

**AUTHORISATION**

**of**

**SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION TRUST**

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



Signature: ..... *William May*

**1 May 2009**

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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 South West Yorkshire 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 May 2009.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

## **PART 2 Interpretation and construction**

1. Words and expressions used in the Authorisation shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
2. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
3. Words and expressions defined in the Act shall have the same meaning when used in this Authorisation.
4. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Authorisation.
5. In construing the provisions of this Authorisation, the heading or title of any Part, Condition or Schedule shall be disregarded.
6. Where any obligation of the Trust is required to be performed by a specified date or within a specified period, and where the Trust has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.

7. In this Authorisation:

“ancillary services” means services which support the provision of the mandatory goods and services listed in Schedule 2.

“property” is land and buildings owned or leased by the Trust.

“the Board of Directors” means the Board of Directors of the Trust.

“the provision of goods and services for purposes related to the provision of health care” includes the provision of social care services.

“high security psychiatric services” has the same meaning as in section 4 of the Act.

## **PART 3 Conditions**

### 1. Principal Purpose

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

### 2. General duty

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

### 3. Constitution

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

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

### 4. Compliance and enforcement

(1) The Trust shall comply with:

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

the Conditions of this Authorisation;

the terms of its constitution;

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

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

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

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

### 5. Governance

(1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory

goods and services referred to in Condition 7(1) and listed in Schedule 2 and the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.

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

#### 6. Health care and other standards

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

#### 7. Mandatory Services

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

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

## 8. Authorised Services

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

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

9. Protection of property

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

10. Private health care

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

11. Limit on borrowing

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

12. Financial viability

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

13. Dividend payments on Public Dividend Capital

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

14. Information

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



15. Entry and inspection of premises

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

16. Fees

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

17. Representative membership

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

18. Co-operation with other bodies

(1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the 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 Schedule 10 paragraph 3 of the Act. The report shall include details of the Trust’s response to the issues raised within the public interest report.

24. Notification

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

25. Information given to Parliament and to Members of Parliament

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

26. 26. Co-operation and Competition Panel

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

**AUTHORISATION OF SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 1**

The Constitution (and Annexures)

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**CONSTITUTION OF**

**SOUTH WEST YORKSHIRE PARTNERSHIP**  
**NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

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# Constitution of South West Yorkshire Partnership Mental Health NHS Foundation Trust

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1. **Name**

The name of the foundation trust is South West Yorkshire Partnership NHS Foundation Trust (“the Foundation Trust”).

2. **Principal purpose**

The principal purpose of the Foundation 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 Foundation Trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.

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

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

4. **Membership and constituencies**

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

4.1 a public constituency; and

4.2 a staff constituency

Further provisions as to members’ meetings are set out in Annex 9.

5. **Application for membership**

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

6.2 Those individuals who live in an area specified in 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 Foundation Trust under a contract of employment with the Foundation Trust may become or continue as a member of the Foundation Trust provided:
- 7.1.1 he is employed by the Foundation 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 Foundation Trust under a contract of employment for at least 12 months.
- 7.2 Individuals who exercise functions for the purposes of the Foundation Trust, otherwise than under a contract of employment with the Foundation 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. For the avoidance of doubt this does not include individuals who assist or provide services to the Foundation Trust on a voluntary basis.
- 7.3 Those individuals who are eligible for membership of the Foundation Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.4 The Staff Constituency shall be divided into 7 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.
- 7.6 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.

**Automatic membership by default – staff**

- 7.7 An individual who is:
- 7.7.1 a member of staff as defined in 7.1 above, and
  - 7.7.2 is invited by the Foundation 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 Foundation Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Foundation Trust that he does not wish to do so.



- 7.8 An individual who:
- 7.71 exercises functions on behalf of the Trust as defined in 7.2 above, and
  - 7.7.2 is invited by the Foundation Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,
- Shall be entitled to apply to become a member of the Foundation Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency

8. **Restriction on membership**

- 8.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Foundation Trust are set out in Annex 9.

9. **Members' Council – composition**

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

10. **Members' Council – election of Council Members**

- 10.1 Elections for elected members of the Members' Council shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time using the single transferable vote method of voting.
- 10.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 4.

10.3 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 Foundation Trust cannot amend the Model Rules.

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

11. **Members' Council - tenure**

11.1 An elected Council Member shall normally hold office for a period of 3 calendar years.

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

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

11.4 An elected Council Member may not hold office for more than six consecutive years, and shall not be eligible for re-election if he has already held office for more than three consecutive years.

11.5 Further provisions as to tenure for appointed Council Members are set out at Annex 5.

12. **Members' Council – disqualification and removal**

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

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

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

12.1.3 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.

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

12.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Members' Council are set out in Annex 5.

13. **Members' Council – meetings of Council Members**

13.1 The Chair of the Foundation Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 20.1 or paragraph 21.1 below) or, in his/her absence the Deputy Chair (appointed in accordance with the provisions of paragraph 22 below) shall preside at meetings of the Members' Council. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Members' Council will nominate one of its number to preside over that part of the meeting.

13.2 Meetings of the Members' Council shall be open to members of the public unless the Members' Council decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.

14. **Members' Council – standing orders**

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

15. **Members' Council - conflicts of interest of Council Members**

15.1 Members of the Members' Council shall disclose to the Members' Council any material interests (as defined below) held by a Council Member, their spouse or partner, which shall be recorded in the register of interests of Council Members.

15.2 Subject to the exceptions below a material interest is:

15.2.1 directorships, including non-executive directorships, held in private companies or PLCs (with the exception of those of dormant companies);

15.2.2 any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Foundation Trust;

15.2.3 any interest in an organisation providing health and social care services to the National Health Service;

15.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

15.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

- 15.3 The exceptions which shall not be treated as interests or material interests for the purposes of these provisions are as follows:
- 15.3.1 shares not exceeding 1% of the total shares in issue or £5,000 in value held in any company whose shares are listed on any public exchange;
  - 15.3.2 an employment contract with the Foundation Trust held by a Staff Council Member;
  - 15.3.3 an employment contract with a PCT held by a PCT Council Member;
  - 15.3.4 an employment contract with a local authority held by a Local Authority Council Member;
  - 15.3.5 an employment contract with a university held by a University Council Member;
  - 15.3.6 an employment contract with or other position of authority within a partnership organisation held by a Partnership Council Member.
- 15.4 Any Council Member who has an interest in a matter to be considered by the Members' Council (whether because the matter involves a firm, company, business or organisation in which the Council Member or his spouse or partner has a material interest or otherwise) shall declare such interest to the Members' Council and:
- 15.4.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
  - 15.4.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 15.5 Details of any such interest shall be recorded in the register of interests of Council Members.
- 15.6 Any Council Member who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Council Members.

