

**AUTHORISATION**  
**of**  
**BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS FOUNDATION TRUST**  
**(pursuant to section 35 of the National Health Service Act 2006)**



Signature: ..... *William Miley*

**1 July 2008**

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## **PART 1 Authorisation**

1. Monitor ("Monitor"), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 ("**the Act**") and all other powers exercisable by Monitor, hereby authorises Birmingham and Solihull Mental Health NHS Trust to become an NHS Foundation Trust ("**the Trust**"), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 July 2008.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

## **PART 2 Interpretation and construction**

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

## **PART 3 Conditions**

### 1. Principal Purpose

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

### 2. General duty

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

### 3. Constitution

- (1) The Trust shall secure that its constitution is in accordance with any regulations made under section 59 of the Act (conduct of elections).
- (2) The Trust may make amendments to its constitution with the approval of Monitor.
- (3) The constitution, incorporating any amendments which may be made thereto, is annexed at Schedule 1.

### 4. Compliance and enforcement

- (1) The Trust shall comply with:
  - any requirements imposed on it under the Act or any other enactment;
  - the Conditions of this Authorisation;
  - the terms of its constitution;
  - if applicable, directions issued by the Secretary of State with respect to safety and security in connection with the provision of high security psychiatric services; and
  - the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.
- (2) The Trust shall comply with any guidance issued by Monitor, unless Monitor has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.
- (3) A failure to comply may result in Monitor taking enforcement action under sections 52, 53 or 54 of the Act.

5. Governance

- (1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 and the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.
- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

6. Health care and other standards

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

7. Mandatory Services

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

the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said education and training in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force.

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

8. Authorised Services

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

- (6) Monitor reserves the right to refuse to authorise research in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(5).
- (7) The Trust is authorised to make facilities and staff available for the purposes of education, training or research carried on by others.
- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of section 43(3) of the Act.

9. Protection of property

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

10. Private health care

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

11. Limit on borrowing

- (1) The total amount of the Trust's borrowing is subject to the limit set out in Schedule 5.
- (2) The limit is subject to annual review by Monitor.

12. Financial viability

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

13. Dividend payments on Public Dividend Capital

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



14. Information

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

15. Entry and inspection of premises

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

16. Fees

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

17. Representative membership

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

18. Co-operation with other bodies

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

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

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

19. Emergency planning

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

20. Information technology

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

21. Audit committee

- (1) The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.
- (2) The Board of Directors shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

22. Audit

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

23. Public interest reporting

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

24. Notification

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

25. Information given to Parliament and to Members of Parliament

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

**AUTHORISATION OF BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS  
FOUNDATION TRUST**

**Schedule 1**

The Constitution (and Annexures)

# **Birmingham and Solihull Mental Health NHS Foundation Trust**

## **CONSTITUTION**

### **Election Rules**

### **Standing Orders - Board of Directors**

### **Standing Orders - Assembly of Governors**

**1<sup>st</sup> July 2008**

# Constitution

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**1. Name**

The name of the Foundation Trust is the Birmingham and Solihull Mental Health 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. Powers**

- 3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the terms of authorisation.
- 3.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the trust.
- 3.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director or to such other persons in accordance with and for the purpose of provisions made under the Mental Health Act 1983 as the Directors may resolve.

**4. Membership and constituencies**

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

- 4.1 a public constituency;
- 4.2 the staff constituency; or
- 4.3 the service users' and carers' constituency

**5. Application for membership**

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

**6. Public Constituency**

- 6.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 6.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.

- 6.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

## 7. **Staff Constituency**

- 7.1 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:
- 7.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 7.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.
- 7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 7.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.4 The Staff Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

### **Automatic membership by default – staff**

- 7.6 An individual who is:
- 7.6.1 eligible to become a member of the Staff Constituency, and
- 7.6.2 invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,
- shall become a member of the trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he/she informs the trust that he/she does not wish to do so.



## **8. Service Users' and Carers' Constituency**

- 8.1 An individual who has, within the period specified below, attended any of the trust's hospitals as either a patient or as the carer of a patient may become or continue as a member of the trust.
- 8.2 The period referred to above shall be the period from 5 July 1948 to the date of an application by the patient or carer to become a member of the trust.
- 8.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Service Users' and Carers' Constituency.
- 8.4 The Service Users' and Carers' Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Service Users' and Carers' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Service Users' and Carers' Constituency.
- 8.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Service Users' and Carers' Constituency
- 8.6 The minimum number of members in each class of the Service Users' and Carers' Constituency is specified in Annex 3.

## **9. Restriction on membership**

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3 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 9 – Further Provisions.

## **10. Assembly of Governors – composition**

- 10.1 The trust is to have an Assembly of Governors, which shall comprise both elected and appointed governors.

10.2 The composition of the Assembly of Governors is specified in Annex 4.

10.3 The members of the Assembly of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The maximum number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

11. **Assembly of Governors – election of governors**

11.1 Elections for elected members of the Assembly of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

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

11.3 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.

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

11.5 A vacant Governor post may be filled without an election where permitted by the Model Rules as they apply to the Trust or by paragraph 7 of Annex 9.

11.6 The provisions in this constitution take priority over the Election Rules in the event of conflict.

12. **Assembly of Governors - tenure**

12.1 An elected governor shall hold office for an initial term of 3 years and shall be eligible for re-election for subsequent terms of not more than 3 years, subject to paragraph 12.3.

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

12.3 An elected governor shall be eligible for re-election at the end of his/her term, subject to a maximum period of office of 10 years.

13. **Assembly of Governors – disqualification and removal**

13.1 The following may not become or continue as a member of the Assembly of Governors:

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

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

**13.1.3** a person who within the preceding five years has been convicted in the British 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.

**13.2** Governors must be at least 18 years of age at the date they are nominated for election or appointment.

**13.3** If a governor fails to attend three successive meetings of the Assembly of Governors, his/her tenure of office is to be immediately terminated unless the other governors are satisfied that:

**13.3.1** the absence was due to a reasonable cause; and

**13.3.2** he will be able to start attending meetings of the Trust again within such a period as they consider reasonable.

**13.4** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Assembly of Governors are set out in Annex 6.

**13.5** Provision for the removal of Governors is set out in Annex 6.

#### **14. Assembly of Governors – meetings of governors**

**14.1** The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 or paragraph 22.1 below) or, in his/her absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Assembly of Governors.

**14.2** Meetings of the Assembly of Governors shall normally be open to members of the public. Members of the public may be excluded from the whole or part of a meeting for special reasons either by resolution of the Assembly of Governors or at the discretion of the Chair of the meeting.

#### **15. Assembly of Governors – standing orders**

The standing orders for the practice and procedure of the Assembly of Governors, as may be varied from time to time, are attached at Annex 7.

**16. Assembly of Governors - conflicts of interest of governors**

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

**17. Assembly of Governors – travel expenses**

The trust may pay traveling and other expenses to members of the Assembly of Governors at rates determined by the trust.

**18. Assembly of Governors – further provisions**

Further provisions with respect to the Assembly of Governors are set out in Annex 6.

**19. Board of Directors – composition**

- 19.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 19.2** The Board of Directors is to comprise:
- 19.2.1** a non-executive Chairman
  - 19.2.2** up to 5 other non-executive directors; and
  - 19.2.3** up to 5 executive directors.
- 19.3** One of the executive directors shall be the Chief Executive.
- 19.4** The Chief Executive shall be the Accounting Officer.
- 19.5** One of the executive directors shall be the finance director.
- 19.6** One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 19.7** One of the executive directors is to be a registered nurse or a registered midwife.

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

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

- 20.1** he is a member of the Public Constituency, or
- 20.2** he is a member of the Service Users' and Carers' Constituency, or
- 20.3** 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
- 20.4** (in a case falling under either of the preceding sub-paragraphs of this paragraph) he/she is not disqualified by virtue of paragraph 26 below.

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

- 21.1** The Assembly of Governors at a general meeting of the Assembly of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.

21.2 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Assembly of Governors.

21.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 22 below.

**22. Board of Directors – appointment of initial chairman and initial other non-executive directors**

22.1 The Chairman of the applicant NHS Trust shall be appointed as the initial Chairman of the trust if he/she wishes to be appointed.

22.2 The power of the Assembly of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.

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

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

**23. Board of Directors – appointment of deputy chairman**

The Assembly of Governors at a general meeting of the Assembly of Governors shall appoint one of the non-executive directors as deputy chairman.

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

24.1 The non-executive directors shall appoint or remove the Chief Executive.

24.2 The appointment of the Chief Executive shall require the approval of the Assembly of Governors.

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

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

**25. Board of Directors – appointment and removal of initial Chief Executive**

25.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the trust if he/she wishes to be appointed.

25.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Assembly of Governors.

