requirements, Monitor may issue guidance in respect of its compliance framework.
- (2) The Trust's Constitution requires that, inter alia, Boards draw up a schedule of decisions reserved to the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The Constitution also requires the establishment of Audit and Remuneration Committees with formally agreed Terms of Reference. The Constitution makes various requirements concerning possible conflicts of interest of Board members.
- (3) The Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

1.3 Delegation of Powers

The Trust has powers to delegate and make arrangements for delegation. The Trust's Constitution (Annex 10(ii)) set out the detail of these arrangements. This document has effect as if incorporated into the Standing Orders.

1.4 Integrated Governance

Trust Boards are now encouraged to move away from silo governance and develop integrated governance that will lead to good governance and to ensure that decision-making is informed by intelligent information covering the full range of corporate, financial, clinical, information and research governance. Guidance from the Department of Health on the move toward and implementation of integrated governance has been issued and will be incorporated in the Trust's Governance Strategy (see Integrated Governance Handbook 2006). Integrated Governance will better enable the Board to take a holistic view of the organisation and its capacity to meet its legal and statutory requirements and clinical, quality and financial objectives.

2. THE TRUST BOARD: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF DIRECTORS

2.1 Composition of the Membership of the Trust Board

In accordance with section 20 of the Constitution, the composition of the Foundation Trust Board of Directors shall be as follows.

- (1) The Chairman of the Trust (Appointed by the Council of Members)
- (2) Five Non-Executive Directors (appointed by the Council of Members)
- (3) Not less than four, and not more than five executive Directors
 - One of the Executive Directors shall be the Chief Executive,
The Chief Executive shall be the Accounting Officer
 - One of the Executive Directors shall be the Finance Director
 - One of the Executive Directors shall be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984)
 - One of the Executive Directors shall be a registered nurse or registered midwife.

2.2 Appointment of Chairman and Directors of the Trust

Appointment of the Chairman and Directors of the Trust is as set out in Sections 22-26 of the Constitution.

2.3 Terms of Office of the Chairman and Directors

The regulations setting out the period of tenure of office of the Chairman and Directors and for the termination or suspension of office of the Chairman and Directors are contained in Section 30 of the Constitution.

2.4 Appointment and Powers of Deputy Chairman

- (1) Subject to Standing Order 2.4 (2) below, the Chairman and Directors of the Trust may appoint one of their number, who is not also an Executive Director, to be Deputy Chairman for such period, not exceeding the remainder of his/her term as a non-executive Director of the Trust, as they may specify on appointing him/her, as referred to in Section 24 of the Constitution.
- (2) Any Non-Executive Director so appointed may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman. The Chairman and Directors may thereupon appoint another Non-Executive Director as Deputy Chairman in accordance with the provisions of Standing Order 2.4 (1).
- (3) Where the Chairman of the Trust has died or has ceased to hold office, or where he/she have been unable to perform his/her duties as Chairman owing to illness or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes their duties as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform those duties, be taken to include references to the Deputy Chairman.

2.5 Joint Directors

- (1) Where more than one person is appointed jointly to a Director post, these persons shall count for the purpose of Standing Order 2.1 as one person.
- (2) Where the office of a Director of the Board of Directors is shared jointly by more than one person:
 - (a) either or both of those persons may attend or take part in meetings of the Board,
 - (b) if both are present at a meeting they should cast one vote if they agree,
 - (c) in the case of disagreements no vote should be cast, and
 - (d) the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order 3.36.

2.6 Role of Directors

The Board will function as a corporate decision making body, and Executive and Non-Executive Directors will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions. (Please also see Section 5. 1 of the Constitution.)

(1) Executive Directors

Executive Directors shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

(2) Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. He/she is the **Accounting Officer** for the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Constitution.

(3) Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. He/she shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

(4) Non-Executive Directors

The Non-Executive Directors shall not be granted, nor shall they seek, to exercise any individual executive powers on behalf of the Trust. They may, however, exercise collective authority when acting as members of, or when chairing a committee of the Trust, which has delegated powers.

(5) Chairman

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

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

The Chairman shall also preside over meetings of the Council of Members.

The Chairman shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

2.7 Corporate Role of the Board

- (1) All business shall be conducted in the name of the Trust.
- (2) All funds received in trust shall be held in the name of the Trust as Corporate Trustee.
- (3) The powers of the Trust established under statute shall be exercised by the Board Meeting in formal sessions.
- (4) The Board shall define and regularly review the functions it exercises in accordance with its statutory duties and the terms of its authorisation by Monitor.

2.8 Schedule of Matters reserved to the Board and Scheme of Delegation

The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the Constitution and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

2.9 Lead Roles for Board Directors

The Chairman will ensure that the designation of Lead roles or appointments of Board Directors as required by the Department of Health and/or Monitor, or as set out in any statutory or other guidance, will be made in accordance with that guidance or statutory requirement (eg appointing a Lead Board Director with responsibilities for Infection Control or Child Protection Services etc).

3 MEETINGS OF THE BOARD OF DIRECTORS

- 3.1** The Board of Directors shall meet once per calendar month in private, having regard to the confidential nature of the business to be transacted, publicity on which could be prejudicial to the public interest, and the business interests of the Trust.
- 3.2** The Chairman may call a meeting of the Board of Directors at any time over and above the normal schedule of meetings, referred to in SO 3.1 above. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.

- 3.3 Notice of Meetings** - before each meeting of the Trust, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an Officer of the Trust authorised by the Chairman to sign on his behalf, 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.
- 3.4** Lack of service of the notice on any Director shall not affect the validity of a meeting.
- 3.5** In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.

Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

- 3.6 Setting the Agenda** - the Board may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)
- 3.7** A Director desiring a matter to be included on the agenda shall make his/her request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.
- 3.8 Chairman of Meeting** - at any meeting of the Trust, the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Deputy Chairman shall preside. If the Chairman and Deputy Chairman are absent such Non-Executive Director as the Directors present shall choose shall preside.
- 3.9** If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest, the Deputy Chairman if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.
- 3.10 Notices of Motion** - a Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to SO 3.4.
- 3.11 Withdrawal of Motion or Amendments** - a motion or amendment once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

3.12 Motion to Rescind a Resolution - notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Directors who give it and also the signature of four other Directors. When any such motion has been disposed of by the Trust, it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within six months. However, the Chairman may do so if he/she considers it appropriate.

3.13 Motions - the mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

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

- an amendment to the motion,
- the adjournment of the discussion or the meeting,
- that the meeting proceed to the next business, or
- the appointment of an ad hoc committee to deal with a specific item of business.

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.

3.15 Chairman's Ruling - statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

3.16 Voting - all questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands and shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote. A paper ballot may also be used if a majority of the Directors present so request.

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

3.18 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

3.19 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

3.20 An Officer who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director.

An officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status, may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the Minutes.

3.21 Minutes - the Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

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

3.23 Minutes shall be circulated in accordance with Directors' wishes.

3.24 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 Trust,
- b) either of those persons shall be eligible to vote in the case of agreement between them,
- c) in the case of disagreement between them no vote should be cast, and
- d) the presence of either or both of those persons shall count as one person for the purposes of Quorum.

3.25 Suspension of Standing Orders - except where this would contravene any statutory provision any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

3.26 A decision to suspend Standing Orders shall be recorded in the Minutes of the Meeting.

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

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

3.29 The Audit Committee shall review every decision to suspend Standing Orders.

3.30 Variation and Amendment of Standing Orders - these Standing Orders shall be amended only if

- a notice of motion under Standing Orders has been given,
- no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment,
- at least two-thirds of the Directors are present; and
- the variation proposed does not contravene a statutory provision..

3.31 Record of Attendance - the names of the Directors present at the meeting shall be recorded in the Minutes.

3.32 Quorum - no business shall be transacted at a meeting of the Trust unless at least one-third of the whole number of the Directors are present including at least one Executive Director and one Non-Executive Director.

3.33 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

3.34 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the Minutes of the Meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board considers the recommendations of the Remuneration and Terms of Service Committee).

4 APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

4.1 The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a Committee, so appointed by a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 Emergency Powers - the powers which the Board has retained to itself within these Standing Orders may, in emergency, be exercised by the Chief Executive and the Chairman after having consulted 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.

- 4.3 Delegation to Committees** - the Board shall agree from time to time to the delegation of executive powers to be exercised by Committees, which it has formally constituted. The constitution and Terms of Reference of these Committees and their specific executive powers shall be approved by the Board. Committees may not delegate their powers to a sub-committee unless authorised by the Board.

The Committees established by the Trust are as follows.

Audit*
Remuneration and Terms of Service**
Complaints
Clinical Governance
Corporate Governance

Charitable Funds

*Required to be established under the 2006 Act and in accordance with section 35 of the Constitution.

** Required to be established under the 2006 Act and in accordance with section 30 of the Constitution.

The approved Terms of Reference for each of the Committees are reproduced at Section F

Terms of Reference for each of the Committees will be reviewed annually by the Trust Board.

- 4.4 Delegation to Officers** - those functions of the Trust which have not been retained as reserved by the Board or delegated to an executive committee shall be exercised on behalf of the Board by the Chief Executive.

The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Board.

- 4.5** The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Audit Committee, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Audit Committee as indicated above.

- 4.6** 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 requirement.

- 4.7** The arrangements made by the Board as set out in the "Reservations of Powers to the Board and Delegation of Powers" shall have effect as if incorporated in these Standing Orders.

5 OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

5.1 Policy Statements - General Principles

The Trust Board will, from time to time, agree and approve Policy statements/procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board of Directors' Meeting Minute and will be deemed, where appropriate, to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

5.2 Specific Policy Statements

Notwithstanding the application of SO 5.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements.

- Constitution of the Trust
- Standards of Business Conduct and Conflicts of Interest Policy for Trust Staff
- Staff Disciplinary and Appeals Procedures adopted by the Trust both of which shall have effect as if incorporated in these Standing Orders

5.3 Standing Financial Instructions

Standing Financial Instructions adopted by the Board of Directors in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

5.4 Specific Guidance

Notwithstanding the application of SO 5.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with any other guidance, Act or legislation which the Foundation Trust must comply with, in particular:- .

- National Health Service Act 2006
- Caldicott Report 1997 and the Caldicott Guardian Manual 2006
- Human Rights Act 1998
- Freedom of Information Act 2000
- Data Protection Act 1998

6 DUTIES AND OBLIGATIONS OF BOARD MEMBERS, DIRECTORS AND SENIOR MANAGERS UNDER THE STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

6.1 Declaration of Interests

6.1.1 Requirements for Declaring Interests and applicability to Board Members

- i) In accordance with the Constitution,(section 29), Trust Directors are required to declare interests which are relevant and material to the NHS Board of which they are a member. All existing Board Directors should declare such interests. Any Board Directors appointed subsequently should do so on appointment. Declarations should be made within 28 days of appointment or within 7 days of a subsequent interest arising

6.1.2 Interests which are Relevant and Material

- (i) Interests which should be regarded as "relevant and material" are as follows.
 - a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies)
 - b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS
 - c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS
 - d) A position of Authority in a charity or voluntary organisation in the field of health and social care
 - e) Any connection with a voluntary or other organisation contracting for NHS services
 - f) Research funding/grants that may be received by an individual or their Department
 - g) Interests in pooled funds that are under separate management
- (ii) Any member of the Trust Board who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in Standing Order 6.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Board Member shall declare his/her interest by giving notice in writing of such fact to the Trust as soon as practicable.

6.1.3 Advice on Interests

If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman of the Trust or with the Trust's Chief Executive.

Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

6.1.4 Recording of Interests in Board of Directors' Meetings Minutes

At the time Board Directors' interests are declared, they should be recorded in the Board of Directors' Meeting Minutes.

Any changes in interests should be declared at the next Board of Directors meeting following the change occurring and recorded in the Minutes of that meeting.

6.1.5 Publication of Declared Interests in Annual Report

Directors' Directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

6.1.6 Conflicts of Interest which arise during the course of a Meeting

During the course of a Board of Directors' meeting, if a conflict of interest is established, the Board Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with SO 6.3)

6.2 Register of Interests

6.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or Committee Members. In particular, the Register will include details of all Directorships and other relevant and material interests (as defined in SO 6.1.2) which have been declared by both Executive and Non-Executive Trust Board members.

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

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

6.3 Exclusion of Chairman and Directors in proceedings on account of Pecuniary Interest

6.3.1 Definition of Terms used in interpreting 'Pecuniary' Interest

For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order.

- (i) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse)
- (ii) "contract" shall include any proposed contract or other course of dealing.
- (iii) "Pecuniary Interest"

Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if

- a) he/she, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
 - b) he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
- iv) Exception to Pecuniary Interests

A person shall not be regarded as having a pecuniary interest in any contract if

- a) neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or
- b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
- c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided, however, that where paragraph (c) above applies, the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 7.1.2 (ii).

6.3.2 Exclusion in Proceedings of the Trust Board

- (i) Subject to the following provisions of this Standing Order, if the Chairman or a Director of the Trust Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust Board at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (ii) The Trust Board may exclude the Chairman or a Director of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under consideration.
- (iii) This Standing Order applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Trust and applies to a member of any such committee or sub-committee (whether or not he/she is also a member of the Trust) as it applies to a member of the Trust.

6.4 Standards of Business Conduct

6.4.1 Trust Policy and National Guidance

All Trust Staff and Members of Council, must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy and the National Guidance contained in HSG(93)5 on 'Standards of Business Conduct for NHS staff' (see SO 5.2).