16. **Members' Council – travel expenses**

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

17. **Members' Council – further provisions**

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

18. **Board of Directors – composition**

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

18.2 The Board of Directors is to comprise:

18.2.1 a non-executive Chair

18.2.2 six other non-executive directors; and

18.2.3 six executive directors.

18.3 One of the executive directors shall be the Chief Executive.

18.4 The Chief Executive shall be the Accounting Officer.

18.5 One of the executive directors shall be the finance director.

18.6 One of the executive directors is to be a registered medical practitioner.

18.7 One of the executive directors is to be a registered nurse.

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

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

19.1 He/she is a member of the Public Constituency, or

19.2 where any of the Foundation Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

19.3 he is not disqualified by virtue of paragraph 25 below or Annex 6.

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

20.1 The Members' Council at a general meeting of the Members' Council shall appoint or remove the chair of the Foundation Trust and the other non-executive directors.

20.2 Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Members' Council, of which two must be publicly elected and two appointed.

20.3 The initial Chair and the initial non-executive directors are to be appointed in accordance with paragraph 21 below.

20.4 Further provisions as to the appointment and removal of the Chair and other non-executive directors are set out at Annex 6.

21. **Board of Directors – appointment of initial chair and initial other non-executive directors**

- 21.1 The Chair of the applicant NHS Trust shall be appointed as the initial Chair of the Foundation Trust if he/she wishes to be appointed.
- 21.2 The power of the Members' Council to appoint the other non-executive directors of the Foundation Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Foundation Trust any of the non-executive directors of the applicant NHS Trust (other than the Chair) who wish to be appointed.
- 21.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 19 above (other than disqualification by virtue of paragraph 25 below or Annex 6) do not apply to the appointment of the initial Chair and the initial other non-executive directors in accordance with the procedures set out in this paragraph.
- 21.4 An individual appointed as the initial Chair or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his/her term of office as Chair or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he/she shall be appointed for 12 months.

22. **Board of Directors – appointment of Deputy Chair**

The Members' Council at a general meeting of the Members' Council shall appoint one of the non-executive directors as a Deputy Chair. If the Chair is unable to discharge his/her office as Chair of the Foundation Trust the Deputy Chair of the Board of Directors shall be acting Chair of the Foundation Trust.

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

- 23.1 The non-executive directors shall appoint or remove the Chief Executive.
- 23.2 The appointment of the Chief Executive shall require the ratification of the Members' Council.
- 23.3 The initial Chief Executive is to be appointed in accordance with paragraph 24 below.
- 23.4 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

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

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

24.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the Foundation Trust shall not require the approval of the Members' Council.

25. **Board of Directors – disqualification**

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

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

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

25.3 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.

Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out at Annex 6.

26. **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.

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

27.1 Members of the Board of Directors shall disclose to the Board of Directors any material interests (as defined below) held by a Director, their spouse or partner, which shall be recorded in the register of interests of the Directors.

27.2 A material interest is:

27.2.1 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Foundation Trust;

- 27.2.2 any interest in an organisation providing health and social care services to the National Health Service;
  - 27.2.3 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 27.2.4 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 27.3 Any Director who has an interest in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business or organisation in which the Director or his spouse or partner has a material interest or otherwise) shall declare such interest to the Board of Directors and:
- 27.3.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
  - 27.3.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 27.4 Details of any such interest shall be recorded in the register of interests of the Directors.
- 27.5 Any Director who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by a majority of the Members' Council.

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

- 28.1 The Members' Council at a general meeting of the Members' Council shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.
- 28.2 The Foundation 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.

29. **Registers**

The Foundation Trust shall have:

- 29.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 29.2 a register of members of the Members' Council;



29.3 a register of interests of Council Members;

29.4 a register of directors; and

29.5 a register of interests of the directors.

30. **Admission to and removal from the registers**

30.1 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

30.2 The Secretary is to send to Monitor a list of persons who were first elected or appointed as Council Members and Directors.

31. **Registers – inspection and copies**

31.1 The Foundation Trust shall make the registers specified in paragraph 29 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 Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Foundation Trust, if the member 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 Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

32. **Documents available for public inspection**

32.1 The Foundation 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;
  - 32.1.6 a copy of any notice given under section 52 of the 2006 Act;
  - 32.1.7 a copy of the Foundation Trust's membership strategy;
  - 32.1.8 a copy of the Foundation Trust's policy for the composition of the Members' Council and of the non-executive directors.
- 32.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy or extract.
- 32.3 If the person requesting a copy or extract is not a member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

33. **Auditor**

- 33.1 The Foundation Trust shall have an auditor.
- 33.2 The Members' Council shall appoint or remove the auditor at a general meeting of the Members' Council.
- 33.3 Further provisions as to the auditor are set out at Annex 10.

34. **Audit committee**

The Foundation 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 Foundation 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 Foundation Trust's auditor.
- 35.3 The Foundation 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 Foundation Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 35.5 Further provisions as to accounts are set out at Annex 10.

36. **Annual report and forward plans**

- 36.1 The Foundation Trust shall prepare an Annual Report and send it to Monitor. Further provisions as to Annual Reports are set out at Annex 10.

- 36.2 The Foundation 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 Members' Council.

37. **Meeting of Members' Council to consider annual accounts and reports**

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

- 37.1 the annual accounts
- 37.2 any report of the auditor on them
- 37.3 the annual report.

38. **Instruments**

- 38.1 The Foundation Trust shall have a seal.
- 38.2 The seal shall not be affixed except under the authority of the Board of Directors.

39. **Amendment of the constitution**

- 39.1 No amendment shall be made to this constitution (including its Annexes, save as otherwise specified) unless:
  - 39.1.1 it has been approved by a majority of the Board of Directors, and by a majority of Council Members present and voting at a meeting of the Members' Council duly called by order of the Board of Directors in accordance with this constitution; and
  - 39.1.2 it has been approved by Monitor.

40. **Mergers**

The Foundation Trust may in accordance with section 56 of the 2006 Act apply to Monitor jointly with another NHS Foundation Trust or an NHS Trust for authorisation of the dissolution of the Foundation Trust and the transfer of some or all of their property and liabilities to a new NHS Foundation Trust established under that section. Such application shall only be made if it is approved by a majority of Council Members present and voting at a members meeting duly called by order of the Members' Council in accordance with this constitution.