**26. Board of Directors – disqualification**

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

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

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

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

**27. 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 8.

**28. Board of Directors - conflicts of interest of directors**

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

**29. Board of Directors – remuneration and terms of office**

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

**29.2** The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

**30. Registers**

The trust shall have:

**30.1** 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;

**30.2** a register of members of the Assembly of Governors;

**30.3** a register of interests of governors;

**30.4** a register of directors; and

**30.5** a register of interests of the directors.

**31. Registers – inspection and copies**

**31.1** The trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

**31.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of –

**31.2.1** any member of the Service Users' and Carers' Constituency;  
or

**31.2.2** any other member of the trust, if he so requests.

**31.3** So far as the registers are required to be made available:

**31.3.1** they are to be available for inspection free of charge at all reasonable times; and

**31.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.



31.4 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.

**32. Documents available for public inspection**

32.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

32.1.1 a copy of the current constitution;

32.1.2 a copy of the current authorisation;

32.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

32.1.4 a copy of the latest annual report;

32.1.5 a copy of the latest information as to its forward planning; and

32.1.6 a copy of any notice given under section 52 of the 2006 Act.

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

32.3 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.

**33. Auditor**

33.1 The trust shall have an auditor.

33.2 The Assembly of Governors shall appoint or remove the auditor at a general meeting of the Assembly of Governors.

**34. 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.

**35. Accounts**

35.1 The trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.

35.2 The accounts are to be audited by the trust's auditor.

**35.3** 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.

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

**36. Annual report and forward plans**

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

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

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

**36.4** In preparing the document, the directors shall have regard to the views of the Assembly of Governors.

**37. Meeting of Assembly of Governors to consider annual accounts and reports**

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

**37.1** the annual accounts

**37.2** any report of the auditor on them

**37.3** the annual report.

**38. Instruments**

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

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

**38.3** The trust shall have a register of sealing, which shall be maintained by the Company Secretary.

**39. 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.

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

**Assembly of Governors** is the name the Trust gives to its Board of Governors.

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

**Secretary** is the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;

**Service Users' and Carers' Constituency** is the name the Trust gives to its Patients' constituency.

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

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

## ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

<b>Public Constituency</b>	<b>Minimum number of members</b>
Birmingham East and North comprising the following Local Authority Wards: Sutton, Four Oaks, Sutton Trinity, Sutton Vesey, Sutton New Hall, Kingstanding, Oscott, Hodge Hill, Washwood Heath, Stockland Green, Erdington, Tyburn, Bordesley Green, South Yardley, Acocks Green, Sheldon, Shard End, Stechford and Yardley North	10
South Birmingham comprising the following Local Authority Wards: Edgbaston, Harborne, Quinton, Bartley Green, Weoley, Longbridge, Northfield, Kings Norton, Bournville, Selly Oak, Moseley, Brandwood, Billseley, Hall Green and Fox Hollies	10
Heart of Birmingham comprising the following Local Authority Wards: Aston, Handsworth Wood, Ladywood, Lozells and East Handsworth, Nechells, Soho, Sparkbrook, Springfield, Oscott and Perry Barr	10
Solihull comprising the district of Solihull	10
Rest of England and Wales	10

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

(Paragraphs 6.4 and 6.5)

<b>Class of Staff Constituency</b>	<b>Minimum number of members</b>
Nursing staff	10
Medical staff	10
Other clinical staff and other health professionals	10
Non-clinical staff	10

### ANNEX 3 – THE SERVICE USERS’ AND CARERS’ CONSTITUENCY

<b>Class of Service Users’ and Carers’ Constituency</b>	<b>Minimum number of members</b>
Birmingham East and North* Service Users	10
South Birmingham* Service Users	10
Heart of Birmingham* Service Users	10
Solihull* Service Users	10
Rest of England and Wales Service Users	10
Carers	10

\* refers to the area (defined as in Annex 1) in which the Service User is resident.

## ANNEX 4 – COMPOSITION OF ASSEMBLY OF GOVERNORS

(Paragraphs 9.2 and 9.3)

### Elected Governors

<b>Public Constituency</b>	<b>No of Governors</b>
Birmingham East and North	2
South Birmingham	2
Heart of Birmingham	2
Solihull	2
Rest of England and Wales	1
<b>Total Public Governors</b>	<b>9</b>
<b>Service Users' and Carers' Class</b>	<b>No of Governors</b>
Birmingham East and North* Service Users	1
South Birmingham* Service Users	1
Heart of Birmingham* Service Users	1
Solihull* Service Users	1
Rest of England and Wales Service Users	1
Carers	4
<b>Total Service Users' and Carers' Governors</b>	<b>9</b>
<b>Total Public and Service Users' and Carers' Governors</b>	<b>18</b>
<b>Staff Class</b>	<b>No of Governors</b>
Nursing staff	2
Medical staff	1
Other clinical staff and health professionals	1
Non-clinical staff	1
<b>Total staff</b>	<b>5</b>

### Appointed Governors (including Partnership Organisations)

<b>Appointer</b>	<b>No of Governors</b>
Birmingham City Council	1
Solihull Borough Council	1
Birmingham and Solihull Councils for Voluntary Service	2
Birmingham East and North Primary Care Trust	1
West Midlands Police	1
University of Birmingham	1
University of Central England	1
Local Medical Committee	1
Local Member of Parliament	1
<b>Total Appointed</b>	<b>10</b>



## **ANNEX 5 –THE MODEL RULES FOR ELECTIONS**

(Paragraph 10.2)

### *Part 1 - Interpretation*

1. Interpretation

### *Part 2 – Timetable for election*

2. Timetable
3. Computation of time

### *Part 3 – Returning officer*

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

### *Part 4 - Stages Common to Contested and Uncontested Elections*

8. Notice of election
9. Nomination of candidates
10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
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18. Method of election

### *Part 5 – Contested elections*

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

### *Action to be taken before the poll*

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

### *The poll*

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
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### *Procedure for receipt of envelopes*

32. Receipt of voting documents
33. Validity of ballot paper
34. Declaration of identity but no ballot paper
35. Sealing of packets

### *Part 6 - Counting the votes*

36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
39. Rejected ballot papers
40. First stage
41. The quota
42. Transfer of votes
43. Supplementary provisions on transfer
44. Exclusion of candidates
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### *Part 7 – Final proceedings in contested and uncontested elections*

47. Declaration of result for contested elections
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### *Part 8 – Disposal of documents*

49. Sealing up of documents relating to the poll
50. Delivery of documents
51. Forwarding of documents received after close of the poll
52. Retention and public inspection of documents
53. Application for inspection of certain documents relating to election

*Part 9 – Death of a candidate during a contested election*

54. Countermand or abandonment of poll on death of candidate

*Part 10 – Election expenses and publicity*

*Expenses*

55. Expenses incurred by candidates
56. Expenses incurred by other persons
57. Personal, travelling, and administrative expenses

*Publicity*

58. Publicity about election by the corporation
59. Information about candidates for inclusion with voting documents
60. Meaning of “for the purposes of an election”

*Part 11 – Questioning elections and irregularities*

61. Application to question an election

*Part 12 – Miscellaneous*

62. Secrecy
63. Prohibition of disclosure of vote
64. Disqualification
65. Delay in postal service through industrial action or unforeseen event

## *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 board of governors;

“the regulator” means the Independent Regulator for NHS foundation trusts; and “the 2006 Act” means the National Health Service 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.

<b>Proceeding</b>	<b>Time</b>
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 board of governors 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.

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 board of governors 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 board of governors, 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 board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be board of governors, then;
  - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and;
  - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

### *Part 5 – Contested elections*

## **19. Poll to be taken by ballot –**

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

## **20. The ballot paper –**

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

- (2) Every ballot paper must specify:
  - (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the board of governors 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 board of governors 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 spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
  - (a) the name of the voter,
  - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and;
  - (c) the details of the unique identifier of the replacement ballot paper.

#### **29. Lost ballot papers –**

- (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she:
  - (a) is satisfied as to the voter’s identity,
  - (b) has no reason to doubt that the voter did not receive the original ballot paper, and;
  - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”):
  - (a) the name of the voter, and;
  - (b) the details of the unique identifier of the replacement ballot paper.

#### **30. Issue of replacement ballot 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.



**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*

**36. 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 44(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 41 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 42 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.

### **39. 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).

### **40. 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.

### **41. 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 44 has been complied with.

#### **42. 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 43 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 43 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.

### **43. 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 42 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 42 or 44 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 42 or 44 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.



#### **44. Exclusion of candidates**

- (1) If—
  - (a) all transferable papers which under the provisions of rule 42 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 45 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 43 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 45 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 42 and rule 43.
- (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.

#### **45. 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.

#### **46. 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 42(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.

*Part 7 – Final proceedings in contested and uncontested elections*

**47. 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 Birmingham and Solihull Mental Health NHS 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 39(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 spoilt ballot papers,
  - (d) the list of lost ballot papers,
  - (e) the list of eligible voters, and;
  - (f) the list of tendered ballot papers.

- (3) The returning officer must endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and;
  - (d) the constituency, or class within a constituency, to which the election relates.

#### **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*

**54. 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) traveling 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) and 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.