6.4.2 Interest of Officers in Contracts

- i) Any officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in SO 6.3) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive as soon as practicable.
- ii) An Officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- iii) The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

6.4.3 Canvassing of and Recommendations by Members in Relation to Appointments

- i) Canvassing of members of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- ii) Members of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

6.4.4 Relatives of Members or Officers

- i) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any member or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- ii) The Chairman and Executive and Non-Executive Directors of the Trust shall disclose to the Trust Board any relationship between himself/herself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- iii) On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.
- iv) Where the relationship to a member of the Trust is disclosed, the Standing Order headed 'Disability of Chairman and members in proceedings on account of pecuniary interest' (SO 6) shall apply.

7 MEMBERSHIP OF THE TRUST

For all matters pertaining to the Council of Members and the Membership of the Trust, please refer to the Constitution of the Trust with particular reference to the following.

- Paragraphs 11-19 of the Constitution
- Paragraph 38 of the Constitution
- Annexes 1-9 to the Constitution

8 CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

8.1 Custody of Seal

The common seal of the Trust shall be kept by the Chief Executive or a nominated Manager by him/her in a secure place.

8.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive, and not also from the originating Department, and shall be attested by them.

8.3 Register of Sealing

The Chief Executive shall keep a register in which he/she, or another Manager of the Authority authorised by him/her, shall enter a record of the sealing of every document.

8.4 Signature of Documents

Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (eg sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

9 MISCELLANEOUS (see overlap with SFI No. 20.3)

9.1 Joint Finance Arrangements

The Board may confirm contracts to purchase from a voluntary organisation or a local authority using its powers under the 2006 Act. The Board may confirm contracts to transfer money from the NHS to the voluntary sector or the health related functions of local authorities where such a transfer is to fund services is for the purposes of or in connection with the Trust's functions

See overlap with Standing Financial Instruction No. 20.3.

SECTION D - STANDING FINANCIAL INSTRUCTIONS

10 INTRODUCTION

10.1 General Instructions

10.1.1 These Standing Financial Instructions detail the financial responsibilities, policies and procedures adopted by the Trust. They are designed to ensure that the Trust's financial transactions are carried out in accordance with the law and with Government policy in order to achieve probity, accuracy, economy, efficiency and effectiveness. They should be used in conjunction with the Schedule of Decisions Reserved to the Board and the Scheme of Delegation adopted by the Trust.

10.1.2 These Standing Financial Instructions identify the financial responsibilities which apply to everyone working for the Trust and its constituent organisations including Trading Units. They do not provide detailed procedural advice and should be read in conjunction with the detailed departmental and financial procedure notes. All financial procedures must be approved by the Director of Finance.

10.1.3 Should any difficulties arise regarding the interpretation or application of any of the Standing Financial Instructions, then the advice of the Director of Finance must be sought before acting. The user of these Standing Financial Instructions should also be familiar with and comply with the provisions of the Trust's Standing Orders.

10.1.4 **The failure to comply with Standing Financial Instructions and Standing Orders can in certain circumstances be regarded as a disciplinary matter that could result in dismissal.**

10.1.5 **Overriding Standing Financial Instructions** – if for any reason these Standing Financial Instructions are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance shall be reported to the next formal meeting of the Audit Committee for referring action or ratification. All members of the Board and staff have a duty to disclose any non-compliance with these Standing Financial Instructions to the Director of Finance as soon as possible.

10.2 Responsibilities and Delegation

10.2.1 The Trust Board

The Board exercises financial supervision and control by

- (a) formulating the financial strategy,
- (b) requiring the submission and approval of budgets within approved allocations/overall income,

(c) defining and approving essential features in respect of important procedures and financial systems (including the need to obtain value for money), and

(d) defining specific responsibilities placed on members of the Board and employees as indicated in the Scheme of Delegation document.

10.2.2 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These are set out in the “Scheme of Reservation and Delegation: Decisions Reserved to the Board” document. All other powers have been delegated to such other committees as the Trust has established.

10.2.3 The Chief Executive and Director of Finance

The Chief Executive and Director of Finance will, as far as possible, delegate their detailed responsibilities, but they remain accountable for financial control. Where the Chief Executive and Director of Finance delegate their responsibilities if such delegations are not covered in the scheme of delegation or SFIs they shall establish a separate systems for recording such delegations as are reasonable and practical.

Within the Standing Financial Instructions, it is acknowledged that the Chief Executive is ultimately accountable to the Board, and as Accounting Officer, for ensuring that the Board meets its obligation to perform its functions within the available financial resources. The Chief Executive has overall Executive responsibility for the Trust’s activities; is responsible to the Chairman and the Board for ensuring that its financial obligations and targets are met; and has overall responsibility for the Trust’s system of internal control.

10.2.4 It is a duty of the Chief Executive to ensure that Members of the Board and, employees and all new appointees are notified of, and put in a position to, understand their responsibilities within these Instructions.

10.2.5 The Director of Finance

The Director of Finance is responsible for:

- (a) implementing the Trust’s financial policies and for coordinating any corrective action necessary to further these policies,
- (b) maintaining an effective system of internal financial control including ensuring that detailed financial procedures and systems incorporating the principles of separation of duties and internal checks are prepared, documented and maintained to supplement these instructions,
- (c) ensuring that sufficient records are maintained to show and explain the Trust’s transactions, in order to disclose, with reasonable accuracy, the financial position of the Trust at any time,

and, without prejudice to any other functions of the Trust, and employees of the

Trust, the duties of the Director of Finance include

- (d) the provision of financial advice to other members of the Board and employees,
- (e) the design, implementation and supervision of systems of internal financial control, and
- (f) the preparation and maintenance of such accounts, certificates, estimates, records and reports as the Trust may require for the purpose of carrying out its statutory duties.

10.2.6 Board Members and Employees

All members of the Board and employees, severally and collectively, are responsible for

- (a) the security of the property of the Trust,
- (b) avoiding loss,
- (c) exercising economy and efficiency in the use of resources, and
- (d) conforming to the requirements of Standing Orders, Standing Financial Instructions, Financial Procedures and the Scheme of Delegation.

10.2.7 Contractors and their Employees

Any contractor or employee of a contractor who is empowered by the Trust to commit the Trust to expenditure, or who is authorised to obtain income, shall be covered by these instructions. It is the responsibility of the Chief Executive to ensure that such persons are made aware of this.

10.2.8 For all members of the Board and any employees who carry out a financial function, the form in which financial records are kept and the manner in which members of the Board and employees discharge their duties must be to the satisfaction of the Director of Finance.

11 AUDIT

11.1 Audit Committee

11.1.1 In accordance with the Constitution, the Board shall formally establish an Audit Committee, with clearly defined Terms of Reference and following best practice guidance issued by Monitor and the Audit Commission which will provide an independent and objective view of internal control by

- (a) overseeing Internal and External Audit services,
- (b) reviewing financial and information systems and monitoring the integrity of the financial statements and reviewing significant financial reporting

judgments,

- (c) review the establishment and maintenance of an effective system of financial risk management and internal control, across the whole of the organisation's activities (both clinical and non-clinical), that supports the achievement of the organisation's objectives,
- (d) monitoring compliance with Standing Orders and Standing Financial Instructions,
- (e) reviewing schedules of Losses and Compensations,
- (f) establishing reporting mechanisms which provide the Trust Board appropriate assurance in respect of audit-related issues identified in the Board Assurance Framework,
- (g) reviewing and approving the Trust's Treasury Management Policy and surplus cash investment policies on a yearly basis, and
- (h) the Board of Directors shall satisfy itself that at least one member of the Audit Committee has recent financial experience.

11.1.2 Where the Audit Committee considers there is evidence of ultra vires transactions, evidence of improper acts, or if there are other important matters that the Committee wishes to raise, the Chairman of the Audit Committee should raise the matter at a full meeting of the Board. Exceptionally, the matter may need to be referred to Monitor .

11.1.3 It is the responsibility of the Director of Finance to ensure an adequate Internal Audit service is provided and the Audit Committee shall be involved in the selection process when/if an Internal Audit service provider is changed.

11.2 Director of Finance

11.2.1 The Director of Finance is responsible for

- (a) ensuring there are arrangements to review, evaluate and report on the effectiveness of internal financial control including the establishment of an effective Internal Audit function,
- (b) ensuring that the Internal Audit is adequate and meets the NHS Foundation Trust audit standards,
- (c) deciding at what stage to involve the police in cases of misappropriation and other irregularities not involving fraud or corruption, and
- (e) ensuring that an annual internal audit report is prepared for the consideration of the Audit Committee. The report must cover

- (i) a clear opinion on the effectiveness of internal control in accordance with current guidance issued by Monitor, and compliance with the Standards for Better Health,
- (ii) major internal financial control weaknesses discovered,
- (iii) progress on the implementation of internal audit recommendations,
- (iv) progress against plan over the previous year,
- (v) strategic audit plan covering the coming three years, and
- (vi) a detailed plan for the coming year.

11.2.2 The Director of Finance or designated auditors, are entitled without necessarily giving prior notice, to require and receive

- (a) access to all records, documents and correspondence relating to any financial or other relevant transactions, including documents of a confidential nature,
- (b) access at all reasonable times to any land, premises or members of the Board or employee of the Trust,
- (c) the production of any cash, stores or other property of the Trust under a member of the Board and an employee's control, and
- (d) explanations concerning any matter under investigation.

11.3 Role of Internal Audit

11.3.1 Internal Audit will review, appraise and report upon

- (a) the extent of compliance with, and the financial effect of, relevant established policies, plans and procedures,
- (b) the adequacy and application of financial and other related management controls,
- (c) the suitability of financial and other related management data,
- (d) the extent to which the Trust's assets and interests are accounted for and safeguarded from loss of any kind, arising from
 - (i) fraud and other offences,
 - (ii) waste, extravagance, inefficient administration, and
 - (iii) poor value for money or other causes.
- (e) Internal Audit shall also independently verify the Trusts Statement of Internal Control in compliance with guidance issued by Monitor.

11.3.2 Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores, or other property or any suspected irregularity in the exercise of any function of a pecuniary nature, the Director of Finance must be notified immediately.

11.3.3 The Head of Internal Audit will normally attend Audit Committee Meetings and has a right of access to all Audit Committee members, the Chairman and Chief Executive of the Trust.

11.3.4 The Head of Internal Audit shall be accountable to the Director of Finance. The reporting system for internal audit shall be agreed between the Director of Finance, the Audit Committee and the Head of Internal Audit. The agreement shall be in writing and shall comply with the guidance on reporting contained in the NHS Internal Audit Standards. The reporting system shall be reviewed at least every three years.

11.3.5 Management responsibility with regard to Internal Audit:

Managers in receipt of audit reports referred to them have a duty to take appropriate remedial action within the timescales specified in the internal audit report. The Director of Finance shall identify a formal review process to monitor the extent of compliance with audit recommendations. Where appropriate remedial action has failed to take place within a reasonable period, the matter shall be reported to the Director of Finance. Changes implemented in response to audit recommendations must be maintained in the future and not viewed as merely satisfying an immediate audit point.

11.4 External Audit

11.4.1 The External Auditor is appointed by the Council of Members (following recommendation by the Audit Committee) and paid for by the Trust. The Audit Committee must ensure a cost-efficient service. If there are any problems relating to the service provided by the External Auditor, then this should be raised with the External Auditor and if deemed appropriate, reported to the Council of Members. .

11.4.2 The Audit Code for NHS Foundation Trusts (“the Audit Code”) contains the directions of Monitor under Schedule 7 to the 2006 Act, with respect of the standards, procedures and techniques to be adopted by the auditor. The External Auditor must also comply with Schedule 10.

11.4.3 Appointment of the External Auditor must comply with Paragraph 23 of Schedule 7 to the 2006 Act..

11.4.4 The Trust shall comply with the Audit Code.

11.4.5 The appointed Auditor shall comply with the Audit Code.

11.5 Fraud and Corruption

11.5.1 In line with their responsibilities, the Trust Chief Executive and Director of Finance shall monitor and ensure compliance with good practice guidance issued on fraud and corruption.

11.5.2 The Trust shall nominate a suitable person to carry out the duties of the Local Counter Fraud Specialist.

11.5.3 The Local Counter Fraud Specialist shall report to the Trust Director of Finance and shall work with staff in the Counter Fraud and Security Management Services (CFSMS) and the Regional Counter Fraud and Security Management Services (CFSMS) 11.5.4. The Local Counter Fraud Specialist will provide a written report to the Audit Committee, at least annually, on counter fraud work within the Trust.

11.6 Security Management

11.6.1 In line with their responsibilities, the Trust Chief Executive will monitor and ensure robust and appropriate security management arrangements are established and maintained.

11.6.2 The Chief Executive shall nominate a suitable person to carry out the duties of security management on behalf of the Trust..

11.6.3 The Trust shall nominate an Executive Director to be responsible to the Board for security management.

11.6.4 The Chief Executive has overall responsibility for controlling and co-ordinating security. However, key tasks are delegated to the Executive Director lead and the appointed Local Security Management Specialist (LSMS).

12 PLANNING, BUDGETS, BUDGETARY CONTROL, AND MONITORING

12.1 Preparation and Approval of Plans and Budgets

12.1.1 The Chief Executive will compile and submit to the Board, a Strategic Planning Document which encompasses and annual business plan that takes into account financial targets and forecast limits of available resources. The annual business plan will contain

- (a) a statement of the significant assumptions on which the plan is based, and
- (b) details of major changes in workload, delivery of services or resources required to achieve the plan.