#### 41. **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.

Headings are for ease of reference only and are not to affect interpretation.

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

“the Accounting Officer”	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
“appointed Council Members”	means those Council Members appointed by the appointing organisations;
“appointing organisations”	means those organisations named in this constitution who are entitled to appoint Council Members;
“Director”	means a member of the Board of Directors;
“elected Council Members”	means those Council Members elected by the Public constituency and the classes of the Staff Constituency;
“Financial year”	means:  (a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and  (b) each successive period of twelve months beginning with 1 April;
“Local Authority Council Member”	means a Council Member appointed by one or more local authorities whose area includes the whole or part of one of an area for a public constituency of the Foundation Trust;
“Monitor”	means the Independent Regulator of NHS Foundation Trusts, established under Section 31 of the 2006 Act;
“partner”	means, in relation to another person, a member of the same household living together as a family unit;

“Partnership Council Member”	means a Council Member appointed by a partnership organisation;
“PCT Council Member”	means a Council Member appointed by a Primary Care Trust for which the Foundation Trust provides goods or services;
“Public Council Member”	means a Council Member elected by the members of one of the areas of the Public Constituency;
“Secretary”	means 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;
“Staff Council Member”	means a Council Member elected by the members of one of the classes of the Staff Constituency;
“terms of Authorisation”	means the terms of authorisation issued by Monitor under Section 35 of the 2006 Act;
“the 2006 Act”	means the National Health Service Act 2006;
“voluntary organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit;

**ANNEX 1 – THE PUBLIC CONSTITUENCY**  
(Paragraphs 6.1 and 6.3)

The areas of the Public Constituency are:

Calderdale  
Kirklees  
Wakefield  
Yorkshire and the Humber

The minimum number of members of each of the areas of the Public Constituency is to be 10.

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

(Paragraphs 7.4 and 7.5)

The Staff Constituency will consist of the following classes:

- 2.1 registered medical practitioners and registered pharmacists
- 2.2 registered nurses
- 2.3 nursing support
- 2.4 allied healthcare professionals
- 2.5 psychological therapies
- 2.6 social care staff working in integrated teams
- 2.7 non-clinical support services, including management

The minimum number of members of each class of the Staff Constituency is to be 4.

## **ANNEX 3 – COMPOSITION OF MEMBERS’ COUNCIL**

(Paragraphs 9.2 and 9.3)

- 1 The aggregate number of Public Council Members is to be more than half of the total number of members of the Members’ Council.
- 2 The Members’ Council, subject to the 2006 Act, shall seek to ensure that through the composition of the Members’ Council:
  - 2.1 the interests of the community served by the Foundation Trust are appropriately represented;
  - 2.2 the level of representation of the Public Constituency, the classes of the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust’s affairs;and to this end, the Members’ Council:
  - 2.3 shall at all times maintain a policy for the composition of the Members’ Council which takes account of the membership strategy, and
  - 2.4 shall from time to time and not less than every three years review the policy for the composition of the Members’ Council, and
  - 2.5 when appropriate shall propose amendments to this constitution.
- 3 The Members’ Council of the Foundation Trust is to comprise:
  - 3.1 twenty Public Council Members from the following areas of the Public Constituency:
    - 3.1.1 Calderdale – four Public Council Members
    - 3.1.2 Kirklees – eight Public Council Members
    - 3.1.3 Wakefield – seven Public Council Members
    - 3.1.4 Yorkshire and the Humber – one Public Council Member
  - 3.2 seven Staff Council Members from the following classes;
    - 3.2.1 Registered medical practitioners and registered pharmacists – one Staff Council Member
    - 3.2.2 Registered nurses – one Staff Council Member
    - 3.2.3 Nursing support – one Staff Council Member
    - 3.2.4 Allied healthcare professionals – one Staff Council Member



- 3.2.5 Psychological therapies – one Staff Council Member
  - 3.2.6 Social care staff working in integrated teams – one Staff Council Member
  - 3.2.7 Non-clinical support staff, including management – one Staff Council Member
  - 3.3 three PCT Council Members to be appointed by each of Calderdale, Kirklees and Wakefield District PCTs;
  - 3.4 three Local Authority Council Members to be appointed by each of Calderdale Metropolitan Borough Council, Kirklees Metropolitan Council and Wakefield Metropolitan District Council;
  - 3.5 six Partnership Council Members to be appointed by partnership organisations.
- 4 The partnership organisations that may appoint a Partnership Council Member are:
- 4.1 Calderdale and Huddersfield NHS Foundation Trust;
  - 4.2 The Mid Yorkshire Hospitals Trust;
  - 4.3 HM Prison Wakefield and HM Prison New Hall, with HM Prison Wakefield being the appointing organisation;
  - 4.4 The Yorkshire Forensic Consortium;
  - 4.5 The University of Huddersfield;
  - 4.6 Joint Committee of Staff Organisations (comprising British Medical Association, Chartered Society of Physiotherapists, Amicus, Royal College of Nursing of the United Kingdom, and UNISON (including BOAT))

## ANNEX 4 –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
17. Withdrawal of candidates
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

31. Declaration of identity for replacement ballot papers  
*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
- stv39. Rejected ballot papers
- fpp39. Rejected ballot papers
- stv40. First stage
- stv41. The quota
- stv42. Transfer of votes
- stv43. Supplementary provisions on transfer
- stv44. Exclusion of candidates
- stv45. Filling of last vacancies
- stv46. Order of election of candidates
- fpp46. Equality of votes

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

- fpp47. Declaration of result for contested elections
- stv47. Declaration of result for contested elections
- 48. Declaration of result for uncontested elections

*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*

- fpp54. Countermand or abandonment of poll on death of candidate
- stv54. 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 Members’ Council;

“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 Members’ Council to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;

- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

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

(2) The returning officer-

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

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

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

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

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

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

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

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

- (a) that he or she is not prevented from being a member of the Members' Council 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) he or she wishes 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 Members' Council, 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 Members' Council, 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 Members' Council, 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 Members' Council 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 Members' Council 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, and
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

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

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

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

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

- (a) the name of the voter, and

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

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

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

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

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

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

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

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

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

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

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

*Procedure for receipt of envelopes*

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

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

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

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

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

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

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

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

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

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

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

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

- (a) mark the declaration of identity “disqualified”,
- (b) record the name of the voter in the list of disqualified documents

indicating that a declaration of identity was received from the voter without a ballot paper; and

- (c) place the declaration of identity in a separate packet.