## **ANNEX 6 – ADDITIONAL PROVISIONS – ASSEMBLY OF GOVERNORS**

(Paragraph 12.3)

Persons also may not become or continue as a Governor of the Trust if:

1. they are a Director of the Trust, or an employee of the Trust with the courtesy title “director”, or a Governor or Director of another NHS body, or an employee of another NHS body with the courtesy title “director”, or a director or senior employee of an independent/private sector health care provider that competes with the Trust. These restrictions do not apply to Appointed Governors who are a Governor, Director or employee of their appointor, unless they are also Directors of the Trust, or employees of the Trust with the courtesy title of "director";
2. being a member of a public constituency, they were (or were entitled to be) a member of one of the classes of the staff constituency at any point during the preceding two years;
3. they are on the register of sex offenders;
4. they have had their name removed, by a direction under section 46 of the 1977 NHS Act from any list prepared under Part II of that Act or have otherwise been disqualified or suspended from any healthcare profession, and have not subsequently had their name included in such a list or had their qualification re-instated or suspension lifted and/or they are the subject of an alert letter;
5. they fail to, or indicate that they are unwilling to, act in the best interests of the Trust and in accordance with The Seven Principles of Public Life laid out by the Committee on Standards in Public Life in its First Report, set out in Part A of Annex 10 as amended from time to time;
6. they fail to agree (or, having agreed, fail) to abide by the values of the Trust Principles set out in Part B of Annex 10

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

(Paragraph 14)

**THE BIRMINGHAM AND  
SOLIHULL MENTAL HEALTH  
NHS FOUNDATION TRUST**

**Standing Orders  
Assembly of Governors**

**1<sup>st</sup> July 2008**

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## 1. INTRODUCTION

### Statutory Framework

The Birmingham and Solihull Mental Health NHS Foundation Trust (The Trust) is a statutory body which became a public benefit corporation on 1<sup>st</sup> July 2008 following its approval as an NHS Foundation Trust by Monitor - the Independent Regulator of NHS Foundation Trusts (Independent Regulator) pursuant to the National Health Service Act 2006 (the 2006 Act).

The principal place of business of the Trust is:

*Unit B1  
50 Summer Hill Road  
Ladywood  
Birmingham B1 3RB*

The Trust operates across 90 sites in the Birmingham and Solihull area.

NHS Foundation Trusts are governed by Act of Parliament, mainly the 2006 Act, by their constitutions and by terms of their authorisation granted by the Independent Regulator (Regulatory Framework).

The functions of the Trust are conferred by the Regulatory Framework. As a body corporate it has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

The Regulatory Framework requires the Assembly of Governors to adopt Standing Orders (SOs) for the regulation of its proceedings and business.

## 2. INTERPRETATION

- 2.1 Save as permitted by law and subject to the Constitution, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Secretary).
- 2.2 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in the interpretation and in addition:

**"TRUST"** means The Birmingham and Solihull Mental Health NHS Foundation Trust.



**“ASSEMBLY OF GOVERNORS”** means the Assembly of Governors of the Trust as defined in the Constitution and “Board” means the Assembly of Governors, unless the context otherwise requires.

**“BOARD OF DIRECTORS”** means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body.

**“CHAIR OF THE BOARD”** or “Chair of the Trust” is the person appointed by the Board of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. Except where the context otherwise requires, the expressions “the Chair of the Board” and “the Chair of the Trust” shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

**“CHIEF EXECUTIVE”** means the chief executive officer of the Trust.

**“COMMITTEE”** means a committee of the Assembly of Governors

**“CONSTITUTION”** means the constitution of the Trust.

**“COMMITTEE MEMBERS”** means the Chair and the Governors or Directors formally appointed by the Assembly of Governors or Board of Directors to sit on or to chair specific committees.

**“DEPUTY CHAIR”** means the Non-Executive Director appointed from amongst the Non-Executive Directors as Deputy Chair by the Assembly of Governors to take on the Chair’s duties in his/her capacity as chair of the Assembly of Governors if the Chair is absent for any reason.

**“EXECUTIVE DIRECTOR”** means a Member of the Board of Directors who holds an executive office of the Trust.

**“GOVERNOR”** means a Governor of the Trust. (Governor in relation to the Assembly of Governors does not include the Chair).

**“NON-EXECUTIVE DIRECTOR”** means a member of the Board of Directors who does not hold an executive office with the Trust.

**“OFFICER”** means employee of the Trust or any other person holding a paid appointment or office with the Trust.

**“SOs”** means these Standing Orders.

**“SECRETARY TO THE TRUST”** means a person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust’s compliance with the Regulatory Framework and these standing orders.

### **3. THE ASSEMBLY OF GOVERNORS**

#### **3.1 Composition of the Board of Governors**

3.1.1 The composition of the Assembly of Governors shall be in accordance with the Constitution of the Foundation Trust.

#### **3.2.1 Role of the Chair**

3.2.2 The Chair is not a Governor. However under the Regulatory Framework, he/she presides at meetings of the Assembly of Governors and has a casting vote.

3.2.2 Where the Chair of the Trust has died or has ceased to hold office, or where he/she has been unable to perform his/her duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his/her duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair.

#### **3.2.3 Role and Responsibilities of the Assembly of Governors**

3.2.4 The roles and responsibilities of the Assembly of Governors, to be undertaken in accordance with the Trust Constitution, are:

- To appoint and remove the Chair and other Non Executive Directors of the Foundation Trust at a general meeting (except for the initial Chair and Non-Executive Directors)
- To approve at a general meeting the appointment by the Non-Executive Directors of the Chief Executive (except for the initial Chief Executive)
- To appoint or remove the auditor at a general meeting
- To be consulted by the Trust's Board of Directors on forward planning and to have the Board of Governors' views taken into account
- To be presented with the Trust's Annual Report and Accounts and the report of the auditor on the Accounts at a general meeting

3.2.5 The 2006 Act provides that all the powers of the Foundation Trust are to be exercised by its Directors. The Assembly of Governors does not have the right to veto decisions made by the Board of Directors.

3.2.6 The Assembly of Governors, and individual Governors, are not empowered to speak on behalf of the Trust, and must seek the advice and views of the Chair concerning any contact from the media or any invitation to speak publicly about the Trust or their role within it. For the avoidance of doubt, in this context the Chair acts as Chair of the Trust not as chair of the Assembly of Governors and in his/her absence Governors should seek the advice and views of the Deputy Chair of the Trust acting as the Senior Independent Director.

## **4. MEETINGS OF THE BOARD**

### **4.1 Admission of the Public**

4.1.1. The public shall be afforded facilities to attend publicly notified formal meetings of the Assembly of Governors except where the Assembly resolves:

- (a) That members of the public be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public; and/or
- (b) That in the interests of the public order the meeting adjourns for a period to be specified in such resolution to enable the Assembly to complete business without the presence of the public.

4.1.2 Nothing in these Standing Orders shall require the Assembly to allow members of the public to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Assembly.

### **4.2 Calling Meetings**

4.2.1 Ordinary meetings of the Assembly shall be held at such times and places as the Assembly may determine and there shall be not less than 3 or more than 4 formal meetings in any year except in exceptional circumstances.

4.2.2 The Chair of the Trust may call a meeting of the Assembly at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of Members of the Assembly, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him at Trust's Headquarters, such one third or more Members of the Assembly may forthwith call a meeting.

### **4.3 Notice of Meetings**

4.3.1 Before each meeting of the Assembly, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least three clear days before the meeting.

4.3.2 Want of service of the notice on any Governor shall not affect the validity of a meeting.

- 4.3.3 In the case of a meeting called by Members of the Assembly in default of the Chair, the notice shall be signed by those Members of the Assembly and no business shall be transacted at the meeting other than specified in the notice.
- 4.3.4 Agendas will be sent to Members of the Assembly before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.
- 4.3.5 Before each meeting of the Assembly a public notice of the time and place of the meeting shall be displayed at the Trust's Headquarters at least three clear days before the meeting.

#### **4.4 Setting the agenda**

- 4.4.1 The Assembly may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.4.2 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

#### **4.5 Petitions**

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

#### **4.6 Chair of Meeting**

- 4.6.1 At any meeting of the Assembly, the Chair of the Trust, if present, shall preside unless he has a conflict of interest. If the Chair is absent from the meeting or has a conflict of interest the Deputy Chair, if he/she is present, shall preside unless he has a conflict of interest. If the Chair and Deputy Chair are absent or have a conflict of interest such Non-Executive Director as the Members of the Assembly present shall choose shall preside unless he has a conflict of interest. Where the Chair of the Trust, Deputy Chair and other Non-Executive Directors are all absent or have a conflict of interest, the Assembly of Governors shall select one of their number to preside at the meeting. The person presiding at the meeting shall have a casting vote.

#### **4.7 Notices of Motion**

- 4.7.1 A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, 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.

#### **4.8 Withdrawal of Motion or Amendments**

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

#### **4.9.1 Motion to Rescind a Resolution**

- 4.9.1 Notice of a 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 Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Assembly, it shall not be competent for any member other than the Chair to propose a motion to the same effect within six months, however the Chair may do so if he/she considers it appropriate.