12.1.2 Prior to the start of the financial year, the Director of Finance will, on behalf of the Chief Executive, prepare and submit budgets for approval by the Board. Such budgets will

- (a) be in accordance with the aims and objectives set out in the Trust's annual business plan,
- (b) accord with workload and manpower plans,
- (c) be produced following discussion with appropriate budget holders,
- (d) be prepared within the limits of available funds,

- (e) identify potential risks,
- (f) be based on reasonable and realistic assumptions, and
- (g) enable the Trust to comply with the requirements of the Prudential Borrowing Code and the terms of its Authorisation.

12.1.3 The Director of Finance shall monitor financial performance against budget and plan, periodically review them, and report to the Board.

12.1.4 All budget holders must provide information as required by the Director of Finance to enable budgets to be compiled.

12.1.5 All budget holders will sign up to their allocated budgets at the commencement of each financial year.

12.1.6 The Director of Finance has a responsibility to ensure that adequate training is delivered on an on-going basis to budget holders to help them manage successfully.

12.2 Budgetary Delegation

12.2.1 The Chief Executive may delegate the management of a budget to permit the performance of a defined range of activities. The terms of delegation shall be specified in the Scheme of Delegation.

12.2.2 The Chief Executive and delegated Budget Holders must not exceed the budgetary total or virement limits set by the Board.

12.2.3 Any budgeted funds not required for their designated purpose(s) revert to the immediate control of the Chief Executive, subject to any authorised use of virement.

12.2.4 Non-recurrent budgets should not be used to finance recurring expenditure without the authority in writing of the Chief Executive/ Director of Finance.

12.3 Budgetary Control and Reporting

12.3.1 The Director of Finance will devise and maintain systems of budgetary control. These will include

- (a) monthly financial reports to the Board in a form approved by the Board containing
 - (i) income and expenditure to date showing trends and forecast year-end position,
 - (ii) balance sheet and movements in working capital,
 - (iii) cash flow statement and cash flow forecasts,

- (iv) details of compliance against with the Prudential Borrowing Code and the Trust's authorised Prudential Borrowing Limit,
 - (iv) capital project spend and projected outturn against plan,
 - (v) explanations of any material variances from plan,
 - (vi) details of any corrective action where necessary and the Chief Executive's and/or Director of Finance's view of whether such actions are sufficient to correct the situation, and
- (b) the issue of timely, accurate and comprehensible advice and financial reports to each budget holder, covering the areas for which they are responsible,
 - (c) investigation and reporting of variances from financial, workload and manpower budgets,
 - (d) monitoring of management action to correct variances,
 - (e) arrangements for the authorisation of budget transfers, and
 - (g) advising the Chief Executive and the Board of the consequences of changes in policy, pay awards and other events and trends affecting budgets and shall advise on the economic and financial impact of future plans and projects and budgets.

12.3.2 Each Budget Holder is responsible for ensuring that

- (a) any likely overspending or reduction of income which cannot be met by virement is not incurred without the prior consent of the Chief Executive or the Director of Finance,
- (b) the amount provided in the approved budget is not used in whole or in part for any purpose other than that specifically authorised subject to the rules of virement, and
- (c) no permanent employees are appointed without the approval of the Chief Executive other than those provided for within the available resources and manpower establishment as approved by the Board.

12.3.3 The Chief Executive is responsible for identifying and implementing cost improvements and income generation initiatives in accordance with the requirements of the requirements of the Annual Business Plan and a balanced budget.

12.4 Capital Expenditure

12.4.1 The general rules applying to delegation and reporting shall also apply to capital expenditure. (The particular applications relating to capital are contained in SFI 22).

12.5 Monitoring Returns

12.5.1 The Chief Executive is responsible for ensuring that the appropriate monitoring forms are submitted to Monitor within the specified time scales.

13 ANNUAL ACCOUNTS AND REPORTS

13.1 The Accounting Officer, on behalf of the Trust, will

- (a) prepare financial returns in accordance with the accounting policies and guidance given by Monitor, the Independent Regulator of NHS Foundation Trusts, and the Treasury, the Trust's accounting policies, and generally accepted accounting practice,
- (b) prepare and submit annual financial reports to Monitor in accordance with current guidelines, and
- (c) submit financial returns to the Monitor for each financial year in accordance with the timetable prescribed by Monitor.

13.2 The Trust's Annual Accounts must be audited by an Auditor appointed by the Council of Members and in accordance with the Audit Code. The Trust's audited annual accounts must be presented to a public meeting and made available to the public.

13.3 The Trust will publish an annual report, in accordance with paragraph 26(1) of Schedule 7., and present it at a public meeting. The document will comply with the Foundation Trust Manual for Accounts.

14 BANK AND OPG ACCOUNTS

14.1 General

14.1.1 The Director of Finance is responsible for managing the Trust's banking arrangements and for advising the Trust on the provision of banking services and operation of accounts. This advice will take into account of guidance issued from time to time by Monitor.

14.1.2 The Board shall approve the banking arrangements.

14.2 Bank and OPG Accounts

14.2.1 The Director of Finance is responsible for

- (a) bank accounts and Office of the Paymaster General (OPG) accounts; and other forms of working capital financing that may be required,
- (b) establishing separate bank accounts for the Foundation Trust's non-exchequer funds,

- (c) ensuring payments made from bank or OPG accounts do not exceed the amount credited to the account except where arrangements have been made,
- (d) reporting to the Board all arrangements made with the Trust's bankers for accounts to be overdrawn (together with the remedial action taken),
- (e) establishing an appropriate committed working capital facility with a bank which complies with the Foundation Trust Prudential Borrowing Code and any subsequent guidance issued by Monitor, and
- (f) ensuring that committed working capital facility proposals are reviewed and agreed by the Audit Committee, prior to seeking approval from the Board.

14.2.2 All bank accounts should be held in the name of the Trust. No officer other than the Director of Finance shall open any account in the name of the Trust or for the purpose of furthering Trust activities.

14.3 Banking Procedures

14.3.1 The Director of Finance will prepare detailed instructions on the operation of bank and OPG accounts which must include

- (a) the conditions under which each bank and OPG account is to be operated,
- (b) the limit to be applied to any overdraft; and compliance with conditions of agreed committed working capital facility arrangements, and
- (c) those authorised to sign cheques or other orders drawn on the Trust's accounts.

14.3.2 The Director of Finance must advise the Trust's bankers in writing of the conditions under which each account will be operated.

14.4 Tendering and Review

14.4.1 The Director of Finance will review the commercial banking arrangements of the Trust at regular intervals to ensure they reflect best practice and represent best value for money by periodically seeking competitive tenders for the Trust's commercial banking business.

14.4.2 Competitive tenders should be sought at least every five years. The results of the tendering exercise should be reported to the Audit Committee. This review is not necessary for OPG accounts.

15 INCOME, FEES AND CHARGES AND SECURITY OF CASH, CHEQUES AND OTHER NEGOTIABLE INSTRUMENTS

15.1 Income Systems

15.1.1 The Director of Finance is responsible for designing, maintaining and ensuring compliance with systems for the proper recording, invoicing, collection and coding of all monies due.

15.1.2 The Director of Finance is also responsible for the prompt banking of all monies received.

15.2 Fees and Charges

15.2.2 The Director of Finance is responsible for approving and regularly reviewing the level of all fees and charges other than those determined by the Department of Health (such as Payment by Results national tariffs), HM Treasury or by Statute,. Independent professional advice on matters of valuation shall be taken as necessary. Where sponsorship income (including items in kind such as subsidised goods or loans of equipment) is considered, the guidance and legislation applicable to NHS foundation trusts on Commercial Sponsorship – Ethical standards shall be considered and complied with.

15.2.3 All employees must inform the Director of Finance promptly of money due arising from transactions which they initiate/deal with, including all contracts, leases, tenancy agreements, private patient undertakings and other transactions.

15.3 Debt Recovery

15.3.1 The Director of Finance is responsible for the appropriate recovery action on all outstanding debts.

15.3.2 Income not received should be dealt with in accordance with losses procedures.

15.3.3 Over-payments should be detected (or preferably prevented) and recovery initiated.

15.4 Security of Cash, Cheques and other Negotiable Instruments

15.4.1 The Director of Finance is responsible for

- (a) approving the form of all receipt books, agreement forms, or other means of officially acknowledging or recording monies received or receivable,
- (b) ordering and securely controlling any such stationery,
- (c) the provision of adequate facilities and systems for employees whose duties include collecting and holding cash, including the provision of

safes or lockable cash boxes, the procedures for keys, and for coin operated machines. and

- (d) prescribing systems and procedures for handling cash and negotiable securities on behalf of the Trust.

15.4.2 Official money shall not under any circumstances be used for the encashment of private cheques or IOUs.

15.4.3 All cheques, postal orders, cash etc shall be banked promptly intact. Disbursements shall not be made from cash received, except under arrangements approved by the Director of Finance.

15.4.4 The holders of safe keys shall not accept unofficial funds for depositing in their safes unless such deposits are in special sealed envelopes or locked containers. It shall be made clear to the depositors that the Trust is not to be held liable for any loss, and written indemnities must be obtained from the organisation or individuals absolving the Trust from responsibility for any loss.

16 TENDERING AND CONTRACTING PROCEDURE

16.1 Duty to comply with Standing Orders and Standing Financial Instructions

The procedure for making all Contracts by, or on behalf of the Trust, shall comply with these Standing Orders and Standing Financial Instructions (except where Standing Order No 3.26 Suspension of Standing Orders is applied).

16.2 EU Directives Governing Public Procurement

Directives by the Council of the European Union promulgated by the Department of Health (DH) prescribing procedures for awarding all forms of contracts, shall have effect as if incorporated in these Standing Orders and Standing Financial Instructions.

16.3 Reverse eAuctions

The Trust should have policies and procedures in place for the control of all tendering activity carried out through Reverse eAuctions. For further guidance on Reverse eAuctions refer to www.ogc.gov.uk.

16.4 Capital Investment Guidance

The Trust shall comply as far as is practicable, with the requirements of guidance issued by Monitor with regard to capital investment., estate and property transactions including “Roles and Responsibilities in the Approval of NHS Foundation Trust PFI Schemes”. In the case of management consultancy contracts, the Trust shall consider best available procurement guidance. This may include but is not restricted to "The Procurement and Management of Consultants within the NHS" published by the Department of Health.

16.5 Formal Competitive Tendering

16.5.1 General Applicability

The Trust shall ensure that competitive tenders are invited for

- the supply of goods, materials and manufactured articles,
- the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the DH), and
- for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); for disposals.

16.5.2 Health Care Services

Where the Trust elects to invite tenders for the supply of healthcare services, these Standing Orders and Standing Financial Instructions shall apply as far as they are applicable to the tendering procedure and need to be read in conjunction with Standing Financial Instruction No 17.

16.5.3 Exceptions and instances where formal tendering need not be applied

Formal tendering procedures **need not be applied** where

- (a) the estimated expenditure or income does not, or is not reasonably expected to, exceed the limit set in the Scheme of Delegation,
- (b) where the supply is proposed under special arrangements negotiated by the DH in which event the said special arrangements must be complied with, or
- (c) regarding disposals as set out in Standing Financial Instructions No. 24.

Formal tendering procedures **may be waived** by officers to whom powers have

been delegated by the Chief Executive (as identified in the scheme of delegation) in following circumstances

- (d) in very exceptional circumstances where formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate Trust record,
- (e) where the requirement is covered by an existing contract,
- (f) where PASA agreements are in place and have been approved by the Board,
- (g) where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members; for example The Greater Manchester Collaborative Procurement Hub,
- (h) where the timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a single tender,
- (i) where specialist expertise is required and is available from only one source,
- (j) when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate,
- (k) there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering,
- (l) for the provision of legal advice and services providing that any legal firm or partnership commissioned by the Trust is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.

The Director of Finance will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work, and

- (m) where allowed and provided for in the Capital Investment Manual,

the waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to

award further work to a consultant originally appointed through a competitive procedure, and

where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded by the Director of Finance and where applicable reported to the relevant Committee of the Board in line with the scheme of delegation.

16.5.4 Fair and Adequate Competition

Where the exceptions set out in **SFI Nos 16.1 and 16.5.3** apply, the Trust shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than two firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.

16.5.5 List of Approved Firms

The Trust shall take reasonable measures to ensure that the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists. Where in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive (**see SFI 16.6.8 List of Approved Firms**).

16.5.6 Items which subsequently breach thresholds after original approval

Items estimated to be below the limits set in this Standing Financial Instruction for which formal tendering procedures are not used which subsequently prove to have a value above such limits shall be reported to the Chief Executive, and be recorded in an appropriate Trust record.

16.6 Contracting/Tendering Procedure

16.6.1 Invitation to Tender

- (i) All invitations to tender on a formal competitive basis shall state the date and time as being the latest time for the receipt of tenders.
- (ii) All invitations to tender on a formal competitive basis shall state that no tender will accepted unless
 - (a) submitted in a plain sealed package or envelope bearing a pre-printed label supplied by the Trust (or the word "tender" followed by the subject to which it relates) and the latest date and time for the receipt of such tender addressed to the Chief Executive or nominated Manager, and
 - (b) that tender envelopes/packages shall not bear any names or marks indicating the sender. The use of courier/postal services must not identify the sender on the envelope or on any receipt so required by the deliverer.