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

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

*Part 6 - Counting the votes*

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

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

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

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

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

“non-transferable vote” means a ballot paper –

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

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

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

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

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

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

“stage of the count” means –

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

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

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

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

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

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

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

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



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

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

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

shall be rejected and not counted, but the ballot paper shall not be rejected by reason

only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

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

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

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

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

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

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

- (a) elsewhere than in the proper place,

- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

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

- (4) The returning officer is to –
  - (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
  - (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- (5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –
  - (a) does not bear proper features that have been incorporated into the ballot paper,
  - (b) voting for more candidates than the voter is entitled to,
  - (c) writing or mark by which voter could be identified, and
  - (d) unmarked or rejected because of uncertainty,

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

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

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

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

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

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only

one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule stv44 has been complied with.

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

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

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

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

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

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

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

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

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

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

- (a) a transfer value calculated as set out in paragraph (4)(b) above, or

- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

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

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

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

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

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

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and

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

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

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

**stv44. Exclusion of candidates – (1) If—**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Members' Council from the constituency, or class within a constituency, for which the election is being held to be elected,
  - (b) give notice of the name of each candidate who he or she has declared elected—
    - (i) where the election is held under a proposed constitution pursuant to powers conferred on the South West Yorkshire Partnership 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 whom he or she has declared elected.
- (2) The returning officer is to make –
- (a) the total number of votes given for each candidate (whether elected or not), and
  - (b) the number of rejected ballot papers under each of the headings in rule fpp39(5), available on request.

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
  - (b) give notice of the name of each candidate who he or she has declared elected –
    - (i) where the election is held under a proposed constitution pursuant to powers conferred on the South West Yorkshire Partnership 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 stv39(1), available on request.

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

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

*Part 8 – Disposal of documents*

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

- (a) the counted ballot papers,
  - (b) the ballot papers endorsed with “rejected in part”,
  - (c) the rejected ballot papers, and
  - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of –
- (a) the disqualified documents, with the list of disqualified documents inside it,
  - (b) the declarations of identity,
  - (c) the list of 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*

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

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

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

- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- (5) The returning officer is to –
- (a) count and record the number of ballot papers that have been received, and
  - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of –
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

**stv54. Countermand or abandonment of poll on death of candidate – (1)**

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

- (a) publish a notice stating that the candidate has died, and
  - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
    - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
    - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

*Part 10 – Election expenses and publicity*

*Election expenses*

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

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

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

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

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

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

*Publicity*

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

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

as it considers necessary.

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

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,

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

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

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

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

- (2) The information must consist of –
  - (a) a statement submitted by the candidate of no more than 250 words, and
  - (b) a photograph of the candidate.

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

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

*Part 11 – Questioning elections and the consequence of irregularities*

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

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

- (3) An application may only be made to the Regulator by
  - (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
  - b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
  - c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

#### *Part 12 – Miscellaneous*

**62. Secrecy** – (1) The following persons –

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

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

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

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

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

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

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

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

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

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

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



## **ANNEX 5 – ADDITIONAL PROVISIONS – MEMBERS’ COUNCIL**

(Paragraphs 11.6, 12.3, 15 and 17)

### **Elected Council Members**

1. A member of the Public Constituency may not vote at an election for a Public Council Member unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant area of the Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **Appointed Council Members**

2. The Secretary, having consulted Calderdale, Kirklees and Wakefield District PCTs, is to adopt a process for agreeing the appointment of PCT Council Members with those Primary Care Trusts.
3. The Secretary, having consulted Calderdale Metropolitan Borough Council, Kirklees Metropolitan Council and Wakefield Metropolitan District Council is to adopt a process for agreeing the appointment of Local Authority Council Members with those local authorities.
4. The Partnership Council Members are to be appointed by the partnership organisations, in accordance with a process agreed with the Secretary.

### **Deputising arrangements for the Chair**

5. The Deputy Chair of the Trust Board will chair the Members’ Council in the absence of the Chair.

### **Tenure for appointed Council Members**

6. An appointed Council Member:
  - 6.1 shall normally hold office for a period of three calendar years;
  - 6.2 shall be eligible for re-appointment at the end of his term;
  - 6.3 may not hold office for longer than six consecutive years, and shall not be eligible for re-appointment if he has already held office for more than three consecutive years.
7. An appointed Council Member shall cease to hold office if the appointing organisation which appointed him terminates the appointment.

### **Further provisions as to eligibility to be a Council Member**

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

- 8.1 they are a Director of the Foundation Trust or a Council Member or director of an NHS body (unless they are appointed by an appointing organisation which is an NHS body);
  - 8.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 8.3 they are a member of a local authority's Scrutiny Committee covering health matters;
  - 8.4 they have been previously removed as a Council Member pursuant to paragraph 10 of this Annex 5.
  - 8.5 being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Members Council ;
  - 8.6 they are subject to a sex offender order ;
  - 8.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
  - 8.8 they are a person whose tenure of office as the Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
9. A person holding office as a Council Member shall immediately cease to do so if:
- 9.1 they resign by notice of one month in writing to the Chair of the Trust;
  - 9.2 they fail to attend three consecutive meetings of the Members' Council, unless the other Council Members are satisfied that:
    - 9.2.1 the absences were due to reasonable causes; and
    - 9.2.2 they will be able to start attending meetings of the Members' Council again within such a period as the other Council Members consider reasonable;
  - 9.3 they have refused without reasonable cause to undertake any training which the Members' Council requires all Council Members to undertake;
  - 9.4 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Council Members;

- 9.5 they are removed from the Members' Council under the following provisions.
10. A Council Member may be removed from the Members' Council by a resolution approved by not less than two thirds of the remaining Council Members present and voting on the grounds that:
  - 10.1 they have committed a serious breach of the code of conduct; or
  - 10.2 they have acted in a manner detrimental to the interests of the Foundation Trust; and
  - 10.3 the Members' Council consider that it is not in the best interests of the Foundation Trust for them to continue as a Council Member.