#### **4.10 Motions**

- 4.10.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.10.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- an amendment to the motion
  - the adjournment of the discussion or the meeting
  - that the meeting proceed to the next business (\*)
  - the appointment of an ad hoc committee to deal with a specific item of business
  - that the motion be now put. (\*)
  - a motion resolving to exclude the public under SO 4.1.1.

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

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

#### **4.11 Chair's Ruling**

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

#### **4.12 Voting**

4.12.1 If a question is put to the vote, it shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.

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

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

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

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

#### **4.13 Minutes**

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

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

4.13.3 Minutes shall be circulated in accordance with the members' wishes.

#### **4.14 Suspension of Standing Orders**

4.14.1 Except where this would contravene any statutory provision or any direction made by the Independent Regulator, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Assembly are present, including two public governors, and that a majority of those present vote in favour of suspension.

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

4.14.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Members of the Assembly.

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

#### **4.15 Variation and Amendment of Standing Orders**

4.15.1 These Standing Orders shall be amended only if:

- a notice of a motion under Standing Order 4.7 has been given; and
- no fewer than half the total of the Trust's Governors vote in favour of amendment; and
- at least two-thirds of the Assembly Members are present; and
- the variation proposed does not contravene a statutory provision or direction made by the Independent Regulator.

#### **4.16 Record of Attendance**

4.16.1 The names of the Chair and Members of the Assembly present at the meeting shall be recorded in the minutes.

#### **4.17 Quorum**

4.17.1 No business shall be transacted at a meeting unless at least 10 (ten) Governors are present of which at least five are public and/or service user and carer Governors.

4.17.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6, 7 or 8) 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.

### **5. COMMITTEES**

5.1 Subject to the Regulatory Framework and such guidance as may be issued by the Independent Regulator, the Assembly may, and if so required by the Independent Regulator, shall, appoint committees of the Assembly to assist the Assembly in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly of the Chair and Members of the Assembly of Governors.

- 5.2 A committee appointed under this regulation may, subject to such guidance as may be given by the Independent Regulator or restriction imposed by the Assembly, appoint sub-committees consisting wholly of members of the committee.
- 5.3 The Standing Orders of the Assembly, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Assembly. In which case the term “Chair” is to be read as a reference to the Chair of the Committee as the context permits, and the term “Governor” is to be read as a reference to a member of the committee also as the context permits.
- 5.4 Subject to Standing Order 5.5, each sub-committee shall have such terms of reference and power and be subject to such conditions (as to reporting back to the Assembly), as the Assembly shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by the Independent Regulator. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 The Assembly may not delegate any decision-making or executive powers to any committee or sub-committee.
- 5.6 The Assembly shall approve the appointments to each of the committees which it has formally constituted.
- 5.7 The committees and sub-committees established by the Assembly shall be such committees as are required to assist the Board in discharging its responsibilities.

## **6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

### **6.1.1 Declaration of Interests**

- 6.1.1 The Regulatory Framework requires Assembly Members to declare interests which are relevant and material to the Assembly of which they are a Member. All existing Assembly Members should declare such interests. Any Assembly Members appointed subsequently should do so on appointment.
- 6.1.2 Interests which should be regarded as “relevant and material” are defined in the Trust’s Constitution as follows:

any 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 Assembly of Governors



- 6.1.3 At the time Board members' interests are declared, they should be recorded in the Assembly minutes. Any changes in interests should be declared at the next Assembly meeting following the change occurring.
- 6.1.4 Assembly members' 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.
- 6.1.5 During the course of an Assembly Meeting, if a conflict of interest is established, the Assembly Members concerned shall withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.1.6 There is no requirement for the interests of Assembly members' spouses or partners to be declared. However Standing Order 7, which is based on the regulations, requires that the interests of Governors' spouses, if living together, in contracts should be declared. Therefore the interests of Assembly Members' spouses and cohabiting partners should also be regarded as relevant.

## **6.2 Register of Interests**

- 6.2.1 The Secretary to the Trust will ensure that a Register of Interests is established to record formally declarations of interests of Assembly Members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by Assembly Members, as defined in Standing Order 6.1.2.
- 6.2.2 These details will be kept up to date by means of a monthly review of the Register in which any changes to interests declared will be incorporated.
- 6.2.3 The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.2.4 In establishing, maintaining, updating and publicising the Register, the Trust shall comply with all guidance issued from time to time by the Independent Regulator.

## **7. DISABILITY OF CHAIR AND MEMBERS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 7.1 Subject to the following provisions of this Standing Order, if the Chair or another Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the

consideration or discussion of the contract or other matter or vote on any question with respect to it.

7.2 The Assembly may exclude the Chair (or Governor) from a meeting of the Assembly while any contract, proposed contract or other matter in which he/she has pecuniary interest, is under consideration.

7.3 For the purpose of this Standing Order the Chair or Governor shall be treated, subject to SO 7.4, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- (a) he/she, or a nominee of theirs, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or;
- (b) he/she, is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

7.4 The Chair or a Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- (a) of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
- (b) of an interest in a company, body or person with which he/she is connected as mentioned in SO 7.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.5 Where a Governor:

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

- 7.6 The Standing Order applies to a committee or sub-committee and to a joint committee as it applies to the Assembly and applies to a Governor of any such committee or sub-committee as it applies to a Governor.

## **8. STANDARDS OF BUSINESS CONDUCT POLICY**

- 8.1 Governors should comply with the Trust Constitution, the NHS Foundation Trust Code of Governance, published by the Independent Regulator, the requirements of the Regulatory Framework, and any guidance and directions issued by the Independent Regulator.

### **8.2 Interest of Governors in Contracts**

- 8.2.1 If it comes to the knowledge of a Governor that a contract in which he/she has any pecuniary interest not being a contract to which he/she is a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Secretary of the Trust of the fact that he/she is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 8.2.2 A Governor should also declare to the Secretary of the Trust any other employment or business or other relationship of his/hers, or of cohabitating spouse, which might reasonably be predicted could conflict with the interests of the Trust.

### **8.3 Canvassing of, and recommendations by Governors in Relation to Appointments**

- 8.3.1 Canvassing of Governors of the Trust or of any Committee of the Assembly of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment.

- 8.3.2 A Governor 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 Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

- 8.3.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

#### **8.4 Relatives of Governors or Officers**

- 8.4.1 Candidates for any staff appointment under the Trust, shall when making application, disclose in writing to the Trust whether they are related to any Member of the Board of Directors or Assembly of Governors 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.
- 8.4.2 The Chair and every Governor and officer of the Trust shall disclose to the Chief Executive any relationship between him/herself and a candidate of whose candidature that Governor or Officer is aware.
- 8.4.3 On appointment, Governors (and prior to acceptance of an appointment in the case of officer members) should disclose to the Board whether they are related to any other Governor or holder of any office in the Trust.
- 8.4.4 Where the relationship to a Governor of the Trust is disclosed, the Standing Order headed Disability of Chair and Members of the Board in proceedings on account of pecuniary interest (SO 7) shall apply.

#### **9. SENIOR INDEPENDENT DIRECTOR**

- 9.1 The Assembly of Governors is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.
- 9.2 The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director Job Specification", as amended from time to time.

#### **10. MISCELLANEOUS**

##### **10.1 Standing Orders to be given to Governors**

- 10.1.1 It is the duty of the Secretary to the Trust to ensure that existing Governors and all new appointees are notified of and understand their responsibilities within these Standing Orders. New designated officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

##### **10.2 Review of Standing Orders**

- 10.2.1 Standing Orders shall be reviewed every two years. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

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

(Paragraph 26)

# **Birmingham and Solihull Mental Health NHS Foundation Trust**

## **Standing Orders for the Practice and Procedure of The Board of Directors**

1<sup>st</sup> July 2008

## ***FOREWORD***

**Trust Boards have a responsibility to agree Standing Orders and Schedules of Reservation of Powers and Delegation of Powers to their boards.**

The documents, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the Trust. They fulfill the dual role of protecting the Trust's interests by ensuring for example, all transactions maximize the benefit to the Trust and protecting staff from possible accusations that they have acted less than properly. This is provided of course, staff have followed the correct procedures outlined in the relevant document.

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

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## 1. INTRODUCTION

The principal place of business of the Trust is Trust Headquarters, 50 Summer Hill Road, Ladywood, Birmingham, B1 3RB

NHS Foundation Trusts are governed by a Regulatory Framework that confers the functions of the Trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 ("the 2006 Act"); their constitutions; the terms of their authorisation granted by the Independent Regulator of NHS Foundation Trusts ("the Independent Regulator"); and binding guidance issued by the Independent Regulator.

The Regulatory Framework requires the Board of Directors to adopt Standing Orders for the practice and procedure of the Board of Directors.

## 1. INTERPRETATION

1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Trust's Secretary).