- (iii) Every tender for goods, materials, services or disposals shall embody such of the NHS Standard Contract Conditions as are applicable.
- (iv) Every tender for building or engineering works shall embody or be in the terms of the current edition of one of the Joint Contracts Tribunal Standard Forms of Building Contract or Department of the Environment (GC/Wks) Standard forms of contract; or, when the content of the work is primarily engineering, the General Conditions of Contract recommended by the Institution of Mechanical and Electrical Engineers and the Association of Consulting Engineers (Form A), or (in the case of civil engineering work) the General Conditions of Contract recommended by the Institute of Civil Engineers, the Association of Consulting Engineers and the Federation of Civil Engineering Contractors, or in the case of contracts entered into using Procure 21 (P21) the rules and regulations regarding this procurement route. If the Trust deems appropriate and or in the best interests of the Trust these documents may be modified and/or amplified to accord with Department of Health Guidance and, in minor respects, to cover special features of individual projects.

16.6.2 Receipt and safe custody of Tenders

The Chief Executive or his nominated representative will be responsible for the receipt, endorsement and safe custody of tenders received until the time appointed for their opening.

The date and time of receipt of each tender shall be endorsed on the tender envelope/package.

16.6.3 Opening Tenders and Register of Tenders

- (i) As soon as practicable after the date and time stated as being the latest time for the receipt of tenders, they shall be opened by two senior officers/managers designated by the Chief Executive and not from the originating Department.
- (ii) The rules relating to the opening of tenders will need to be read in conjunction with any delegated authority set out in the Trust's Scheme of Delegation.
- (iii) The "originating" Department will be taken to mean the Department sponsoring or commissioning the tender.
- (iv) The involvement of Finance Directorate Staff in the preparation of a tender proposal will not preclude the Director of Finance or any approved Senior Manager from the Finance Directorate from serving as one of the two senior managers to open tenders.
- (v) All Executive Directors/members will be authorised to open tenders regardless of whether they are from the originating Department

provided that the other authorised person opening the tenders with them is not from the originating Department.

- (vi) Every tender received shall be marked with the date of opening and initialled by those present at the opening.
- (vii) A register shall be maintained by the Chief Executive, or a person authorised by him, to show for each set of competitive tender invitations despatched
 - the name of all firms individuals invited,
 - the names of firms individuals from which tenders have been received,
 - the date the tenders were opened.
 - the persons present at the opening,
 - the price shown on each tender, and
 - a note where price alterations have been made on the tender.

Each entry to this register shall be signed by those present.

A note shall be made in the register if any one tender price has had so many alterations that it cannot be readily read or understood.

- (viii) Incomplete tenders, ie those from which information necessary for the adjudication of the tender is missing, and amended tenders, ie those amended by the tenderer upon his own initiative either orally or in writing after the due time for receipt, but prior to the opening of other tenders, should be dealt with in the same way as late tenders. (Standing Order No 16.6.5 below.)

16.6.4 Admissibility

- i) If for any reason the designated officers are of the opinion that the tenders received are not strictly competitive (for example, because their numbers are insufficient or any are amended, incomplete or qualified) no contract shall be awarded without the approval of the Chief Executive.
- (ii) Where only one tender is sought and/or received, the Chief Executive and Director of Finance shall, as far practicable, ensure that the price to be paid is fair and reasonable and will ensure value for money for the Trust.

16.6.5 Late Tenders

- (i) Tenders received after the due time and date, but prior to the opening of the other tenders, may be considered only if the Chief Executive or his nominated officer decides that there are exceptional circumstances, ie despatched in good time but delayed through no fault of the tenderer.
- (ii) Only in the most exceptional circumstances will a tender be considered which is received after the opening of the other tenders and only then if the tenders that have been duly opened have not left the custody of the

Chief Executive or his nominated officer or if the process of evaluation and adjudication has not started.

- (iii) While decisions as to the admissibility of late, incomplete or amended tenders are under consideration, the tender documents shall be kept strictly confidential, recorded, and held in safe custody by the Chief Executive or his nominated officer.

16.6.6 Acceptance of formal Tenders (See overlap with SFI No 16.7)

- (i) Any discussions with a tenderer which are deemed necessary to clarify technical aspects of his tender before the award of a contract will not disqualify the tender.
- (ii) The lowest tender, if payment is to be made by the Trust, or the highest, if payment is to be received by the Trust, shall be accepted unless there are good and sufficient reasons to the contrary. Such reasons shall be set out in either the contract file, or other appropriate record.

It is accepted that for professional services such as management consultancy, the lowest price does not always represent the best value for money. Other factors affecting the success of a project include

- (a) experience and qualifications of team members,
- (b) understanding of client's needs,
- (c) feasibility and credibility of proposed approach, and
- (d) ability to complete the project on time.

Where other factors are taken into account in selecting a tenderer, these must be clearly recorded and documented in the contract file, and the reason(s) for not accepting the lowest tender clearly stated.

- (iii) No tender shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these Instructions except with the authorisation of the Chief Executive.
- (iv) The use of these procedures must demonstrate that the award of the contract was
 - (a) not in excess of the going market rate/price current at the time the contract was awarded, and
 - (b) that best value for money was achieved.
- (v) All tenders should be treated as confidential and should be retained for inspection.

16.6.7 Tender Reports to the Trust Board

Reports to the Trust Board will be made on an exceptional circumstance basis only.

16.6.8 List of Approved Firms (see SFI No. 16.5.5)

(a) Responsibility for maintaining List

The Trust shall take all reasonable and practical steps to compile and maintain lists of approved firms and individuals from who tenders and quotations may be invited. These shall be kept under frequent review. The lists shall include all firms who have applied for permission to tender and as to whose technical and financial competence the Trust is satisfied. All Suppliers must be made aware of the Trust's Terms and Conditions of Contract.

(b) Building and Engineering Construction Works

- i) Invitations to tender shall be made only to firms included on the Approved List of Tenderers compiled in accordance with this Instruction.
- ii) Firms included on the Approved List of Tenderers shall ensure that when engaging, training, promoting or dismissing employees or in any conditions of employment, shall not discriminate against any person because of colour, race, ethnic or national origins, religion or sex, and will comply with the provisions of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disabled Persons (Employment) Act 1944 and any amending and/or related legislation.
- iii) Firms shall conform at least with the requirements of the Health and Safety at Work Act and any amending and/or other related legislation concerned with the health, safety and welfare of workers and other persons, and to any relevant British Standard Code of Practice issued by the British Standard Institution. Firms must provide to the appropriate Manager, a copy of its safety policy and evidence of the safety of plant and equipment, when requested.

(c) Financial Standing and Technical Competence of Contractors

The Director of Finance may make or institute any enquiries he deems appropriate concerning the financial standing and financial suitability of approved contractors. The Director with lead responsibility for Clinical Governance will similarly make such enquiries as is felt appropriate to be satisfied as to their technical/medical competence.

16.6.9 Exceptions to using Approved Contractors

If, in the opinion of the Chief Executive and the Director of Finance or the Director with lead responsibility for Clinical Governance, it is impractical to use

a potential contractor from the list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), or where a list for whatever reason has not been prepared, the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of those firms that are invited to tender or quote.

An appropriate record in the contract file should be made of the reasons for inviting a tender or quote other than from an approved list.

16.7 Quotations - Competitive and Non-Competitive

16.7.1 General Position on Quotations

Quotations are required where formal tendering procedures are not adopted and where the intended expenditure or income exceeds, or is reasonably expected to exceed £4,999 but not exceed £49,999. (SFI 16.7.2)

Where intended expenditure or income exceeds, or is reasonably expected to exceed £49,999 formal tendering shall be followed.

16.7.2 Competitive Quotations

- (i) Quotations should be obtained from at least four firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the Trust.

Where the intended expenditure or income falls below, or is reasonably expected to be below £4,999 as a minimum, three quotes shall be obtained and a written note of prices obtained (eg by telephone, fax or email) and retained on file.

- (ii) Quotations should be in writing unless the Chief Executive or his nominated officer determines that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotations should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- (iii) All quotations should be treated as confidential and should be retained for inspection.
- (iv) The Chief Executive, or his nominated officer, should evaluate the quotation and select the quote which gives the best value for money. If this is not the lowest quotation if payment is to be made by the Trust, or the highest if payment is to be received by the Trust, then the choice made and the reasons why should be recorded in a permanent record.

16.7.3 Non-Competitive Quotations

Non-competitive quotations, in writing, may be obtained in the following circumstances

- (i) the supply of proprietary or other goods of a special character and the rendering of services of a special character, for which it is not, in the opinion of the responsible officer, possible or desirable to obtain competitive quotations,
- (ii) the supply of goods or manufactured articles of any kind which are required quickly and are not obtainable under existing contracts,
- (iii) miscellaneous services, supplies and disposals, and/or
- (iv) where the goods or services are for building and engineering maintenance the responsible works manager must certify that the first two conditions of this SFI (ie (i) and (ii) of this SFI) apply.

16.7.4 Quotations to be within Financial Limits

No quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with Standing Financial Instructions except with the authorisation of either the Chief Executive or Director of Finance.

16.8 Authorisation of Tenders and Competitive Quotations

Providing all the conditions and circumstances set out in these Standing Financial Instructions have been fully complied with, formal authorisation and awarding of a contract may be decided by the following staff to the value of the contract as follows:

Designated Budget Holders up to £50,000

Associate Director of Estates and Facilities - within delegated budgets up to £100,000

Any Executive Director and Senior Manager with the title "Director" up to £100,000

Two signatures, either the Chief Executive and / or Director of Finance plus a senior manager with the title of "Director" up to £1,000,000

Director of Finance and Chief Executive/Chairman up to £2,000,000

Trust Board over £2,000,000

Building and Engineering Contracts over £50,000 to be executed under Common Seal.

The levels referred to in this SFI 16.8 may be varied or changed and need to be read in conjunction with the Trust Board's Scheme of Delegation.

Formal authorisation must be put in writing. In the case of authorisation by the Trust Board this shall be recorded in their Minutes.

16.9 Instances where formal competitive Tendering or competitive Quotation is not required

Where competitive tendering or a competitive quotation is not required, the Trust shall procure goods and services in accordance with procurement procedures approved by the Director of Finance.

16.10 Private Finance for Capital Procurement (see overlap with SFI No 22)

The Trust should normally market-test for PFI (Private Finance Initiative funding) when considering a capital procurement. When the Board proposes, or is required to use finance provided by the private sector, the following should apply

- (a) the Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector,
- (b) a Business Case must be referred to the Board of the Trust for approval and the approvals process should where appropriate follow the “Roles and Responsibilities in the Approval of NHS Foundation Trust PFI Schemes” guidance issued by Monitor.
- (c) the selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

16.11 Compliance Requirements for all Contracts

The Board may only enter into Contracts on behalf of the Trust within its statutory powers and shall comply with

- (a) the Trust’s Standing Orders and Standing Financial Instructions,
- (b) EU Directives and other statutory provisions,
- (c) Where deemed appropriate, any available guidance on both capital investment and the procurement and management of consultants,
- (d) such of the NHS Standard Contract Conditions as are applicable,
- (e) where appropriate, contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited,
- (f) in all contracts made by the Trust, the Board shall endeavour to obtain best value for money by use of all systems in place. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust, and

(g) the terms of the Trust's Foundation Trust Authorisation.

16.12 Personnel and Agency or Temporary Staff Contracts

The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

16.13 Healthcare Services Agreements (see overlap with SFI No. 17)

Service Agreement Contracts with NHS or Foundation Trust Providers for the supply of healthcare services shall be drawn up in accordance with legal advice.

All agreements entered into by the Trust for the receipt of services from, or the provision of services to, NHS and Foundation Trusts shall be reflected in a Contract Agreement. The Contract is a legal document and is enforceable in law. The minimum requirement for all contracts is described at SFI No 17.1.3.

The Chief Executive shall nominate officers to commission Service Contracts with Providers of Healthcare.

16.14 Disposals (see overlap with SFI No 24)

Competitive Tendering or Quotation procedures shall not apply to the disposal of

- (a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his nominated officer,
- (b) obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust,
- (c) items to be disposed of with an estimated sale value of less than £1,000 this figure to be reviewed on a periodic basis,
- (d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract, and
- (e) land or buildings concerning which applicable foundation trust legislation / guidance has been issued but subject to compliance with such legislation / guidance.

16.15 In-house Services

16.15.1 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided on an in-house basis. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering.

16.15.2 In all cases where the Board determines that in-house services should be subject to competitive tendering the following groups shall be set up.

- (a) Specification group, comprising the Chief Executive or nominated officer(s) and specialist.
- (b) In-house tender group, comprising a nominee of the Chief Executive and technical support.
- (c) Evaluation team, comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £1,000,000, a non-officer member should be a member of the evaluation team.

16.15.3 All groups should work independently of each other and individual officers may be a member of more than one group but no member of the in-house tender group may participate in the evaluation of tenders.

16.15.4 The evaluation team shall make recommendations to the Board.

16.15.5 The Chief Executive shall nominate an officer to oversee and manage the contract on behalf of the Trust.

16.16 Applicability of SFIs on Tendering and Contracting to funds held in trust (see overlap with SFI No 27)

These Instructions shall not only apply to expenditure from Exchequer funds but also to works, services and goods purchased from the Trust's trust funds and private resources.