### **Vacancies amongst Council Members**

11. Where a vacancy arises on the Members' Council for any reason other than expiry of term of office, the following provisions will apply.
12. Where the vacancy arises amongst the appointed Council Members, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
13. Where the vacancy arises amongst the elected Council Members, the Members' Council shall be at liberty either:
  - 13.1 to call an election within three months to fill the seat for the remainder of that term of office; or
  - 13.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office; or
  - 13.3 if the unexpired period of the term of office is less than 9 months, to leave the seat vacant until the next elections are held.

### **Further provisions as to meetings of Council Members**

14. The Members' Council is to meet at least four times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least seven days written notice of the date and place of every meeting of the Members' Council together with an agenda and any supporting papers to all Council Members. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Foundation Trust, and on the Foundation Trust's website.
15. Meetings of the Members' Council may be called by the Secretary, or by the Chair, or by ten Council Members (including at least two elected Council Members and two appointed Council Members) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send

a written notice to all Council Members as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or ten Council Members, whichever is the case, shall call such a meeting.

16. One-third of the membership of the Members' Council shall form a quorum, to include at least one more public Council Member than staff/appointed Council Members.
17. The Members' Council may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Members' Council.
18. The Members' Council may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
19. Subject to the following provisions of this paragraph, questions arising at a meeting of the Members' Council shall be decided by a majority of votes.
  - 19.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.
  - 19.2 No resolution of the Members' Council shall be passed if it is opposed by all of the Public Council Members present.
20. The Members' Council may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Members' Council in carrying out its functions. The Members' Council may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
21. All decisions taken in good faith at a meeting of the Members' Council or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Council Members attending the meeting.

## **Declaration**

22. An elected Council Member may not vote at a meeting of the Members' Council unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the Foundation Trust and that they are not prevented from being a member of the Members' Council. An elected Council Member shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Members' Council, and every agenda for meetings of the Members' Council will draw this to the attention of elected Council Members.

## **Initial Council Members**

23. Not less than one third of the initial Public Council Members who polled the highest votes will serve a term of office of three calendar years from the date of Authorisation; not less than one third of the initial Public Council Members who polled the next highest number of votes will serve a term of office of two calendar years from the date of Authorisation; the remaining initial Public Council Members will serve a term of office of one calendar year from the date of Authorisation. For the purposes of this paragraph any Public Council Member who is elected unopposed, or elected pursuant to a subsequent election to fill a seat left empty at or after the initial elections, shall be deemed to have received no votes.

## **ANNEX 6 - ADDITIONAL PROVISIONS – BOARD OF DIRECTORS**

(Paragraphs 19.3, 20.4, 21.3, 25 and 27)

### **Appointment and Removal of Chair and other Non-executive directors**

1. Non-executive Directors are to be appointed by the Members' Council using the following procedure.
  - 1.1 The Members' Council will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
  - 1.2 The Board of Directors will work with an external organisation recognised as expert at appointments to identify candidates with appropriate skills and experience required for non-executive Directors vacancies.
  - 1.3 (An) appropriate candidate(s) will be identified by a Nominations Committee through a process of open competition, which takes account of the policy maintained by the Members' Council and the skills and experience required.
  - 1.4 The Nominations Committee will comprise the Chair of the Foundation Trust (or, when a Chair is being appointed, another non-executive Director), the Chief Executive and two Council Members selected by the Members' Council. The Nominations Committee will have the power to co-opt external persons to act as independent assessors to the Nominations Committee.
2. The removal of the Chairman or another non-executive Director shall be in accordance with the following procedures.
  - 2.1 Any proposal for removal must be proposed by a Council Member and seconded by not less than three-quarters of the Members' Council of whom at least two must be elected Council Members and two must be appointed Council Members.
  - 2.2 Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons.
  - 2.3 In making any decision to remove a non-executive Director, the Members' Council shall take into account the annual appraisal carried out by the Chair.
  - 2.4 If any proposal to remove a non-executive Director is not approved at a meeting of the Members' Council, no further proposal can be put

forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

### **Further provisions as to disqualification of Directors**

3. A person may not become or continue as a Director of the Foundation Trust if:
  - 3.1 they are a member of the Members' Council or, except with the permission of the Board of Directors, a governor or director of an NHS body;
  - 3.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 3.3 they are a member of a local authority's Scrutiny Committee covering health matters;
  - 3.4 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 3.5 they are a person whose tenure of office as a Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 3.6 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
  - 3.7 in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
  - 3.8 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

### **Meetings of the Board of Directors**

4. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors. Meetings of the Board of Directors shall be held sufficiently regularly to enable the Board of Directors to discharge its duties effectively at such times and places as the Board of Directors may determine subject to the conditions set out in this Annex 6.
5. Meetings of the Board of Directors shall be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of such meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a

meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.

6. Meetings of the Board of Directors may be called by the Secretary, or by the Chairman or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.
7. One-third of the whole number of directors including not less than one executive Director (one of whom must be the Chief Executive or another executive director nominated by the Chief Executive), and not less than two non-executive Directors (one of whom must be the Chair or the Deputy Chair of the Board of Directors) shall form a quorum.
8. The Board of Directors may agree that its members can participate in its meetings by video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
9. The Chair of the Foundation Trust or, in their absence, the Deputy Chair of the Board of Directors, is to chair meetings of the Board of Directors.
10. Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
  - 10.1 In case of an equality of votes the Chair shall have a second and casting vote.
  - 10.2 No resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive Directors present or by all of the executive Directors present.

## **Expenses**

11. The Foundation Trust may reimburse executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.
12. The remuneration and allowances for Directors are to be disclosed in bands in the annual report.



## **ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE MEMBERS’ COUNCIL**

(Paragraph 14)

### **1. Calling Meetings**

- 1.1 The Members’ Council is to meet at least four times in each financial year (excluding the Annual Members’ Meeting) at such times and places as the Council may determine.
- 1.2 Meetings of the Members’ Council may be called by the Secretary, or by the Chair, or by ten Council Members including at least two elected Governors and two appointed Governors who give written notice to the Secretary specifying the business to be carried out.

### **2. Admission of the Public**

- 2.1 All meetings of the Members’ Council are to be General Meetings open to members of the public unless the Members’ Council decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chair may exclude any member of the public from a meeting of the Members’ Council if they are interfering with or preventing the proper conduct of the meeting.