1.2 Any expression to which a meaning is given in the 2006 Act and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders and in addition:

1.2.1 "**Board of Directors**" means the Chair, executive and non-executive directors of the Trust collectively as a body as constituted in accordance with the constitution and the 2006 Act.

1.2.2 "**Chief Executive**" means the chief officer of the Trust.

1.2.3 "**Committee**" means a committee appointed by the Trust.

1.2.4 "**Committee members**" mean persons formally appointed by the Board of Directors to sit on or to chair specific committees.

1.2.5 "**Director of Finance**" means the chief financial officer of the Trust.

1.2.6 "**Executive Director**" means a Director who is also an officer of the Trust.

1.2.7 "**Director**" means an executive (including the Chief Executive) or non executive director (including the Chair) of the Board.

1.2.8 "**Nominated Officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.



1.2.9 "**Non-Executive Director**" means a Director of the Trust who is not an officer of the Trust, except where the Director is a nominee of the university that provides the Trust's medical school.

1.2.10 "**Officer**" means employee of the Trust or any other person holding a paid appointment or office with the Trust.

## **2. THE TRUST**

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

2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Board of Directors as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

2.3 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission.

2.4 The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the document entitled 'Reservation of powers to the Board of Directors and Scheme of Delegation' 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 that document also.

**2.5 Appointment and Powers of Deputy Chair** – For the purposes of allowing the proceedings of the Board of Directors to be conducted in the absence of the Chair for any reason and subject to Standing Order 2.6 below, the Assembly of Governors may appoint a non-executive director to be Deputy Chair, for such period, not exceeding the remainder of his/her term as a Director, as they may specify on appointing him.

2.6 Any non-executive director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Assembly of Governors may thereupon appoint another non-executive director as Deputy Chair in accordance with the provisions of Standing Order 2.5.

2.7 Where the Chair of the Trust has died or has ceased to hold office, or where he/she has been unable to perform his/her duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his/her duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair.

- 2.8 Appointment and Powers of Senior Independent Director** - Subject to Standing Order 2.9 below, the Board of Directors may in consultation with the Assembly of Governors appoint a Non-Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of his term as a Member of the Board of Directors, as they may specify on appointing him. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board of Directors.
- 2.9 Any Member of the Board of Directors so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman. The Board of Directors may thereupon in consultation with the Assembly of Governors appoint another Non-Executive Director as Senior Independent Director in accordance with the provisions of Standing Order 2.8 above.
- 2.10 **Role of Directors** – The Board of Directors will function as a corporate decision-making body, 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.

### **3. MEETINGS OF THE BOARD OF DIRECTORS**

- 3.1 Admission of the Public and the Press** - The public and representatives of the press shall be afforded facilities to attend formal meetings of the Board of Directors as notified but shall be required to withdraw upon the Board of Directors resolving as follows:

"That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest".

- 3.2 The Chair (or Deputy Chair) shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors' business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:  
"That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board of Directors to complete business without the presence of the public".

- 3.3 Confidentiality:**

- 3.3.1. Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Board of Directors. Proceedings shall not be transmitted in any manner whatsoever without the prior agreement of the Board of Directors.
- 3.3.2. Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public shall be confidential to the members of the Board of Directors.
- 3.3.3. Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Board of Directors meeting, without the express permission of the Board of Directors. This prohibition shall apply equally to the content of any discussion during the Board of Directors' meeting which may take place on such reports or papers.
- 3.4 **Calling Meetings** - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 3.5 The Chair of the Trust may call a meeting of the Board of Directors at any time. If the Chair 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 Chair does not call a meeting within seven days after such requisition has been presented to him/her at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 3.6 **Notice of Meetings** - Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least three clear days before the meeting.
- 3.7 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 3.8 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these Standing Orders. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3.9 Agendas will wherever possible be sent to Directors at least five clear days before the meeting and supporting papers, whenever possible.

- 3.10 Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.
- 3.11 **Setting the Agenda** - The Board of Directors may determine that certain matters shall appear on every agenda for a meeting 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.)
- 3.12 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.13 **Petitions** - Where a petition has been received by the Trust the Chair of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting subject to the powers granted to the Chair by these Standing Orders to regulate arrangements for Board of Directors' meetings.
- 3.14 **Chair of Meeting** - At any meeting of the Board of Directors, the Chair of the Board of Directors, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and he/she is present, shall preside. If the Chair and Vice -Chair are absent such Director (who is not also an officer of the Trust) as the Directors present shall choose shall preside.
- 3.15 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such non-executive director as the Directors present shall choose shall preside. If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or to the interests of the non-executive Directors as a class, neither the Chair nor any of the other non-executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair or the other non-executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.16 **Annual Public Meeting** – The Trust will publicise and hold an annual public meeting.

- 3.17 **Notices of Motion** - A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, 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 Standing Order 3.8.
- 3.18 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.19 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months; however the Chair may do so if he/she considers it appropriate.
- 3.20 **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.
- 3.21 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- An amendment to the motion.
  - The adjournment of the discussion or the meeting.
  - That the meeting proceed to the next business. (\*)
  - The appointment of an ad hoc committee to deal with a specific item of business.
  - That the motion be now put. (\*)
  - A motion resolving to exclude the public (including the press).
- In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.
- No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.
- 3.22 **Chair's Ruling** - Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.
- 3.23 **Voting** - Every question put to a vote at a meeting shall be determined by a

majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.

- 3.24 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.25 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.
- 3.26 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.27 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.28 An officer who has been appointed formally by the Board of Directors to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be an executive director.
- 3.29 An officer attending the Board of Directors 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.
- 3.30 **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.
- 3.31 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.32 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.
- 3.33 **Suspension of Standing Orders** Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 3.34 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

- 3.35 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 3.36 No formal business may be transacted while Standing Orders are suspended.
- 3.37 The Audit Committee shall review every decision to suspend Standing Orders.
- 3.38 **Waiver of Standing Orders** - Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non executive director, and that a majority of those present vote in favour of suspension.
- 3.38 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.
- 3.39 The Audit Committee shall review every decision to waive Standing Orders.
- 3.40 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 3.17 has been given; and
  - no fewer than half the total of the Trust's non executive directors vote in favour of amendment; and
  - at least two-thirds of the Directors are present; and
  - the variation proposed does not contravene any provision of the Regulatory Framework.
- 3.41 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.
- 3.42 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors appointed, (including at least one non-executive director and one executive director) are present.
- 3.43 An officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.
- 3.44 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) 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 of Directors considers the recommendations of the Remuneration and Terms of Service Committee). The above requirement for at least one non-executive Director to form part of the quorum shall not apply where the non-executive Directors are excluded from a meeting.

- 3.45 **Adjournment of Meetings** - The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 3.46 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted.
- 3.47 **Observers at Board of Directors meetings** - The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board of Directors meetings and may change, alter or vary these terms and conditions as it deems fit.

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

- 4.1 Subject to the Regulatory Framework, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions subject to such restrictions and conditions as the Board of Directors thinks fit by:
- a) a committee or sub-committee appointed by virtue of Standing Order 5 or by a Director or an officer of the Trust; or
  - b) in the case of delegation for the purposes of a provision of, or made under, the Mental Health Act 1983, in such other manner as is permitted by the relevant provision in each case subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.
- 4.2 **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders (Standing Order 2.4) may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors for noting.
- 4.3 **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by



committees, or subcommittees, which it has formally constituted. The constitution and terms of reference of these committees, or joint committees, and their specific executive powers shall be approved by the Board of Directors.

- 4.4 When the Directors are not meeting as the Board of Directors in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Board of Directors in public session.
- 4.5 Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or otherwise for the purposes of and in accordance with the Mental Health Act 1983 shall be exercised on behalf of the Board of Directors 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 of Directors.
- 4.6 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals, which shall be considered and approved by the Board of Directors, 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 Board of Directors as indicated above.
- 4.7 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance or other executive Director to provide information and advise the Board of Directors in accordance with the Constitution, Terms of Authorisation, any statutory requirements or provisions required by the Independent Regulator of NHS Foundation Trusts. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.
- 4.8 The arrangements made by the Board of Directors as set out in the "Reservation of Powers to the Board of Directors and Delegation of Powers" document shall have effect as if incorporated in these Standing Orders.
- 4.9 Overriding Standing Orders** – If for any reason these Standing Orders 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 Board of Directors for action or ratification. All Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## 5. COMMITTEES

- 5.1 Subject to the Regulatory Framework, the Board of Directors may appoint committees of the Board of Directors. The Board of Directors shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.
- 5.2 A committee appointed under this regulation may, subject to their terms of reference and the Regulatory Framework, appoint sub-committees consisting wholly of members of the committee.
- 5.3 The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors. In which case the term "Chair" is to be read as a reference to the Chair of the committee as the context permits, and the term "Director" is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Board of Directors in public.)
- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- 5.6 The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. The Chair of each Board of Directors sub-committee shall be a non-executive Director.
- 5.7 The committees and sub-committees, established by the Board of Directors shall include an Audit Committee, a Nomination Committee and a Remuneration and Terms of Service Committee.
- 5.8 The Board of Directors may elect to change the committees and sub-committees of the Board of Directors, as necessary, without requirement to amend these Standing Orders.
- 5.9 **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

- 5.10 Director of the Trust or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

## **6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

- 6.1 **Declaration of Interests** - The Constitution requires Directors to declare interests which are relevant and material to the Board of Directors. All existing Directors should declare such interests. Any Directors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with guidance issued by the Independent Regulator of NHS Foundation Trusts and include:
- a) Directorships, including non-executive directorships held in private companies or PLC's (with the exception of those of dormant companies).
  - b) Ownership or part-ownership or directorship 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 trust 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.
  - h) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
  - i) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means.
  - j) Any other commercial interest in the decision before the meeting.
- 6.3 At the time Directors' interests are declared, they should be recorded in the board minutes. Any changes in interests should be declared at the next Board of Directors meeting following the change occurring. It is the obligation of the Director to inform the Secretary of the Trust in writing within 7 days of becoming aware of the existence of a relevant or material

interest. The Secretary will amend the Register upon receipt within 5 working days.