17 TRUST CONTRACTS FOR THE PROVISION OF SERVICES

17.1 The Board of Directors of the Trust shall regularly review and shall at all times maintain and ensure the capacity and capability of the Trust to provide the mandatory goods and services referred to in the Terms of Authorisation and related schedules.

17.1.1 The Chief Executive, as the Accounting Officer, is responsible for ensuring the Trust enters into suitable legally binding Contracts with Service Commissioners and Primary Care Trusts for the provision of NHS Services.

17.1.2 In discharging this responsibility, the Chief Executive should take the following into account

- The standards of service quality expected
- The relevant national service framework (if any)
- The provision of reliable information on cost and volume of services
- The Performance Assessment Framework contained within the contract

17.1.3 The legally binding contract shall as a minimum incorporate the following

- A description of the services and indicate activity levels
- The terms, commencement date and length of the agreement
- The value of service provided and price
- The payment terms and payment mechanism
- Contract variation procedure
- The lead officers
- Compliance with the Trust employment policies, procedures and protocols as deemed appropriate
- Compliance with applicable standards, regulations and legislation.
- Monitoring arrangements and performance review process
- Dispute resolution procedures and process
- Remedies
- Information sharing and confidentiality
- Risk management and clinical governance arrangements
- Compliance with Trust policies and procedures
- Liabilities and indemnities
- Legal ownership for any delivered product or material
- Contract cancellation and termination arrangements

These minimum standards shall be incorporated into all contracts for both the provision and receipt of services.

17.2 Reports to Board on Contracts for the Provision of NHS Services

The Chief Executive, as the Accounting Officer, will need to ensure that regular reports are provided to the Board detailing actual and forecast income from the contract. This will include Payment by Results performance information.

18 PRIVATE PATIENT HEALTH CARE

The Trust shall ensure that the proportion of total income of the Trust in any financial year derived from private patients charges (as defined by Monitor), shall not be greater than the percentage set out in the Terms of Authorisation.

19 TERMS OF SERVICE, ALLOWANCES AND PAYMENT OF MEMBERS OF THE TRUST BOARD AND EXECUTIVE COMMITTEE AND EMPLOYEES

19.1 Remuneration and Terms of Service

19.1.1 In accordance with the 2006 Act and the Trust's Constitution section 30.2 the Board shall establish a Remuneration and Terms of Service Committee comprising of non-executive directors with clearly defined Terms of Reference, specifying which posts fall within its area of responsibility

19.2 Funded Establishment

19.2.1 The manpower plans incorporated within the annual budget will form the funded establishment.

19.2.2 The funded establishment of any Department may only be varied in accordance with the Scheme of Delegation.

19.3 Staff Appointments

19.3.1 No Director or Member of the Trust Board or employee may engage, re-engage, or re-grade employees, either on a permanent or temporary nature, or hire agency staff, or agree to changes in any aspect of remuneration

(a) unless authorised to do so by the Chief Executive and in accordance with the Scheme of Delegation, and

(b) within the limit of their approved budget and funded establishment.

19.3.2 Other than nationally determined pay rates and conditions, the Board will approve procedures presented by the Chief Executive for the determination of commencing pay rates, condition of service, etc, for employees.

19.4 Processing Payroll

19.4.1 The Director of Human Resources is responsible for:

(a) specifying timetables for submission of properly authorised time records and other notifications,

(b) the final determination of pay and allowances,

(c) making payment on agreed dates, and

(d) agreeing method of payment.

19.4.2 The Director of Human Resources will, subject to the advice of the Director of Finance, issue, where appropriate, instructions regarding

(a) verification and documentation of data,

(b) the timetable for receipt and preparation of payroll data and the payment of employees and allowances,

(c) maintenance of subsidiary records for superannuation, income tax, social security and other authorised deductions from pay,

(d) security and confidentiality of payroll information,

(e) checks to be applied to completed payroll before and after payment,

- (f) authority to release payroll data under the provisions of the Data Protection Act,
- (g) methods of payment available to various categories of employee,
- (h) procedures for payment by cheque, bank credit, or cash to employees,
- (i) procedures for the recall of cheques and bank credits,
- (j) pay advances and their recovery,
- (k) maintenance of regular and independent reconciliation of pay control accounts,
- (l) separation of duties of preparing records and handling cash, and
- (m) a system to ensure the recovery from those leaving the employment of the Trust of sums of money and property due by them to the Trust.

19.4.3 Appropriately nominated managers have delegated responsibility for

- (a) submitting time records, and other notifications in accordance with agreed timetables,
- (b) completing time records and other notifications in accordance with the Director of Human Resources' instructions, and in the form prescribed by the Director of Human Resources, and
- (c) submitting termination forms, in the prescribed form, immediately upon knowing the effective date of an employee's or officer's resignation, termination or retirement. Where an employee fails to report for duty or to fulfil obligations in circumstances that suggest they have left without notice, the Director of Human Resources must be informed immediately.

19.4.4 Regardless of the arrangements for providing the Payroll Service, the Director of Human Resources shall ensure that the chosen method is supported by appropriate (contracted) Terms and Conditions, adequate internal controls and audit review procedures and that suitable arrangements are made for the collection of payroll deductions and payment of these to appropriate bodies.

19.5 Contracts of Employment

19.5.1 The Board shall delegate responsibility to the Director of Human Resources for

- (a) ensuring that all employees are issued with a Contract of Employment in a form approved by the Board and which complies with employment legislation, and
- (b) dealing with variations to, or termination of, Contracts of Employment.

20 NON-PAY EXPENDITURE

20.1 Delegation of Authority

20.1.1 The Board will approve the level of non-pay expenditure on an annual basis. No Director or employee may initiate non-pay expenditure other than within the level of budget delegated to them and in accordance within such limits specified in the Scheme of Delegation.

20.1.2 The Director of Finance shall set out procedures on the seeking of professional advice regarding the supply of goods and services.

20.2 Choice, Requisitioning, Ordering, Receipt and Payment for Goods and Services (see overlap with Standing Financial Instruction No 16)

20.2.1 Requisitioning

The requisitioner, in choosing the item to be supplied (or the service to be performed) shall always obtain the best value for money for the Trust. In so doing, the advice of the Trust's adviser on supply shall be sought. Where this advice is not acceptable to the requisitioner, the Director of Finance (and/or the Chief Executive) shall be consulted.

20.2.2 System of Payment and Payment Verification

The Director of Finance shall be responsible for the prompt payment of accounts and claims. Payment of contract invoices shall be in accordance with contract terms or, otherwise, in accordance with National Guidance.

20.2.3 The Director of Finance will

- (a) advise the Board regarding the setting of thresholds above which quotations (competitive or otherwise) or formal tenders must be obtained and, once approved, the thresholds should be incorporated in Standing Orders and Standing Financial Instructions and regularly reviewed,
- (b) prepare procedural instructions or guidance within the Scheme of Delegation on the obtaining of goods, works and services incorporating the thresholds,
- (c) be responsible for the prompt payment of all properly authorised accounts and claims,
- (d) be responsible for designing and maintaining a system of verification, recording and payment of all amounts payable. The system shall provide for
 - (i) a list of Directors / employees (including specimens of their signatures) authorised to certify invoices.
 - (ii) certification that

- goods have been duly received, examined and are in accordance with specification and the prices are correct,
- work done or services rendered have been satisfactorily carried out in accordance with the order, and, where applicable, the materials used are of the requisite standard and the charges are correct,
- in the case of contracts based on the measurement of time, materials or expenses, the time charged is in accordance with the time sheets, the rates of labour are in accordance with the appropriate rates, the materials have been checked as regards quantity, quality, and price and the charges for the use of vehicles, plant and machinery have been examined,
- where appropriate, the expenditure is in accordance with regulations and all necessary authorisations have been obtained,
- the account is arithmetically correct,
- the account is in order for payment,

(iii) a timetable and system for submission to the Director of Finance of accounts for payment; provision shall be made for the early submission of accounts subject to cash discounts or otherwise requiring early payment,

(iv) instructions to employees regarding the handling and payment of accounts within the Finance Department, and

(e) be responsible for ensuring that payment for goods and services is only made once the goods and services are received. The only exceptions are set out in SFI No 20.2.4 below.

20.2.4 Pre-Payments

Prepayments are only permitted where exceptional circumstances apply. In such instances

- (a) pre-payments are only permitted where the financial advantages outweigh the disadvantages (ie cash flows must be discounted to NPV using the National Loans Fund (NLF) rate plus 2%),
- (b) the appropriate officer must provide the Director of Finance, in the form of a written report, a case setting out all relevant circumstances of the purchase. The report must set out the effects on the Trust if the supplier is at some time during the course of the prepayment agreement unable to meet his commitments,

- (c) the Director of Finance will need to be satisfied with the proposed arrangements before contractual arrangements proceed (taking into account the EU public procurement rules where the contract is above a stipulated financial threshold), and
- (d) The Budget Holder is responsible for ensuring that all items due under a pre-payment contract are received and they must immediately inform the appropriate Director or Chief Executive if problems are encountered.

20.2.5 Official Orders

Official Orders must

- (a) be consecutively numbered,
- (b) be in a form approved by the Director of Finance,
- (c) state the Trust's terms and conditions of trade, and
- (d) only be issued to, and used by, those duly authorised by the Scheme of Delegation.

20.2.6 Duties of Managers and Officers

Managers and Officers must ensure that they comply fully with the guidance and limits specified by the Director of Finance and that

- (a) all contracts (except as otherwise provided for in the Scheme of Delegation), leases, tenancy agreements and other commitments which may result in a liability are notified to the Director of Finance in advance of any commitment being made,
- (b) contracts above specified thresholds are advertised and awarded in accordance with EU rules on public procurement,
- (c) no order shall be issued for any item or items to any firm which has made an offer of gifts, reward or benefit to Directors or employees, other than
 - (i) isolated gifts of a trivial character or inexpensive seasonal gifts, such as calendars, and
 - (ii) conventional hospitality, such as lunches in the course of working visits,
- (d) no requisition/order is placed for any item or items for which there is no budget provision unless authorised by the Director of Finance on behalf of the Chief Executive,

- (e) all goods, services, or works are ordered on an official order except works and services executed in accordance with a contract and purchases from petty cash,
- (f) verbal orders must only be issued very exceptionally - by an employee designated by the Chief Executive and only in cases of emergency or urgent necessity. These must be confirmed by an official order and clearly marked "Confirmation Order",
- (g) orders are not split or otherwise placed in a manner devised so as to avoid the financial thresholds,
- (h) goods are not taken on trial or loan in circumstances that could commit the Trust to a future uncompetitive purchase,
- (i) changes to the list of employees and officers authorised to certify invoices are notified to the Director of Finance,
- (j) purchases from petty cash are restricted in value and by type of purchase in accordance with instructions issued by the Director of Finance, and
- (k) petty cash records are maintained in a form as determined by the Director of Finance.

20.2.7 The Chief Executive and Director of Finance shall ensure that the arrangements for financial control and financial audit of building and engineering contracts and property transactions. The technical audit of these contracts shall be the responsibility of the relevant Director.

20.3 Joint Finance Arrangements with Local Authorities and Voluntary Bodies (see overlap with Standing Order No 9.1)

20.3.1 Payments to Local Authorities and voluntary organisations made under the powers of the 2006 Act **shall** comply with procedures laid down by the Director of Finance which shall be in accordance with the 2006 Act.

21 EXTERNAL BORROWING

21.1.1 Prudential Borrowing Code and Borrowing Arrangements

The Trust must ensure compliance with the Prudential Borrowing Code set by Monitor to limit the amount of borrowing for the Foundation Trusts.

The Prudential Borrowing Code will determine the Prudential Borrowing Limit for the Trust. The Trust's Prudential Borrowing Limit will form part of the Terms of Authorisation and will be reviewed annually by Monitor. The Trust's borrowing must not exceed the limit imposed by Monitor.

The Trust may borrow money from any commercial source for the purposes of, or connection with, its functions subject to the Prudential Borrowing Limit.

All long term borrowing must be agreed by the Board and be consistent with the Trust's Business Plans.

All short-term borrowings should be kept to the minimum period of time possible, consistent with the overall cash flow position, represent good value for money, and comply with the Trust's Prudential Borrowing Limit and Terms of Authorisation.

21.1.2 The Director of Finance must prepare detailed procedural instructions concerning applications for loans and overdrafts including the utilisation of any agreed committed working capital facility. The procedures shall include a list of authorised signatories (including their specimen signatures) who are authorised to make short term borrowings on behalf of the Trust.

21.1.3 Public Dividend Capital

On authorisation as a Foundation Trust the Public Dividend Capital held immediately prior to authorisation continues to be held on the same conditions.

Additional Public Dividend Capital may be made available on such terms as the Secretary of State (with the consent of the Treasury) decides.

Draw down of Public Dividend Capital should be authorised in accordance with the mandate held by the Department of Health Cash Funding Team, and is subject to approval by the Secretary of State.

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

21.2 Investments

21.2.1 The Trust may invest money for the purposes of, or in connection with, its functions.

The investment may include investment by

- a) forming or participating in forming, bodies corporate, and/or
- b) otherwise acquiring membership of bodies corporate.

The Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

21.2.2 Medium to Long Term Investments

The Director of Finance is responsible for preparing policies and procedures governing medium to long term investments, having regard to Best Practice Guidance issued by Monitor.

21.2.3 Policies and procedures governing medium to long term borrowing shall be reviewed by the Audit Committee on an annual basis and formally approved by the Board.