### **3. Notice of Meetings**

- 3.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary will give at least 7 days written notice of the date and place of every meeting of the Members’ Council to all Council Members. Notice will also be published on the Trust’s website.
- 3.2 After the receipt of a request to call a meeting the Secretary shall send written notice to all Council Members, specifying the business to be carried out, as soon as possible after the receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days’ notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or ten Council Members, whichever is the case, shall call such a meeting.
- 3.3 The notice of the meeting specifying the business proposed to be transacted at it shall be delivered to every Council Member, or sent by post to the usual place of residence of such Council Member, so as to be available to him at least five clear days before the meeting.
- 3.4 Lack of service of the notice shall not affect the validity of a meeting.
- 3.5 In the case of a meeting called by the Chair or the Council Members in default of the Secretary, the Chair or those Council Members shall sign the notice and no

business shall be transacted at the meeting other than that specified in the notice.

- 3.6 In such a case, failure to serve such a notice on more than 25 Council Members will invalidate the meeting.

#### **4. Setting the Agenda**

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

- 4.2 In accordance with the Constitution every agenda for meetings of the Members' Council will draw to the attention of Council Members the declaration they are required to make in clause 9.1 stating that they are qualified to vote as a member of the Trust and that they are not prevented from being a member of the Members' Council. An elected Council Member shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Members' Council.

- 4.3 Any Council Member wishing to submit an agenda item must notify the Secretary in writing at least ten clear days prior to the meeting at which it is to be considered. Requests made less than ten clear days before a meeting may be included on the agenda at the discretion of the Chair.

#### **5. Chair of the Meeting**

- 5.1 The Chair of the Trust or, in their absence, the Deputy Chair is to preside at meetings of the Members' Council.

- 5.2 If the Chair has a conflict of interest in relation to the business being discussed, the Deputy Chair will chair that part of the meeting.

- 5.3 If a vote concerns matters relating to the Chair and/or Non Executive Directors, neither the Chair of the Trust nor any other Non Executive Director should preside over the meeting. In this instance the Members' Council should nominate one of their membership to preside over that part of the meeting and to have the casting vote.

#### **6. Annual Members' Meeting**

- 6.1 The Foundation Trust will publicise and hold an annual members' meeting in accordance with the constitution.

#### **7. Motions**

- 7.1 Motions may only be submitted by a Council Member and must be received by the Secretary in writing at least one week prior to the meeting at which they are to be considered.

- 7.2 Emergency motions may only be submitted by a Council Member and must be received by the Secretary before the commencement of the meeting. Acceptance of such motions for inclusion on the Agenda will be at the discretion of the Chair.
- 7.3 Any other business should be notified to the Chair at the commencement of the meeting. Acceptance of such items of business for inclusion on the agenda will be at the discretion of the Chair.
- 7.4 Notice of a motion to rescind a previous Minute must be received by the Secretary at least 21 days before the meeting and must be signed by a majority of members. Such a motion should not be taken until at least 30 minutes after the start of the meeting.
- 7.5 An amendment that does not directly negate a resolution may be moved by any member. No further amendments may be moved until the first amendment is disposed of. If an amendment is passed it shall become part of the substantive motion and subject to further amendment.

## **8. Chair's Ruling**

- 8.1 Statements of Council Members made at meetings of the Members' Council 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 observed at the meeting.

## **9. Voting**

- 9.1 An elected Council Member may not vote at a meeting of the Members' Council unless, before attending the meeting, they have made a declaration in the form specified by the Members' Council of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Members' Council. An elected Council Member shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Members' Council, and every agenda for meetings of the Members' Council will draw this to the attention of elected Council Members.
- 9.2 Subject to the Constitution questions arising at a meeting shall be determined by a majority of the votes of the Council Members present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 9.3 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 Council Members present so request.
- 9.4 In accordance with the Constitution the appointment of the Chair and any Non Executive Director of the Trust is subject to the approval of a majority of the votes of the Council Members present.

- 9.5 In accordance with the Constitution the removal of the Chair and any Non Executive Director of the Trust is subject to a three-quarters majority of all the members of the Council of Members, voting at the meeting, of which at least two must be elected and two appointed.
- 9.6 In accordance with the Constitution the appointment of the Chief Executive is subject to the approval of a majority of the members of the Council of Members present and voting at a meeting. .
- 9.7 In no circumstances may an absent Council Member vote by proxy. Absence is defined as being absent at the time of the vote.
- 9.8 Subject to the Constitution, and subject to clause 9.5, questions arising at a meeting of the Members' Council shall be decided by a majority of votes.
- 9.9 No resolution of the Members' Council shall be passed if all the Public Council Members present unanimously oppose it.

## **10. Attendance**

- 10.1 Council Members who are unable to attend the Members' Council meeting should advise the Secretary in advance of the meeting so that their apologies may be submitted.
- 10.2 The Members' Council may agree that its members can participate in its meetings by video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in the person at the meeting.
- 10.3 The Members' Council may invite the Chief Executive or any other member or members of the Trust Board, or a representative of the Trust's auditors or other advisors to attend a meeting of the Members' Council.

## **11. Minutes**

- 11.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting. The person presiding at that meeting will sign them. In circumstances where this person is not present at the next ensuing meeting, the Members' Council will agree a suitable signatory.
- 11.2 No discussion shall take place upon the Minutes except upon their accuracy or where the Chairman considers discussion appropriate (for example, consideration of matters arising). Any amendment to the Minutes shall be agreed and recorded at the next meeting.
- 11.3 Minutes shall be circulated in accordance with the Council Members' wishes. Where providing a record of a public meeting the Minutes shall be made available to the public.

## **12. Record of Attendance**

- 12.1 The names of the Council Members present at the meeting shall be recorded in the minutes.

## **13. Suspension of Standing Orders**

- 13.1 Except where this would contravene the Constitution or any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council are present, and that a majority of those present vote in favour of suspension.
- 13.2 A decision to suspend Standing Orders shall be recorded in the minutes of the Meeting.
- 13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Council Members.
- 13.4 No formal business may be transacted while Standing Orders are suspended.

## **14. Variation and Amendment of Standing Orders**

- 14.1 These Standing Orders may only be amended at the Annual Members' Meeting or at a meeting specially convened for the purpose. A motion to change the Standing Orders must be signed by a majority of Council Members and submitted to the Secretary in writing at least 21 day before the meeting.

## **15. Quorum**

- 15.1 The quorum for the Members' Council will be one-third of the membership of the Council to include at least one more public governor than staff/non-elected governors.
- 15.2 Any Council Member who 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 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.
- 15.3 In accordance with the Constitution if at any meeting there is no quorum within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for 7 days and upon reconvening, those present shall constitute a quorum.