- 6.4 Directors' directorships of companies in 6.2(a) above and Directors' directorships of companies likely or possibly seeking to do business with the NHS in 6.2(b) above should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.5 During the course of a Board of Directors meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.6 There is no requirement for the interests of Directors' family or close personal relationships to be declared. However Standing Order 7 requires that the interest of Directors' family or close personal relationships, if living together, in contracts should be declared.
- 6.7 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair. 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.

#### **6.8 Register of Interests**

- 6.9 The details of Directors' interests recorded in the Register will be kept up to date by means of a monthly review of the Register by the Secretary in which any changes to interests declared during the preceding month will be incorporated.
- 6.10 The Register will be available to the public and the Chair will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

### **7. EXCLUSION OF CHAIR AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 7.1 Subject to the following provisions of this Standing Order if the Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

- 7.2 The Board of Directors may exclude the Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 7.3 Any remuneration, compensation or allowances payable to the Director shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4 For the purpose of this Standing Order a Director shall be treated, subject to Standing Order 7.2 and Standing Order 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) He/she, or a nominee of his/hers, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - (b) He/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and in the case of family or close personal relationship, the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 7.5 The Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) Of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
  - (b) Of an interest in any company, body or person with which he/she is connected as mentioned in Standing Order 7.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 7.6 Where a Director has:
- (a) an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and;
  - (b) the total nominal value of those securities does not exceed £5,000 or one hundredth of the total nominal value of the issued share capital of the company body, whichever is the less, and;
  - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on

any question with respect to it, without prejudice however to his/her duty to disclose his/her interest.

- 7.8 Standing Order 7 applies to a committee or sub-committee as it applies to the Board of Directors and applies to a member of any such committee or sub-committee (whether or not he/she is also a Director) as it applies to a Director.

## 8. STANDARDS OF BUSINESS CONDUCT POLICY

- 8.1 **Policy** - Staff must comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" (contained in Appendix B). This section of Standing Orders should be read in conjunction with this document.
- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of a director or an officer of the Trust that a contract in which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a member of his/her family or of someone with whom he/she has a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships so declared to be entered in a register of interests of staff.
- 8.4 **Canvassing of and Recommendations by, Directors in Relation to Appointments** - Canvassing of Directors or of any Committee of the Board 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.
- 8.5 A Director 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 Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.6 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

- 8.7 **Relatives of Directors or Officers** - Candidates for any staff appointment shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 8.8 Every Director and officer of the Trust shall disclose to the Chief Executive any relationship between himself/herself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 8.9 On appointment, Directors (and prior to acceptance of an appointment in the case of executive Directors) should disclose to the Board of Directors whether they are related to any other Director or holder of any office in the Trust.
- 8.10 Where the relationship to a Director is disclosed, the Standing Order headed 'Disability of Chair and Directors in proceedings on account of pecuniary interest' (Standing Order 7) shall apply.
- 8.11 No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

## **9. TENDERING AND CONTRACT PROCEDURE**

- 9.1 The procedure for making all contracts by or on behalf of the Trust shall comply with: the Regulatory Framework; these Standing Orders (except where Standing Order 3.33 or 3.37 is applied); and the Trust's Standing Financial Instructions. Such contracts involving charitable funds shall comply with the requirements of the Charities Act and the trust deed.

## **10. CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

- 10.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Chief Executive or his/her nominated officer in a secure place.
- 10.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the board of Directors or of a committee, thereof or where the Board of Directors has delegated its powers. The Seal shall be used whenever required by law, or on the advice of the Trust's solicitor. 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.

- 10.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an officer nominated by him/her who shall not be within the originating directorate).
- 10.4 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors and to the Audit Committee at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

## 11. SIGNATURE OF DOCUMENTS

- 11.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 11.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document, not required to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee, sub-committee, or standing committee with delegated authority.

## 12. MISCELLANEOUS

- 12.1 **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and put into a position to understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. Copies shall also be placed on the Trusts Intranet to allow ease of access, by Directors and officers, to the latest version. New designated officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.
- 12.2 **Documents having the standing of Standing Orders** - Standing Financial Instructions and Reservation of Powers to the Board of Directors



and Delegation of Powers shall have effect as if incorporated into Standing Orders.

- 12.3 **Review of Standing Orders** - Standing Orders shall be reviewed by the Board of Directors at least once in each financial year, and shall be amended if and as agreed appropriate by the Board of Directors. The Trust will maintain records necessary for the appropriate delegation and control of this process. This requirement extends to all documents having the effect as if incorporated in Standing Orders.

January 1993

**APPENDIX A CODE OF BUSINESS CONDUCT**

# Standards of Business Conduct

for NHS staff

## **Part A**

### **Prevention of Corruption Acts 1906 and 1916 - summary of main provisions Acceptance of gifts by way of Inducements or reward**

1. Under the Prevention of Corruption Acts, 1906 and 1916, it is an offence for employees corruptly to accept any gifts or consideration as an inducement or reward for:
  - . doing, or refraining from doing, anything in their official capacity; or
  - . showing favour or dis-favour to any person in their official capacity.
  
2. Under the Prevention of Corruption Act 1916, any money, gift or consideration received by an employee in public service from a person or organisation holding or seeking to obtain a contract will be deemed by the courts to have been received corruptly unless the employee proves the contrary.

## **Part B**

### **NHS Management Executive (NHSME) - general guidelines**

#### **Introduction**

1. These guidelines, which are intended by the NHSME to be helpful to all NHS employers (i) and their employees, re-state and reinforce the guiding principles previously set out in Circular HM(62)21 (now cancelled), relating to the conduct of business in the NHS.

#### **Responsibility of NHS employers**

2. NHS employers are responsible for ensuring that these guidelines are brought to the attention of all employees; also that machinery is put in place for ensuring that they are effectively implemented.

#### **Responsibility of NHS staff**

3. It is the responsibility of staff to ensure that they are not placed in a position which risks, or appears to risk, conflict between their private interests and their NHS duties. This primary responsibility applies to *all NHS Staff*, i.e. those who commit NHS resources directly (e.g. by the ordering of goods) or those who do so indirectly (e.g. by the prescribing of medicines). A further example would be staff who may have an interest in a private nursing home and who are involved with the discharge of patients to residential facilities.

#### **Guiding principle in conduct of public business**

4. It is a long established principle that public sector bodies, which include the NHS, must be impartial and honest in the conduct of their business, and that their employees should remain beyond suspicion. It is also an offence under the Prevention of Corruption Acts 1906 and 1916 for an employee corruptly to accept any inducement or reward for doing, or refraining from doing anything, in his or her official capacity, or corruptly showing favour, or disfavour, in the handling of contracts (see PART A).

*Staff will need to be aware that a breach of the provisions of these Acts renders them liable to prosecution and may also lead to loss of their employment and superannuation rights in the NHS*

## **Principles of conduct in the NHS**

5. NHS staff are expected to:

- ensure that the interest of patients remains paramount at all times;
- be impartial and honest in the conduct of their official business;
- use the public funds entrusted to them to the best advantage of the service,
- always ensuring value for money.

It is also the responsibility of staff to ensure that they do **not**:

- abuse their official position for personal gain or to benefit their family or friends;
- seek to advantage or further private business or other interests, in the course of their official duties.

## ***Implementing the guiding principles***

### **Casual gifts**

6. Casual gifts offered by contractors or others, e.g. at Christmas time, may not be in any way connected with the performance of duties so as to constitute an offence under the Prevention of Corruption Acts. Such gifts should nevertheless be politely but firmly declined. Articles of low intrinsic value such as diaries or calendars, or small tokens of gratitude from patients or their relatives, need not necessarily be refused. In cases of doubt staff should either consult their line manager or politely decline acceptance.

### **Hospitality**

7. Modest hospitality provided it is normal and reasonable in the circumstances, e.g. lunches in the course of working visits, may be acceptable, though it should be similar to the scale of hospitality which the NHS as an employer would be likely to offer.
8. Staff should decline all other offers of gifts, hospitality or entertainment. If in doubt they should seek advice from their line manager.