21.2.4 All medium to long term investment proposals shall be approved by the Board.

The Director of Finance is responsible for advising the Board on medium to long term investments and shall report periodically to the Board concerning the performance of investments which fall under these categories.

21.3 Investment of Temporary Cash Surpluses

21.3.1 Temporary cash surpluses must only be held in such public and private sector investments as defined in the Trust's Treasury Management Policy.

21.3.2 The Director of Finance is responsible for establishing a Treasury Management Policy which shall include procedures and protocols for the short term investment of cash surpluses. Reviewable on an annual basis.

21.4 Treasury Management Policy

21.4.1 The Audit Committee shall be responsible for approving the Treasury Management Policy and will oversee short term investment and borrowing arrangements on behalf of the Trust Board.

21.4.2 The Director of Finance is responsible for advising the Audit Committee on short term investments and shall report periodically to the Audit Committee concerning the performance of investments undertaken.

22 CAPITAL INVESTMENT, PRIVATE FINANCING, FIXED ASSET REGISTERS AND SECURITY OF ASSETS

22.1 Capital Investment

22.1.1 The Chief Executive

(a) shall ensure that there is an adequate appraisal and approval process in place for determining capital expenditure priorities and the effect of each proposal upon business plans,

(b) is responsible for the management of all stages of capital schemes and for ensuring that schemes are delivered on time and to cost, and

(c) shall ensure that the capital investment is not undertaken without the availability of resources to finance all revenue consequences, including capital charges.

22.1.2 For every capital expenditure proposal the Chief Executive shall ensure that a business case is produced setting out

- (a) an option appraisal of potential benefits compared with known costs to determine the option with the highest ratio of benefits to costs,
 - (b) the involvement of appropriate Trust personnel and external agencies,
 - (c) appropriate project management and control arrangements.
- 22.1.3** For capital schemes where the contracts stipulate stage payments, the Chief Executive will issue procedures for their management, incorporating the recommendations of “Estate code”.
- 22.1.4** The Director of Finance shall assess on an annual basis the requirement for the operation of the construction industry tax deduction scheme in accordance with Inland Revenue guidance.
- 22.1.5** The Director of Finance shall issue procedures for the regular reporting of expenditure and commitment against authorised expenditure.
- 22.1.6** The approval of a capital programme shall not constitute approval for expenditure on any scheme until authorised by the Capital Planning and Estates Committee, which shall provide
- (a) specific authority to commit expenditure,
 - (b) authority to proceed to tender (see overlap with SFI No 16.6), and
 - (c) approval to accept a successful tender (see overlap with SFI No 16.6).
- 22.1.7** The Director of Planning and Performance shall agree with the Director of Finance and shall issue procedures governing the financial management, including variations to contract, of capital investment projects and valuation for accounting purposes.
- 22.2 Private Finance (see overlap with SFI No 16.10)**
- 22.2.1** The Trust should normally test for PFI when considering capital procurement. When the Trust proposes to use finance provided by the private sector, the following procedures shall apply.
- (a) The Director of Finance shall demonstrate that the use of private finance represents value for money and genuinely transfers significant risk to the private sector.
 - (b) Refer to the guidance issued by Monitor “Roles and Responsibilities in the Approval of NHS Foundation Trust PFI Schemes .
 - (c) The proposal must be specifically agreed by the Board.

22.3 Asset Registers

22.3.1 The Trust shall maintain an asset register recording fixed assets and the Director of Finance is responsible for the maintenance of the Register of Assets.

22.3.2 Additions to the fixed Asset Register must be clearly identified to an appropriate location and/or manager and be validated by reference to

- (a) properly authorised and approved agreements, architect's certificates, suppliers' invoices and other documentary evidence in respect of purchases from third parties,
- (b) stores, requisitions and wages records for own materials and labour including appropriate overheads, and
- (c) lease agreements in respect of assets held under a finance lease and capitalised.

22.3.3 Where capital assets are sold, scrapped, lost or otherwise disposed of, their value must be removed from the accounting records and each disposal must be validated by reference to authorisation documents and invoices (where appropriate).

22.3.4 The Director of Finance shall approve procedures for reconciling balances on fixed assets accounts in ledgers against balances on fixed asset registers.

22.3.5 The value of each asset shall be subject to periodic review in accordance with applicable accounting requirements and the Trust's accounting policies..

22.3.6 The value of each asset shall be depreciated in accordance with the Trust's accounting policies which shall be consistent with applicable accounting requirements and guidance issued by HM Treasury.

22.3.7 The Director of Finance of the Trust shall calculate and pay capital charges in accordance with the Foundation Trust Financial Reporting Manual, and other applicable guidance issued by Monitor and HM Treasury..

22.4 Protected Assets

22.4.1 In compliance with the Foundation Trust Terms of Authorisation, a Register of Protected Assets is required to be maintained in accordance with requirements issued by Monitor.

The definition of a protected asset for this purpose is land or buildings owned or leased by the Trust. Assets such as equipment, financial assets, cash or intellectual property will not be regarded as protected assets.

- 22.4.2** No protected asset may be disposed of without the prior approval of Monitor. Disposing of property includes disposing of part of it or granting an interest in it.

Gaining approval for reclassification or disposal of protected assets is dealt with via the planning process:

- 22.4.3** Monitor requires the Trust to provide an Annual Plan. The Annual Plan will include proposed changes in treatment of assets that are protected and will identify proposed disposals and acquisitions.

NHS Foundation Trusts are required to notify relevant bodies of the publication date of their Annual Plans. In relation to asset protection, the purpose of this notification is to ensure that relevant bodies are satisfied that any proposed changes in classification or availability of assets do not endanger the provision of mandatory services. Relevant bodies will have 21 days from the receipt of the notification to respond to the plans on protection or disposal of assets. If there are no objections, the Trust plans will be treated as approved by Monitor and the Trust will be free to reclassify or dispose of the relevant assets.

Monitor does not require notification of agreed asset changes.

- 22.4.3** A condition of the Terms of Authorisation is that the Trust must make the Asset Register available for inspection by the public. NHS Foundation Trusts may charge a reasonable fee for providing access to this information.

22.5 Security of Assets

- 22.5.1** The overall control of fixed assets is the responsibility of the Chief Executive.

- 22.5.2** Asset control procedures (including fixed assets, cash, cheques and negotiable instruments, and also including donated assets) must be approved by the Director of Finance. This procedure shall make provision for

- (a) recording managerial responsibility for each asset,
- (b) identification of additions and disposals,
- (c) identification of all repairs and maintenance expenses,
- (d) physical security of assets,
- (e) periodic verification of the existence of, condition of, and title to, assets recorded,
- (f) identification and reporting of all costs associated with the retention of an asset, and
- (g) reporting, recording and safekeeping of cash, cheques, and negotiable instruments.

22.5.3 All significant discrepancies revealed by verification of physical assets to fixed Asset Register shall be notified to the Director of Finance.

22.5.4 Whilst each employee and officer has a responsibility for the security of property of the Trust, it is the responsibility of Directors and senior employees in all disciplines to apply such appropriate routine security practices in relation to NHS property as may be determined by the Board. Any breach of agreed security practices must be reported in accordance with agreed procedures.

22.5.5 Any damage to the Trust's premises, vehicles and equipment, or any loss of equipment, stores or supplies, must be reported by Directors and employees to the Director of Finance (for attention of Internal Audit) and in accordance with the procedure for reporting losses.

22.5.6 Where practical, assets should be marked as Trust property.

23 STORES AND RECEIPT OF GOODS

23.1 General position

23.1.1 Stores, defined in terms of controlled stores and departmental stores (for immediate use) should be

- (a) kept to a minimum,
- (b) subjected to annual stock take, and
- (c) valued at the lower of cost and net realisable value.

23.2 Control of Stores, Stocktaking, Condemnations and Disposals

23.2.1 Subject to the responsibility of the Director of Finance for the systems of control, overall responsibility for the control of stores shall be delegated to an employee by the Chief Executive. The day-to-day responsibility may be delegated by him to Departmental employees and stores managers/keepers, subject to such delegation being entered in a record available to the Director of Finance. The control of any Pharmaceutical stocks shall be the responsibility of a designated Pharmaceutical Officer; the control of any fuel oil and coal of a designated Estates Manager.

23.2.2 The responsibility for security arrangements and the custody of keys for any stores and locations shall be clearly defined in writing by the designated manager/Pharmaceutical Officer. Wherever practicable, stocks should be marked as Trust property.

23.2.3 The Director of Finance shall set out procedures and systems to regulate the stores including records for receipt of goods, issues, and returns to stores, and losses.

23.2.4 Stocktaking arrangements shall be agreed with the Director of Finance and there shall be a physical check covering all items in store at least once a year.

23.2.5 Where a complete system of stores control is not justified, alternative arrangements shall require the approval of the Director of Finance.

23.2.6 The designated Manager/Pharmaceutical Officer shall be responsible for a system approved by the Director of Finance for a review of slow moving and obsolete items and for condemnation, disposal, and replacement of all unserviceable articles. The designated Officer shall report to the Director of Finance any evidence of significant overstocking and of any negligence or malpractice (see also overlap with SFI No 24 Disposals and Condemnations, Losses and Special Payments). Procedures for the disposal of obsolete stock shall follow the procedures set out for disposal of all surplus and obsolete goods.

24 DISPOSALS AND CONDEMNATIONS, LOSSES AND SPECIAL PAYMENTS

24.1 Disposals and Condemnations

24.1.1 Procedures

The Director of Finance must prepare detailed procedures for the disposal of assets including condemnations, and ensure that these are notified to managers.

24.1.2 When it is decided to dispose of a Trust asset, the Head of Department or authorised deputy will determine and advise the Director of Finance of the estimated market value of the item, taking account of professional advice where appropriate.

All other material items of unwanted equipment shall be dealt with in accordance with the "Policy for the Re-Use, Sale and Disposal of Surplus or Obsolete Equipment"

24.1.3 All unserviceable articles shall be

- (a) Condemned or otherwise disposed of by an employee authorised for that purpose by the Director of Finance, and
- (b) recorded by the Condemning Officer in a form approved by the Director of Finance which will indicate whether the articles are to be converted, destroyed or otherwise disposed of. All entries shall be confirmed by the countersignature of a second employee authorised for the purpose by the Director of Finance.

24.1.4 The Condemning Officer shall satisfy himself as to whether or not there is evidence of negligence in use and shall report any such evidence to the Director of Finance who will take the appropriate action.

24.2 Losses and Special Payments

24.2.1 Procedures

The Director of Finance must issue procedural instructions on the recording of and accounting for condemnations, losses, and special payments. The Director of Finance must also prepare a "Fraud and Corruption Policy" that sets out the action to be taken both by persons detecting a suspected fraud and those persons responsible for investigating it.

24.2.2 Any employee or officer discovering or suspecting a loss of any kind must either immediately inform their head of department, who must immediately inform the Chief Executive and the Director of Finance or inform an officer charged with responsibility for responding to concerns involving loss or fraud confidentially. This officer will then appropriately inform the Director of Finance and/or Chief Executive. Where a criminal offence is suspected, the Director of Finance must immediately inform the police if theft or arson is involved. In cases of fraud and corruption or of anomalies which may indicate fraud or corruption, the Director of Finance must inform the relevant Local Counter Fraud Specialist and Counter Fraud and Security Management Service regional team before any action is taken and reach agreement how the case is to be handled.

The Director of Finance must notify the Counter Fraud and Security Management Services (CFSMS) and the External Auditor of all frauds.

24.2.3 For losses apparently caused by theft, arson, neglect of duty or gross carelessness, except if trivial, the Director of Finance must immediately notify

(a) the Board (via the Audit Committee), and

(b) the External Auditor.

24.2.4 The Board shall approve the writing-off of losses; or delegate this function in accordance with Standing Orders and the Scheme of Delegation.

24.2.5 The Director of Finance shall be authorised to take any necessary steps to safeguard the Trust's interests in bankruptcies and company liquidations.

24.2.6 For any loss, the Director of Finance should consider whether any insurance claim can be made.

24.2.7 The Director of Finance shall maintain a Losses and Special Payments Register in which write-off action is recorded.

26.2.8 All losses and special payments must be reported to the Audit Committee on a quarterly basis.

25 INFORMATION TECHNOLOGY

25.1 Responsibilities and Duties of the Director of Finance

25.1.1 The Director of Finance, who is responsible for the accuracy and security of the computerised financial data of the Trust, shall

- (a) devise and implement any necessary procedures to ensure adequate (reasonable) protection of the Trust's data, programs and computer hardware for which the Director is responsible from accidental or intentional disclosure to unauthorised persons, deletion or modification, theft or damage, having due regard for the Data Protection Act 1998 (updated 2000) and the Computer Misuse Act 1990,
- (b) ensure that adequate (reasonable) controls exist over data entry, processing, storage, transmission and output to ensure security, privacy, accuracy, completeness, and timeliness of the data, as well as the efficient and effective operation of the system,
- (c) ensure that adequate controls exist such that the computer operation is separated from development, maintenance and amendment, and
- (d) ensure that an adequate management (audit) trail exists through the computerised system and that such computer audit reviews as the Director may consider necessary are being carried out.

25.1.2 The Director of Finance shall need to ensure that new financial systems and amendments to current financial systems are developed in a controlled manner and thoroughly tested prior to implementation. Where this is undertaken by another organisation, assurances of adequacy must be obtained from them prior to implementation.