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

(Paragraph 26)

**STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD  
OF DIRECTORS ('TRUST BOARD') OF SOUTH WEST YORKSHIRE  
PARTNERSHIP NHS TRUST.**

**To be read in conjunction with the Standing Financial Instructions, Reservation of Powers to  
the Board and Scheme of Delegation**

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## 1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

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 they should be advised by the Chief Executive or Secretary to the Board).

Any expression to which a meaning is given in the National Health Service Act 1977, National Health Service and Community Care Act 1990, the National Health Service Act 2006 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 Standing Financial Instructions and in addition:

**"Accounting Officer"** refers to the Chief executive who is responsible and accountable to Parliament for ensuring the proper stewardship of public funds and assets.

**"Trust"** means the South West Yorkshire Partnership NHS Foundation Trust.

**"Board of Directors/Trust Board"** means the Chair, executive and non-executive directors of the Trust collectively as a body.

**"Constitution"** means the Constitution of the Trust and all annexes to it

**"Budget"** means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

**"Budget holder"** means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.

**"Chair of the Board (or Trust)"** is the person appointed by the Members' Council to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "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 officer of the Trust, who is also the Accounting Officer.

**"Clinical Governance Committee"** means a committee whose functions are concerned with the arrangements for monitoring and improving the quality of healthcare for which the South West Yorkshire Partnership NHS FT has responsibility.

**"Commissioning"** means the process for determining the need for and for obtaining the supply of healthcare and related services within available resources.

**"Committee"** means a committee or sub-committee created and appointed by the Trust.

**"Committee members"** means persons formally appointed by the Board to sit on or to chair specific committees.

**"Contracting and procuring"** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

**"Council Member"** means a person elected or appointed to serve on the Members' Council-

**"Deputy Chair"** means the non-executive director appointed by the Members' Council to take on the Chair's duties if the Chair is absent for any reason.

**"Director of Finance"** means the Chief Financial Officer of the Trust.

**"Executive Director"** means a director of the Trust who is an employee of the Trust.

**"Funds held on trust"** shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under S.90 of the NHS Act 1977, as amended. Such funds may or may not be charitable.

**"Members' Council"** is the body established according to the constitution to represent the interests of stakeholders

**"Monitor"** is the Regulator appointed under the National Health Service Act 2006

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

**"Non Executive Director"** means a director of the Trust who is not an employee of the Trust.

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

**"Secretary"** means a person 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 law, Standing Orders, and guidance issued by the Department of Health and Monitor.

**"SFIs"** means Standing Financial Instructions.

**"SOs"** means Standing Orders.

**"Trust Board member"** means an executive or non-executive director of the Board as the context permits.

## **2. INTRODUCTION**

### **2.1 Statutory Framework**

South West Yorkshire Partnership NHS Foundation Trust is a public benefit corporation established in accordance with the provisions of the National Health Service Act 2006 and was authorised on November 1<sup>st</sup> 2008. The Standing Orders of the Trust are designed to facilitate effective working of the Trust Board and to reflect the standards for business conduct and probity that are set out in the Monitor Code of Governance.

- (1) The Trust provides services to the population of Calderdale, Kirklees and Wakefield and the principal places of business are within the boundaries of these local authority areas. The Trust also operates regional forensic psychiatric services for the population of Yorkshire and Humberside. The headquarters of the Trust is Fieldhead Hospital, Ouchthorpe Lane, Wakefield. WF1 3SP.
- (2) NHS Foundation Trusts are governed mainly by the National Health Service Act 2006 and are subject to regulation by Monitor.
- (3) The functions of the Trust are conferred by this legislation.
- (4) As a statutory body, the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable as well as to the Secretary of State for Health.

The Trust is required to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) setting out the responsibilities of individuals. The Trust is additionally required to draw up a schedule of decisions that are reserved for the Board and to ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The document setting out the Reservation of Powers to the Board and Scheme of Delegation and the Standing Financial Instructions have effect as if incorporated into the Standing Orders.

The Trust is also bound by such other statutes and legal provisions which govern the conduct of its affairs. In addition to the statutory requirements the Secretary of State through the Department of Health issues further directions and guidance. These are normally issued under cover of a circular or letter.

### **2.2 Dissemination of the Trust Board standing orders**

The Chief Executive is responsible for ensuring all existing directors and staff and all new appointees to the Trust Board are notified of and understand their responsibilities within Standing Orders, Standing Financial Instructions and the Scheme of Delegation.

### **2.3 Changes to Standing Orders**

Changes to the Standing Orders are subject to the following conditions:

- A notice of motion under SO 4.4 has been given.
- The amendment has been approved by a majority of the Trust Board and by a majority of the Members' Council present and voting at a meeting called in accordance with the constitution and standing orders.
- The amendment is approved by Monitor

## **2.4 Review of standing orders**

These standing orders will be reviewed annually by the Trust Board. This review will include all documents having the effect as if incorporated into Standing Orders.

## **3. THE TRUST BOARD: COMPOSITION AND THE ROLE AND TERMS OF OFFICE OF DIRECTORS**

### **3.1 Role of Directors**

The Board will function as a unitary board. Executive and Non-Executive Directors will be full and equal members of the Board which will act as the corporate decision body. Their role as members of the Board of Directors will be to consider the key strategic, risk and governance issues facing the Trust in carrying out its statutory and other functions.

### **3.2 Chair**

The Chair shall be responsible for the operation of the Trust Board and chair all meetings of the Trust Board and the members' Council when present. The Chair must comply with the terms of appointment and with these Standing Orders.

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

The Chair will meet at least four times per year with the Non-executives without the Executive Directors present.

### **3.3 Non-Executive Directors**

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

### **3.4 Executive Directors**

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

### **3.5 Chief Executive**

The Chief Executive is the Accounting Officer for the Trust and is responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Accounting Officer Memorandum for NHS Foundation Trust Chief Executives.

### **3.6 Director of Finance**

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

### **3.7 Composition of the Trust Board**

In accordance with the constitution the composition of the Trust Board shall be:

- (1) The Chair of the Trust (Appointed by the Members' Council);
- (2) Six non-executive directors
- (3) Six executive directors including:
  - the Chief Executive who is the accounting officer;
  - the Director of Finance
  - a registered medical practitioner
  - a registered nurse

### **3.8 Appointment of Chair and Non-Executive Directors of the Trust**

Regulations for the appointment and removal of the Chair and Non-Executive Directors of the Trust Board are set out in section 20 and 21 and annex six of the constitution: Additional Provisions. The Chair and Non-Executive Directors will be appointed by the Members' Council for an initial period of three years. The Chair may be re-appointed for a further three years (up to a maximum of nine years) subject to the approval of the members' Council. Appointment of Non-Executive directors may be re-appointed for a further three years (up to a maximum of nine years), subject to approval by the Members' Council following confirmation by the Chair that they have performed effectively and remain committed to the role. Appointments beyond six years will be subject to annual review.