## Declaration of interests

9. NHS employers need to be aware of all cases where an employee, or his or her close relative or associate, has a controlling and/or significant financial interest in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation), or in any other activity or pursuit, which may compete for an NHS contract to supply either goods or services to the employing authority.
10. All NHS staff should therefore declare such interests to their employer, either on starting employment or on acquisition of the interest, in order that it may be known to and in no way promoted to the detriment of either the employing authority or the patients whom it serves.
11. One particular area of potential conflict of interest which may directly affect patients is when NHS staff hold a self beneficial interest in private care homes or hostels. While it is for staff to declare such interests to their employing authority, the employing authority has a responsibility to introduce whatever measures it considers necessary to ensure that its interests and those of patients are adequately safeguarded. This may for example take the form of a contractual obligation on staff to declare any such interests. Advice on professional conduct issued by the General Medical Council recommends that when a doctor refers a patient to a private care home or hostel in which he or she has an interest, the patient must be informed of that interest before referral is made.
12. In determining what needs to be declared, employers and employees will wish to be guided by the principles set out in paragraph 5 above; also the more detailed guidance to staff contained in Part D.
13. NHS employers should:
  - ensure that staff are aware of their responsibility to declare relevant interests (perhaps by including a clause to this effect in staff contracts)
  - consider keeping registers of all such interests and making them available for inspection by the public.
  - develop a local policy, in consultation with staff and local staff interests, for implementing this guidance. This may include the disciplinary action to be taken if an employee fails to declare a relevant interest, or is found to have abused his or her official position, or knowledge, for the purpose of self-benefit, or that of family or friends.

### **Preferential treatment in private transactions**

14. Individual staff must not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which they have had, or may have, official dealings on behalf of their NHS employer. (This does not apply to concessionary agreements negotiated with companies by NHS management, or by recognised staff interests, on behalf of all staff - for example, NHS staff benefits schemes.)

### **Contracts**

15. All staff who are in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign Purchase Orders, or place contracts for goods, materials or services, are expected to adhere to professional standards of the kind set out in the Ethical Code of the Institute of Purchasing and Supply (IPS), reproduced at PART E.

### **Favouritism in awarding contracts**

16. Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of NHS Standing Orders and of EC Directives on Public Purchasing for Works and Supplies. This means that:
  - no private, public or voluntary organisation or company which may bid for NHS business should be given any advantage over its competitors, such as advance notice of NHS requirements. This applies to all potential contractors, whether or not there is a relationship between them and the NHS employer, such as a long-running series of previous contracts.
  - each new contract should be awarded solely on merit, taking into account the requirements of the NHS and the ability of the contractors to fulfill them.
17. NHS employers should ensure that no special favour is shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in a senior or relevant managerial capacity. Contracts may be awarded to such businesses where they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff who are known to have a relevant interest play no part in the selection.

### **Warnings to potential contractors**

18. NHS employers will wish to ensure that all invitations to potential contractors to tender for NHS business include a notice warning tenderers of the consequences of engaging in any corrupt practices involving employees of public bodies.

### **Outside employment**

19. NHS employees are advised not to engage in outside employment which may conflict with their NHS work, or be detrimental to it. They are advised to tell their NHS employing authority if they think they may be risking a conflict of interest in this area: the NHS employer will be responsible for judging whether the interests of patients could be harmed, in line with the principles in paragraph 5 above. NHS employers may wish to consider the preparation of local guidelines on this subject.

### **Private practice**

20. Consultants (and associate specialists) employed under the Terms and Conditions of Service of Hospital Medical and Dental Staff are permitted to carry out private practice in NHS hospitals subject to the conditions outlined in the handbook "A Guide to the Management of Private Practice in the NHS". (See also PM (79)11). Consultants who have signed new contracts with Trusts will be subject to the terms applying to private practice in those contracts.
21. Other grades may undertake private practice or work for outside agencies, providing they do not do so within the time they are contracted to the NHS, and they observe the conditions in paragraph 20 above. All hospital doctors are entitled to fees for other work outside their NHS contractual duties under "Category 2" (paragraph 37 of the TCS of Hospital Medical and Dental staff), e.g. examinations and reports for life insurance purposes. Hospital doctors and dentists in training should not undertake locum work outside their contracts where such work would be in breach of their contracted hours. Career grade medical and dental staff employed by NHS Trusts may agree terms and conditions different from the National Terms and Conditions of Service.



## Rewards for Initiative

22. NHS employers should ensure that they are in a position to identify potential intellectual property rights (IPR), as and when they arise, so that they can protect and exploit them properly, and thereby ensure that they receive any rewards or benefits (such as royalties) in respect of work commissioned from third parties, or work carried out by their employees in the course of their NHS duties. Most IPR are protected by statute; e.g. patents are protected under the Patents Act 1977 and copyright (which includes software programmes) under the Copyright Designs and Patents Act 1988. To achieve this, NHS employer should build appropriate specifications and provisions into the contractual arrangements which they enter into *before* the work is commissioned, or begins. They should always seek legal advice if in any doubt in specific cases.
23. With regard to patents and inventions, in certain defined circumstances the Patents Act gives *employees a right* to obtain some reward for their efforts, and employers should see that this is effected. Other rewards may be given voluntarily to employees who within the course of their employment have produced innovative work of outstanding benefit to the NHS. Similar rewards should be voluntarily applied to other activities such as giving lectures and publishing books and articles.
24. In the case of collaborative research and evaluative exercises with manufacturers, NHS employers should see that they obtain a fair reward for the input they provide. If such an exercise involves additional work for an NHS employee outside that paid for by the NHS employer under his or her contract of employment, arrangements should be made for some share of any rewards or benefits to be passed on to the employee(s) concerned from the collaborating parties. Care should however be taken that involvement in this type of arrangement with a manufacturer does not influence the purchase of other supplies from that manufacturer.

## Part E

### Institute of Purchasing and Supply - Ethical Code

(Reproduced by kind permission of IPS)

#### Introduction

The code set out below was approved by the Institute's Council on 26 February 1977 and is binding on IPS members.

#### Precepts

1. Members shall never use their authority or office for personal gain and shall seek to uphold and enhance the standing of the Purchasing and Supply profession and the Institute by:
  - a. maintaining an unimpeachable standard of integrity in all their business relationships both inside and outside the organisations in which they are employed;
  - b. fostering the highest possible standards of professional competence amongst those for whom they are responsible;
  - c. optimising the use of resources for which they are responsible to provide the maximum benefit to their employing organisation;
  - d. complying both with the letter and the spirit Of;
    - i. the law of the country in which they practise;
    - ii. such guidance on professional practice as may be issued by the Institute from time to time;
    - iii. contractual obligations;
  - e. rejecting any business practice which might reasonably be deemed improper.

#### Guidance

1. In applying these precepts, members should follow the guidance set out below:

- a.) Declaration of interest. Any personal interest which may impinge or might reasonably be deemed by others to impinge on a member's impartiality in any matter relevant to his or her duties should be declared.
- b.) Confidentiality and accuracy of information. The confidentiality of information received in the course of duty should be respected and should never be used for personal gain; information given in the course of duty should be true and fair and never designed to mislead.
- c.) Competition. While bearing in mind the advantages to the member's employing organisation of maintaining a continuing relationship with a

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supplier, any relationship which might, in the long term, prevent the effective operation of fair competition, should be avoided.

d.) Business Gifts. Business gifts other than items of very small intrinsic value such as business diaries or calendars should not be accepted.

e.) Hospitality. Modest hospitality is an accepted courtesy of a business relationship. However, the recipient should not allow him or herself to reach a position whereby he or she might be deemed by others to have been influenced in making a business decision as a consequence of accepting such hospitality; the frequency and scale of hospitality accepted should not be significantly greater than the recipient's employer would be likely to provide in return.

f.) when it is not easy to decide between what is and is not acceptable in terms of gifts or hospitality, the offer should be declined or advice sought from the member's superior.

## **ANNEX 9 – FURTHER PROVISIONS**

- 1.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
    - 1.1.1 acting as Secretary to the Assembly of Governors and the Board of Directors, and any committees;
    - 1.1.2 summoning and attending all members meetings, meetings of the Assembly of Governors and the Board of Directors, and keeping the minutes of those meetings;
    - 1.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
    - 1.1.4 having charge of the Trust's seal;
    - 1.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
    - 1.1.6 preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.
  - 1.2 Minutes of every meeting of the Assembly of Governors and of every meeting of the Board of Directors are to be kept by the Secretary. Minutes of meetings will be read at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
  - 1.3 The Secretary is to be appointed and removed by the Chair and Chief Executive acting jointly.
2. The Company Secretary (if any) and members of the Assembly of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, including (but not limited to) any liability arising by reason of the Trust acting as a Corporate Trustee, save where they have acted recklessly and the Trust may also take out and maintain for their benefit insurance against such risks and may participate in risk pooling schemes, including (but not limited to) insurance and schemes operated by the NHS Litigation Authority. Any costs arising in this way will be met by the Trust.