25.2 Responsibilities and duties of other Directors and Officers in relation to Computer Systems of a General Application

25.2.1 The Director of Planning and Performance shall publish and maintain a Freedom of Information (FOI) Publication Scheme, or adopt a model Publication Scheme approved by the Information Commissioner. A Publication Scheme is a complete guide to the information routinely published by a public authority. It describes the classes or types of information about our Trust that we make publicly available.

25.2.2 In the case of computer systems which are proposed General Applications (i.e. normally those applications which the majority of Trusts in the Region wish to sponsor jointly), all responsible Directors and employees will send to the Director of Finance

- (a) details of the outline design of the system, and

- (b) in the case of packages acquired either from a commercial organisation, from the NHS, or from another public sector organisation the operational requirement.

25.3 Contracts for Computer Services with other Health Bodies or Outside Agencies

The Director of Finance shall ensure that contracts for computer services for financial applications with another health organisation or any other agency shall clearly define the responsibility of all parties for the security, privacy, accuracy, completeness, and timeliness of data during processing, transmission and storage. The contract should also ensure rights of access for audit purposes.

Where another health organisation or any other agency provides a computer service for financial applications, the Director of Finance shall periodically seek assurances that adequate controls are in operation.

25.4 Risk Assessment

The Director of Planning and Performance together with the Director of Finance shall ensure that risks to the Trust arising from the use of IT are effectively identified and considered and appropriate action taken to mitigate or control risk. This shall include the preparation and testing of appropriate disaster recovery plans.

25.5 Requirements for Computer Systems which have an impact on corporate financial systems

Where computer systems have an impact on corporate financial systems, the Director of Finance shall need to be satisfied that

- (a) systems acquisition, development and maintenance are in line with corporate policies such as an Information Technology Strategy,
- (b) data produced for use with financial systems is adequate, accurate, complete and timely, and that a management (audit) trail exists,
- (c) Director of Finance staff have access to such data, and
- (d) such computer audit reviews as are considered necessary are being carried out.

26 PATIENTS' PROPERTY

26.1 The Trust has a responsibility to provide safe custody for money and other personal property (hereafter referred to as "property") handed in by patients, in the possession of unconscious or confused patients, or found in the possession of patients dying in hospital or dead on arrival.

26.2 The Chief Executive is responsible for ensuring that patients or their guardians, as appropriate, are informed before or at admission by:

- notices and information booklets - hospital admission documentation and property records, and
- the oral advice of administrative and nursing staff responsible for admissions, and

that the Trust will not accept responsibility or liability for patients' property brought into Health Service premises, unless it is handed in for safe custody and a copy of an official patients' property record is obtained as a receipt.

- 26.3** The Director of Finance must provide detailed written instructions on the collection, custody, investment, recording, safekeeping, and disposal of patients' property (including instructions on the disposal of the property of deceased patients and of patients transferred to other premises) for all staff whose duty is to administer, in any way, the property of patients. Due care should be exercised in the management of a patient's money in order to maximise the benefits to the patient.
- 26.4** Where Department of Health instructions require the opening of separate accounts for patients' monies, these shall be opened and operated under arrangements agreed by the Director of Finance.
- 26.5** In all cases where property of a deceased patient is of a total value in excess of £5,000 (or such other amount as may be prescribed by any amendment to the Administration of Estates, Small Payments, Act 1965), the production of Probate or Letters of Administration shall be required before any of the property is released. Where the total value of property is £5,000 or less, forms of indemnity shall be obtained.
- 26.6** Staff should be informed, on appointment, by the appropriate Departmental or Senior Manager of their responsibilities and duties for the administration of the property of patients.
- 26.7** Where patients' property or income is received for specific purposes and held for safekeeping, the property or income shall be used only for that purpose, unless any variation is approved by the donor or patient in writing.

27 FUNDS HELD ON TRUST/CHARTITABLE FUNDS

- 27.1** The Board is responsible, as Corporate Trustee, for the management of the Tameside and Glossop Acute Care Charitable Fund (Charity Registration Number 1055818) and is separately accountable in law to the Charity Commission for operating funds received and held under this registration in accordance with Charities Acts and the Charity Commission's latest guidance and best practice.
- 27.2** The Charitable Funds Sub-Committee will, on behalf of The Board (Corporate Trustee), monitor the application of all charitable funds in accordance with the Charities Acts, external guidance and applicable legislation and will ensure that decisions on the use or investment of such funds are compliant with the explicit conditions or purpose for each donation, bequest or grant.

27.3 Except where separate written instructions are issued by the Director of Finance on behalf of the Charitable Funds Sub-Committee, these Standing Financial Instructions apply to Charitable Funds.

27.4 The Director of Finance shall establish policies and procedures for the effective day to day management of the Charitable Funds.

28 ACCEPTANCE OF GIFTS BY STAFF AND LINK TO STANDARDS OF BUSINESS CONDUCT (see overlap with SO No 6 and SFI No 20.2.6 (c))

The Director of Finance shall ensure that all staff are made aware of the Trust Policy on acceptance of gifts and other benefits in kind by staff. This policy follows the guidance contained in the Department of Health circular HSG (93) 5 “Standards of Business Conduct for NHS Staff” and is also deemed to be an integral part of these Standing Orders and Standing Financial Instructions (see overlap with SO No 6).

29. RETENTION OF RECORDS

29.1 The Chief Executive shall be responsible for maintaining archives for all records required to be retained in accordance with applicable Department of Health and NHS Foundation Trust guidelines.

29.2 The records held in archives shall be capable of retrieval by authorised persons.

29.3 Records held in accordance with latest applicable Department of Health and NHS Foundation Trust guidance shall only be destroyed at the express instigation of the Chief Executive. Detail shall be maintained of records so destroyed.

30 RISK MANAGEMENT AND INSURANCE

30.1 Programme of Risk Management

The Chief Executive shall ensure that the Trust has a programme of risk management, which must be approved and monitored by the Board.

The programme of risk management shall include

- a) a process for identifying and quantifying risks and potential liabilities,
- b) engendering among all levels of staff a positive attitude towards the control of risk,
- c) management processes to ensure all significant risks and potential liabilities are addressed including effective systems of internal control, cost effective insurance cover, and decisions on the acceptable level of retained risk,
- d) contingency plans to offset the impact of adverse events,

- e) audit arrangements including; Internal Audit, clinical audit, health and safety review,
- f) a clear indication of which risks shall be insured and the insurance arrangements in place, and
- g) arrangements to review the Risk Management programme.

The existence, integration and evaluation of the above elements will assist in providing a basis to make a Statement on the effectiveness of Internal Control (SIC) within the Annual Report and Accounts as required by current guidance.

30.2 Insurance

30.2.1 The Board shall ensure that the Trust has sufficient insurance cover for risk associated with the following.

- Clinical Negligence
- Employers Liability
- Public Liability
- Products Liability
- Professional Indemnity
- Property Damage (Buildings and Equipment etc)
- Contract Works
- Directors Liability

30.2.2 Insurance arrangements shall be reviewed by the Board annually.

31 MISCELLANEOUS

31.1 Standing Orders to be given to Directors and Officers

It is the duty of the Chief Executive to ensure that existing Executive Directors, Non-Executive Directors and all new appointees are notified of, and understand, their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive and it is the responsibility of all staff to comply with these rules and regulations, which are freely available to view on the Trust's internet. New designated officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

SECTION E

SCHEME OF RESERVATION AND DELEGATION OF POWERS

SECTION E1 DECISIONS RESERVED FOR THE BOARD

SECTION E2 DELEGATION TO COMMITTEES

SECTION E3 DETAILED SCHEME OF DELEGATION

SECTION E1 – DECISIONS RESERVED FOR THE BOARD

REF	THE BOARD	DECISIONS RESERVED TO THE BOARD
1	THE BOARD	<p>General Enabling Provision</p> <p>The Board may determine any matter, for which it has delegated or statutory authority, it wishes in full session within its statutory powers.</p>
2	THE BOARD	<p><i>Regulations and Control</i></p> <ol style="list-style-type: none"> 1. Approval or amendment of Standing Orders (Standing Orders), a schedule of matters reserved to the Board and Standing Financial Instructions for the regulation of its proceedings and business. 2. Suspend Standing Orders (SO 3.25 to SO 3.29). 3. Vary or amend the Standing Orders. (SO 3.30). 4. Ratify any urgent decisions taken by the Chairman and Chief Executive in accordance with SO 4.2. 5. Approve a Scheme of Delegation of Powers from the Board to committees. 6. Require and receive the declaration of Board members' interests that may conflict with those of the Trust and determining the extent to which that member may remain involved with the matter under consideration. 7. Require and receive the declaration of officers' interests that may conflict with those of the Trust. 8. Receive reports from committees including those that the Trust is required by regulation to establish and to take appropriate action on. 9. Confirm the recommendations of the Trust's committees where the committees do not have executive powers. 10. Approve arrangements relating to the discharge of the Trust's responsibilities as a Corporate Trustee for funds held on trust. 11. Establish terms of reference and reporting arrangements of all committees and sub-committees that are established by the Board. 12. Approve arrangements relating to the discharge of the Trust's responsibilities as a bailer for patients' property. 13. Authorise use of the Trust's Common Seal by consideration of a quarterly report. 14. Ratify or otherwise instances of failure to comply with Standing Orders brought to the Chief Executive's attention. 15. Approve individual losses or bad debt write-off exceeding £100,000.

3	THE BOARD	<p>Appointments/ Dismissal</p> <ol style="list-style-type: none"> 1. Appoint the Deputy Chairman of the Board (subject to SO 2.4). 2. Appoint and dismiss committees (and individual members) that are directly accountable to the Board. 3. In accordance with section 26 of the Constitution, A committee consisting of the Chairman, the Chief Executive and other Non Executive Directors shall appoint or remove Executive Directors.. 4. In accordance with section 30.2 of the Constitution the approval of proposals for the Remuneration and terms and conditions of office of Executive Directors and the Chief Executive will be undertaken by the Remuneration and Terms of Service Committee.. 5. Agree the remuneration strategy for all staff where scope for local flexibility exists.
4	THE BOARD	<p>Strategy, Plans and Budgets</p> <ol style="list-style-type: none"> 1. Approve the strategic aims and objectives of the Trust. 2. Approve the Annual Business Plan. 3. Approve Outline and Final Business Cases for Capital Investment (following consideration by the Capital Planning and Estates Committee or established Project Board. 4. Approve the Annual Income and Expenditure budget of the Trust. 5. Ratify proposals for acquisition, disposal or change of use of land and/or buildings. 6. Approve PFI proposals with a contract value exceeding £2,000,000. 7. Approve proposals on individual contracts (other than NHS contracts) of a capital or revenue nature amounting to, or likely to amount to over £2,000,000 pa or for the duration of the contract. 8. Review and Approve the Trust’s insurance arrangements on annual basis. 9. Approve all decisions to take out long term commercial borrowing. 10. Approve all medium to long term investments.
5	THE BOARD	<p>Audit</p> <ol style="list-style-type: none"> 1. <i>The approval and appointment of External Auditors is the responsibility of the Council of Members (Paragraph 34 of the Constitution of Tameside Hospital NHS Foundation Trust).</i> 2. <i>Receive of the Annual Management Letter received from the External Auditor and agreement of proposed action, taking account of the advice, where appropriate, of the Audit Committee.</i>

6	THE BOARD	<p>Annual Reports and Accounts</p> <ol style="list-style-type: none"> 1. Receipt and approval and adoption of the Trust's Annual Accounts following consideration by the Audit Committee. 2. Receipt and approval and adoption of the Annual Report and Accounts for funds held on trust following consideration by the Charitable Funds Committee.
7	THE BOARD	<p>Monitoring</p> <ol style="list-style-type: none"> 1. Receive of such reports as the Board sees fit from committees in respect of their exercise of powers delegated. 2. Continuous appraisal of the affairs of the Trust by means of the provision to the Board as the Board may require from Directors, committees, and officers of the Trust. This will include regular reports from the Director of Finance on all aspects of financial performance against agreed budgets and plans. 3. All monitoring returns required by the Independent Regulator of NHS Foundation Trusts (Monitor) shall be reported, at least in summary, to the Board.