3.1 The Trust may make amendments to this Constitution with the approval of Monitor, subject to paragraph 3.2 below.

3.2 No proposal for amendment of this Constitution will be put to Monitor unless it has been approved by the Board of Directors and a majority of those governors present and voting at a meeting of the Assembly of Governors.

4. The validity of any act of the Trust is not affected by any vacancy among the directors or the governors or by any defect in the appointment of any director or governor.

5.1 If:

- (a) an executive director is temporarily unable to perform his/her duties due to illness or some other reason (the "Absent Director"); and
- (b) the board of directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement director; and
- (c) the board of directors agree that the duties of the Absent Director need to be carried out;

then the Chair (if the Absent Director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting director as an additional director to carry out the Absent Director's duties temporarily.

5.2. For the purposes of paragraph 5.1 of this Annex, the maximum number of directors that may be appointed under paragraph 19.2.3 of the Constitution shall be relaxed accordingly.

5.3 The acting director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint him under this paragraph notifies him that he/she is no longer to act as an acting director.

5.4 The acting director shall be an Executive Director for the purposes of the 2006 Act. He shall be responsible for his/her own acts and defaults and he/she shall not be deemed to be the agent of the Absent Director.

6.1 If:

- (a) an executive director post is vacant ("Vacant Position"); and
- (b) the board of directors agree that the Vacant Position needs to be filled by an interim postholder pending appointment of a permanent postholder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a director as an interim director ("Interim Director") to fill the Vacant Position pending appointment of a permanent postholder.

6.2 The Interim Director will vacate office on the appointment of a permanent postholder or, if earlier, the date on which the persons entitled to appoint him under this paragraph notifies him that he/she is no longer to act as an Interim Director.

6.3 The Interim Director shall be an Executive Director for the purposes of the 2006 Act.

7. When a vacancy arises for one or more elected governors, the Assembly of Governors shall have the option to take from the list of members who stood for election at the most recent election of governors for the class or constituency in question whichever member who was not elected as a governor at the recent election but had secured the next most votes at that time. This procedure, which shall be an uncontested election for the purposes of the Model Rules for Elections as they apply to the trust, shall be available to the Governors on 2 occasions within 12 months of the previous election. Governors appointed in this way shall hold office for a minimum of 6 months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of that Governor whose cessation of office gave rise to the vacancy

8. The Trust may confer on senior staff the title "Director" as an indication of their corporate responsibility within the Trust but such persons will not be Directors of the Trust for the purposes of the 2006 Act ("statutory directors") unless their title includes the title "Chief", "Executive" or "Non-Executive Director" or "Chairman" and will not have the voting rights of statutory directors or any power to bind the Trust.

9. Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer acting in good faith on the basis of such error.

10. Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:

10.1 not be obliged to send any information or photographs unless received by the Trust from the candidate;

- 10.2 not be in breach of any obligation to include in any communication, or otherwise provide, information which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow;
- 10.3 have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive or libellous.
11. The minimum age for membership of the Trust is 16 years old.

## **ANNEX 10 – NOLAN PRINCIPLES AND TRUST PRINCIPLES**

### **PART A – NOLAN PRINCIPLES**

#### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### **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 that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

#### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and 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.



## **PART B – TRUST PRINCIPLES**

### **OUR AIMS AND VALUES**

#### ***Aims***

First and foremost the Trust aims to provide integrated mental health services across Birmingham and Solihull in the most effective and efficient way. We want to ensure the best outcomes for those who use our services and to work in an open and honest way with staff, service users and their carers and families.

#### ***Values***

We will work in collaboration with service users, families and carers, our staff and other agencies to achieve this and the following principles will guide our practice.

We will:-

- Value and respect individuals
- Continually strive for excellence
- Be realistic about targets and achievements
- Ensure our services are community orientated, also appreciating the need for high quality hospital based services where appropriate
- Encourage learning within and outside of the organisation
- Listen, hear and explain
- Create a reflective, open and transparent organisation

**AUTHORISATION OF BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS  
FOUNDATION TRUST**

**Schedule 2**

Mandatory Goods and Services

Location: Birmingham and Solihull Mental Health NHS Foundation Trust

Care Group: All

Code	Specialty	Assertive Outreach Team Community Contact	Continuing Care Occupied Bed Days	Crisis resolution team Community Contact	Day Care (1) Attendances	Day Care (2) Community Contact	Early Intervention team (1) Occupied Bed Days	Early Intervention team (2) Community Contact	Inpatient - functional Occupied Bed Days	Inpatient - mixed Occupied Bed Days	Outpatient Attendances	PICU Occupied Bed Days	Rehabilitation - Community Community Contact	Rehabilitation - Inpatient Occupied Bed Days	Community Interventions Community Contact	CMHT - caseload (1) Attendances	CMHT - caseload (2) Community Contact	Specialist (1) Occupied Bed Days	Specialist (2) Attendances	Specialist (3) Community Contact	Eating Disorder (1) Occupied Bed Days	Eating Disorder (2) Attendances	Medium Secure Occupied Bed Days	Low Secure Occupied Bed Days
700	Learning disability (previously known as mental handicap)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
710	Mental illness	41,769	-	56,520	47,771	921	2,858	20,491	81,650	-	43,012	7,349	23,621	30,586	19,037	75,409	50,633	5,385	8,066	2,279	3,339	5,646	-	-
711	Child and adolescent psychiatry	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7,300	-
712	Forensic psychiatry	-	-	-	-	-	-	-	-	-	-	-	-	-	4,441	-	-	-	-	-	-	-	42,596	4,292
713	Psychotherapy	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3,916	-	-	-	-	-
715	Old age psychiatry	-	23,531	-	34,418	-	-	-	-	39,972	8,293	-	4,917	-	2,536	-	34,828	723	360	1,995	-	-	-	-
420	Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>		<b>41,769</b>	<b>23,531</b>	<b>56,520</b>	<b>82,189</b>	<b>921</b>	<b>2,858</b>	<b>20,491</b>	<b>81,650</b>	<b>39,972</b>	<b>51,305</b>	<b>7,349</b>	<b>28,538</b>	<b>30,586</b>	<b>26,014</b>	<b>75,409</b>	<b>85,461</b>	<b>6,108</b>	<b>12,342</b>	<b>4,274</b>	<b>3,339</b>	<b>5,646</b>	<b>49,896</b>	<b>4,292</b>

**AUTHORISATION OF BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS  
FOUNDATION TRUST**

**Schedule 3**

Mandatory Education and Training

**Schedule 3**  
**Mandatory Education and Training Services**

**Birmingham and Solihull Mental Health NHS Foundation Trust**

<b>Commissioning body</b>	<b>Educational body</b>	<b>Contract Length</b>	<b>Expiry date of contract</b>	<b>Student group</b>	<b>Type of training</b>	<b>Number of Students</b>	<b>Contract Value</b>
		(Years)					(£000s)
Workforce Deanery NHS West Midlands	Birmingham City University	3 years	Sep-11	Nursing	Diploma	19	£257
Workforce Deanery NHS West Midlands	Birmingham City University	3 years	Sep-11	Nursing	Degree	3	£91
Workforce Deanery NHS West Midlands	Birmingham City University	3 years	Oct-11	OT	Degree	4	£32
Workforce Deanery NHS West Midlands	University of Birmingham	3 years	Oct-10	Psychology	Degree	18	£444
Workforce Deanery NHS West Midlands	BSMHT	Rolling	Rolling	Nurses	PPMs	4	£146
Workforce Deanery NHS West Midlands	University of Birmingham	Rolling	Rolling	Medics	SIFT	97	£2,084
Workforce Deanery NHS West Midlands	BSMHT	Rolling	Rolling	Nursing/AHP/HC scientists	Various	1,845	£140
Workforce Deanery NHS West Midlands	University of Birmingham	Rolling	Rolling	Junior Medics	MADEL	97	£2,442

**AUTHORISATION OF BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS  
FOUNDATION TRUST**

**Schedule 4**

Private Health Care

**AUTHORISATION OF BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS  
FOUNDATION TRUST**

**PRIVATE HEALTH CARE**

In 2002/03 the proportion of the total patient income derived from private health charges was 0%.

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 0%.

**DEFINITION:**

Private patient income

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Total patient  
related income

**AUTHORISATION OF BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS  
FOUNDATION TRUST**

**Schedule 5**

Limit on Borrowing



**AUTHORISATION OF BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS  
FOUNDATION TRUST**

**PRUDENTIAL BORROWING LIMIT**

Pursuant to section 46 of the Act, the Prudential Borrowing Limit ("PBL") for the year 2008/09 is the sum of the following:

- (i) Maximum cumulative long term borrowing: £36.0 million and
- (ii) Approved working capital facility: not to exceed £16.0 million

**AUTHORISATION OF BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS  
FOUNDATION TRUST**

**Schedule 6**

Information

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