SECTION E2: DELEGATION TO COMMITTEES

REF	COMMITTEE	DECISIONS/DUTIES DELEGATED BY THE BOARD TO COMMITTEES
SO.4.3	AUDIT COMMITTEE	<p>The Committee will:</p> <ol style="list-style-type: none"> 1. Advise the Board on internal audit services. 2. Advise the Council of Members on the external audit services 3. Receive and consider reports from internal (including counter fraud) and external auditors and agree appropriate action. 4. The Committee shall review the establishment and maintenance of an effective system of financial risk management and internal control, across the whole of the organisation's activities that supports the achievement of the organisation's objectives; 5. Monitor compliance with, and consider amendments to, Standing Financial Instructions; Standing Orders and Scheme of Delegation 6. Review schedules of Losses and Compensations and approve individual losses or bad debts exceeding £25,000 in value up to a value of £100,000. 7. Review the annual financial statements prior to submission to the Board for adoption. 8. Approval of the Trust's banking arrangements and Treasury Management Policy 9. Fulfil the role of an investment committee on behalf of the Trust Board 10. Approval of the Trust's arrangements for the discharge of the Trust's responsibilities as bailee for patients' property.
SO.4.3	REMUNERATION AND TERMS OF SERVICE COMMITTEE	<p>The Committee will:</p> <p>Advise the Board about appropriate remuneration and terms of service for the Chief Executive and other Executive Directors.</p>
SO.4.3	CLINICAL GOVERNANCE COMMITTEE	<p>The Committee will:</p> <ol style="list-style-type: none"> 1. Approve the annual Clinical Governance Plan and Annual Report

SO.4.3	CORPORATE GOVERNANCE COMMITTEE	<ol style="list-style-type: none"> 1. Approve Risk Management Plans 2. Approve organisational and risk management policies developed by reporting sub-committees
SO.4.3	CHARITABLE FUNDS COMMITTEE	<p>The Committee will:</p> <ol style="list-style-type: none"> 1. Monitor the application of all Charitable Funds in accordance with the Charities Acts 1993, external guidance and applicable legislation, and to ensure that decisions on the use or investment of such funds are compliant with the explicit conditions or purpose for each donation, bequest or grant. <p>Receive and approve the charitable funds annual financial statements prior to submission to the Board for adoption.</p> <ol style="list-style-type: none"> 3. Approval of Investment Policy for Charitable Funds.
		1.
SO.4.3	COMMUNITY RELATIONS AND COMPLAINTS COMMITTEE	<p>The Committee will:</p> <p>monitor communications concerning individual patients' experiences ensuring that the Trust's Complaints Procedures are operated in accordance with National and locally agreed standards and that the lessons learned are translated into formal recommendations for practical changes in procedure.</p>

Non –Board Committees

n/a	CAPITAL PLANNING AND ESTATES COMMITTEE	<p>The Committee will:</p> <ol style="list-style-type: none"> 2. Subject to confirmation by the Board, approve the Capital Programme of the Trust. 3. Approval of specific schemes within the programme and any changes to the capital budget. 4. Monitor performance against agreed plans 5. Monitor performance against agreed estates related key performance indicators
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SECTION E3: DETAILED SCHEME OF DELEGATION

This document provides a framework for decision making responsibilities within the Trust. Directors are responsible for ensuring that all staff operate within the Scheme of Delegation and in accordance with Standing Orders and Standing Financial Instructions. The Scheme of Delegation identifies the lowest level to which a particular responsibility may be delegated. There is no requirement for Directors to delegate to this level. The levels of management/delegation referred to in this Scheme are as follows.

- Chief Executive (In the absence of the Chief Executive, urgent matters may be dealt with by the relevant Executive Director or senior manager with the title “Director” and/or the Chairman)
- Director of Finance (In the absence of the Director of Finance, urgent matters may be dealt with by the Deputy Director of Finance)
- Other Executive Directors
- Lead Clinicians
- Service Managers/Divisional Nurse Managers (including Chief Pharmacist, Chief Radiographer, Chief MLSO, Chief Physiotherapist)
- Senior Manager Authorised Signatories
- Matron/Clinical Nurse Specialist
- Other Authorised Signatories

It is for Executive Directors to identify within their Directorate those Officers whom they wish to authorise (Authorised Signatories) to exercise delegated authority within this Scheme of Delegation. Forms for this purpose are available from the Director of Finance.

DELEGATED MATTER	AUTHORITY DELEGATED TO	NOTES/FURTHER GUIDANCE
1 Management of Budgets – General		
<p>All Directors, Lead Clinicians, Managers and other staff are responsible for operating within budget and exercising due economy and efficiency in the use of resources and for exercising due care in relation to security of Trust property and avoidance of loss.</p>		<p>Finance Manual for Managers Standing Financial Instructions– Section 10,12,20,22,23 and 24</p>
2 Management of Revenue Budgets – Pay		
<p>Expenditure budgets incorporate approved staffing levels known as ‘budgeted establishment’. These are an essential aspect of the management of pay budgets.</p>	<p>All Authorised Signatories or Matron/ Clinical Nurse Specialist as appropriate (claims to be initialed by Ward Managers and countersigned by Matron/Clinical Nurse Specialist).</p>	<p>Standing Financial Instructions – Sections 12,16 and 20</p>
<p>a) Authorisation of timesheets/clock cards/claims for special duty, overtime, on-call etc.</p>	<p>Lead Clinicians, General Managers/ Divisional Nurse Managers, Senior Manager Authorised Signatories and Clinical Nurse Specialist/ Matrons as appropriate.</p>	
<p>b) Authorisation of use of temporary staff from agencies claims for medical sessional payment and internal Bank Staff.</p>	<p>Lead Clinicians, General Managers/ Divisional Nurse Managers, Senior Manager, Authorised Signatories and Matron/Clinical Nurse Specialist.</p>	
<p>c) Approval of requests to full vacant posts within budgeted establishment (subject to any in-year review considered necessary by the Chief Executive).</p>		

2 continued ...

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| d) Approval of changes to budgeted establishment <u>funded from within the Divisional Budget</u> . | General Managers/Divisional Nurse Managers. | Requires Change to Establishment form. (This form requires Finance Department confirmation of budget and HR confirmation of grading. |
| e) Approval of other increases in budgeted establishment. Whether funded from external sources or CRES Programme etc) | Chief Executive/Director of Finance (in conjunction with the relevant Executive Director or senior manager with the title "Director"). | Requires Change to Establishment form. (This form requires Finance Department confirmation of budget and HR confirmation of grading. |

3 Management of Revenue Budgets – Non-Pay

(see also Charitable Funds – 11 below)

Orders and contracts for goods/services must be subject to due care as to choice/specification and to adequate competition as to price. Unless authorised to raise orders (see [h] below), all Divisions/Departments should requisition goods via the Supplies Department who will advise on these matters.

Standing Orders – Section 6

See also SFI 16 and SFI 20

The Supplies Department is responsible for observing Standing Orders in relation to price competition. Those requirements (for tenders, quotations etc) may only be waived as identified below.

[3(k), 3(l) and 3(m) for revenue items: 5(b) for capital items]

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| a) Approval of stock requisitions. | All Authorised Signatories. |
| b) Non-stock requisitions for <u>individual items of equipment</u> up to £5,000. | Senior Manager Authorised Signatories and Matron /Clinical Nurse Specialist |

NB: Individual items of equipment costing more than £5,000 are classed as capital and are not provided for within divisional budgets (see 5 below)

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| c) | Authorisation of non-stock requisitions for consumables etc. up to £50,000. | Senior Managers/Divisional Nurse Managers (within approved budget). | |
| d) | Authorisation of non-stock requisitions for consumables over £50,000 up to £100,000. | Executive Directors and senior managers with the title "Director" Associate Director of Facilities (within approved budget) | |
| e) | Authorisation of non-stock requisitions over £100,000. | As d) excluding Associate Director of Facilities plus Chief Executive or Director of Finance. | |
| f) | Authorisation of building/engineering maintenance. | As delegated by the Director of Planning & Performance or the Associate Director of Facilities and within approved Budget. | Refer to SFI 20.2.4 |
| g) | Leases or other long term financial commitments. | Director of Finance.

Director of Finance. | |
| h) | Pre-Payments | Supplies Department. | |
| i) | Raising of orders | Pharmacy Department for drugs only.
Facilities Directorate for building and engineering work and consumables.
Pathology Department for reagents and lab supplies only.
Catering Department for provisions only.
Out-patient Department for patients' appliances only. | |

- j) Signing of other contracts (ie excluding legally binding health care contracts and tenders) which commit the Trust to expenditure:
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| up to £100,000 | Any Executive Director and senior manager with the title "Director" including Associate Director of Facilities (within approved budget) | |
| over £100,000 up to £1 million | Two signatures: Chief Executive and or Director of Finance or Chief Executive or Director of Finance and a senior manager with the title "Director". | |
| over £1 million up to £2million | Two of either Director of Finance, Chief Executive or Chairman. | |
| over £2million | Any Executive Director following Trust Board approval. | Decisions reserved to the Trust Board Number 4 Strategy, Plans and Budgets (6) |
- k) Waiver of formal tendering procedures/ requirements for written quotations/acceptance of other than the lowest quotation for goods/services/revenue works up to £5,000.
- Any Executive Director, senior manager with the title "Director" and the Associate Director of Facilities within approved budgets.
- l) Ditto up to £50,000.
- Any two Directors: Executive of senior manager with the title of "Director" and including the Associate Director of Facilities within approved budgets.
- m) Ditto greater than £50,000 up to £1 million
- Two signatures: Chief Executive and or Director of Finance or Chief Executive or Director of Finance and a senior manager with the title "Director".

<p>n) Traveling Expenses/Study Leave/Training Courses. Chief Executive Directors Lead Clinicians Consultants and other career grade medical staff. Managers reporting to Executive Directors of senior managers with the title "Director"</p>	<p>Chairman or Director of Finance Chief Executive Medical Director Lead Clinicians Executive Directors and senior managers with the title "Director" Senior Manager Authorised Signatories</p>
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All Others

4 Virement

<p>Approval of virements within Divisional Non-Pay Budget.</p>	<p>Service Managers/Divisional Nurse Managers/ General Managers.</p>
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<p>Virement between Pay and Non-Pay Budgets.</p>	<p>Director of Finance/Deputy Director of Finance.</p>
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<p>Allocations from Reserves.</p>	<p>Director of Finance/Deputy Director of Finance.</p>
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5 Capital

<p>a) Authorisation of capital projects/procurements up to £2,000,000 per scheme or item of equipment.</p>	<p>Capital Planning and Estates Committee or between meetings, any two of the: Chief Executive, Director of Planning & Performance and Director of Finance.</p>	<p>To be reported to the next meeting of the Capital Planning and Estates Committee.</p>
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Authorisation of capital projects/procurements over £2,000,000 per scheme or item of equipment	Any Executive Director following Trust Board approval	Decisions reserved to the Trust Board Number 4 Strategy, Plans and Budgets (6)
b) Waiving of formal tendering procedures/requirement for written quotations/acceptance of other than the lowest quotation for contracts up to £1 million.	Two signatures: Chief Executive and or Director of Finance or Chief Executive or Director of Finance and a senior manager with the title "Director".	To be reported to the next meeting of Capital Planning & Estates Committee.
Over £1 million	Trust Board	
c) Authorisation to exceed scheme approved budgets.	Capital Planning & Estates Committee or between meetings any two of the: Chief Executive, Director of Planning & Performance and Director of Finance.	To be reported to the next meeting of Capital Planning & Estates Committee.

6 Income

a) Approval of pricing strategies, fees and charges in relation to income.	Director of Finance
b) Authorisation of all contracts for the provision of services by the Trust/receipt of income.	Director of Finance

7 Losses and Write-Off

a) Disposal of obsolete furniture and equipment, ie excluding stores and capital items.	Senior Manager Authorised Signatory	Policy for the re-use, sale and disposal of surplus or obsolete equipment.
b) Disposal/write off of stores or capital items.	Director of Finance.	
c) All other losses/write offs		
Up to £5,000	Deputy Director of Finance	
Up to £25,000	Director of Finance	Report to Audit Committee on a quarterly basis
Over £25,000 and up £100,000	Audit Committee	Report to Audit Committee on a quarterly basis
Over £100,000	Trust Board	

8 Ex-Gratia Payments (including payments made under legal obligation)

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| a) Patients and staff for loss of personal effects up to £1,000. | General Managers and Divisional Nurse Managers. |
| b) Other up to £5,000. | Any two Directors (Executive and or senior managers with the title "Director"). |
| c) Over £5,000 to £50,000 | Two signatures: Chief Executive and or Director of Finance or Chief Executive or Director of Finance and a senior manager with the title of "Director". |
| d) Over £50,000 | Requires Trust Board approval. |

9 Investigation of Fraud and Irregularities

Investigations and reporting of incidents to the Police	Local Counter Fraud Specialist/Director of Finance.	See Fraud and Corruption Policy.
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10 Personnel and Pay

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| a) Issue of Contracts of Employment | Director of Human Resources. |
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b) Re-Gradings	Relevant Executive Director under Director of Human Resources' advice NB: Employing Directorate to identify funding.	See Grading Evaluation Procedure.
c) Annual Leave and Special Leave	Chairman Chief Executive Medical Director or Chief Executive and Director of Human Resources Lead Clinicians or Director of Clinical Services and Director of Human Resources	
Chief Executive Directors Lead Clinicians		
Consultants and other career grade medical staff.		
Managers reporting to Executive Directors or senior manager with the title "Director"	Executive Directors and senior managers with the title "Director"	
All others	Senior Manager Authorised Signatories.	
d) Dismissal	Chairman and Non-executive Directors.	See Disciplinary Procedure and Constitution
Chief Executive	Committee including Chief Executive, Chairman and Non-executive Directors.	
Directors/senior managers with the title "Director"	Chief Executive and Medical Director.	
Lead Clinicians and Consultants	Executive Directors and senior managers with the title "Director" and Associate Directors.	
Other		

e) Advertising and Removal Expenses	Director of Human Resources	See relevant Policy
10 Press Releases	Director of Nursing/other Executive Director in his/her absence.	
11 Charitable Funds		
a) Items of expenditure up to £1,000	Two Charitable Fund Signatories	Charitable Funds Handbook
b) Items of expenditure up to £10,000	As above plus one Director	
c) Items of expenditure £10,000 to £50,000	As above, plus Chief Executive or Director of Finance. Following approval of the Charitable Funds Sub Committee	
12 Direct Operational Decisions		
The introduction or discontinuation of any significant activity or operation where this is not set out in the Business/Service Development Plan (up to £2 million gross annual income/expenditure)	Chief Executive Above £2 million requires Trust Board approval.	