On appointment the Chair must meet the 'independence criteria set out in the Monitor Code of Governance.

The Members' Council will be responsible for agreeing the Remuneration of the Chair and non-Executive Directors.

The senior independent director will meet annually with the Non-Executive Directors to review the Chair's performance. Any further arrangements for appraisal of the chair will be agreed with the Members' Council.

### **3.9 Appointment of Chief Executive and Executive Directors**

The Chief Executive will be appointed by a sub-committee of the Trust Board, consisting of the Chair and other Non-Executive Directors and an independent assessor, who will have no formal role in making an appointment. Appointment of executive directors will be subject to ratification by the Members' Council at the first general meeting after appointment.

Executive Directors of the Trust Board will be appointed by a sub-committee of the Trust Board including the Chair, the Chief executive and other non-executive directors.

### **3.10 Appointment and Powers of Deputy Chair**

The Members' Council will appoint a Non-Executive Director to be the Deputy Chair for period of two years or for the remainder of their term as a member of the Trust (if less than two years).

Any member so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Members Council may thereupon appoint another member as Deputy Chair.

Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their 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 their 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 those duties, be taken to include references to the Deputy Chair.

### **3.11 Appointment of a senior independent director**

The Trust Board shall appoint one of the independent non-executive directors to act as the senior Independent Director. This will be done in consultation with the Members' Council. The senior independent director may be, but need not necessarily be, the Deputy Chair.

The senior independent director will be available to directors and council members if they have concerns which they cannot resolve with the chair, chief executive or director of finance.

### **3.12 Company secretary**

The Trust Board shall appoint a senior member of staff to carry out the functions of a Company Secretary to provide advice on corporate governance issues to the Chair, the Trust Board and the members' Council and monitor the trust's compliance with these standing orders, the constitution, the terms of authorization, statutory provisions and guidance and directions given by Monitor. The Secretary will ensure good information flows between the Trust Board, its committees and the Members' Council.

### **3.13 Corporate role of the Board**

- (1) All business shall be conducted in the name of the Trust.
- (2) All funds received in trust shall be held in the name of the Trust as corporate trustee.

### **3.14 Schedule of Matters reserved to the Board and Scheme of Delegation**

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

### **3.15 Lead Roles for Board Members**

The Chair will ensure that the designation of lead roles or appointments of Board members as required by commissioners or as set out in any statutory or other relevant guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Member with responsibilities for Infection Control or Child Protection Services etc.).

### **3.16 Indemnity for Directors**

Directors may, at the Trust's expense, seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective decision by the majority of directors.

A director who acts honestly and in good faith will not have to meet out of his/her personal resources any personal civil liability incurred in the execution of the functions of the Trust Board, save where he has acted recklessly. Any costs arising from a director acting honestly and in good faith will be met by the Trust. The Board of Directors may make any arrangements it considers appropriate for the provision of indemnity insurance to meet any liabilities which are properly the liability of the trust.

## **4. MEETINGS OF THE TRUST**

### **4.1 Calling meetings**

- 4.1.1 Ordinary meetings of the Board shall be held sufficiently regularly to enable the Board to discharge its duties effectively at such times and places as the Board may determine subject to the conditions set out in Annex 6 of the constitution (Additional provisions for the Board of Directors.) This will include an Annual General Meeting of the Trust Board and the Members' Council which will be held in public.
- 4.1.2 The Chair of the Trust may call a meeting of the Board at any time.
- 4.1.3 Meetings of the Trust Board may be called by the Secretary or the Chairman or by four directors who give written notice to the secretary specifying the business to be carried out. The secretary will send a written notice to all directors as soon as possible after receipt of such a request. The secretary will call a meeting at least fourteen days but not more than 28 days after receipt of such a notice to discuss the specified business. If the secretary fails to do so, then the chairman or the directors may call such a meeting.

### **4.2 Notice of Meetings and the Business to be transacted**

- 4.2.1 At least 14 days notice of the date, time and place of meetings will be given except in an emergency.
- 4.2.2 In the case of a meeting called by directors in default of the Chair calling the meeting, the notice shall be signed by those directors.
- 4.2.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 4.5.
- 4.2.4 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.
- 4.2.5 Before each public meeting of the Board 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 principal offices at least three clear days before the meeting

### **4.3 Agenda and Supporting Papers**

The Agenda will be sent to Trust Board directors at least six clear days before the meeting and supporting papers, whenever possible, will accompany the agenda, unless there are exceptional circumstances and the chair and secretary have agreed to one or more papers being circulated later. Failure to serve such a notice on any director shall not affect the validity of a meeting.

### **4.4 Notice of Motion**

- 4.4.1 Subject to the provision of Standing Orders 4.6 'Motions: Procedure at and during a meeting' and 4.7 'Motions to rescind a resolution', a member of the Board wishing to move a motion shall send a written notice to the Secretary who will ensure that it is brought to the immediate attention of the Chair.
- 4.4.2 The notice shall be delivered at least 10 clear days before the meeting. The Secretary shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion

being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

#### **4.5 Emergency Motions**

Subject to the agreement of the Chair, and subject also to the provision of Standing Order 4.6 'Motions: Procedure at and during a meeting', a director of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Trust Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

#### **4.6 Motions: Procedure at and during a meeting**

##### **4.6.1 Who may propose?**

A motion may be proposed by the Chair of the meeting or any director present. It must also be seconded by another director.

##### **4.6.2 Contents of motions**

The Chair may exclude from the debate at their discretion any motion not included in the notice summoning the meeting except motions relating to:

- the receipt of a report;
- consideration of any item of business before the Trust Board;
- the accuracy of minutes;
- that the Board proceed to next business;
- that the Board adjourn;
- that the question be now put.

##### **4.6.3 Amendments to motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

##### **4.6.4 Rights of reply to motions**

###### **a) Amendments**

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

###### **b) Substantive/original motion**

The director who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

##### **4.6.5 Withdrawing a motion**

A motion, or an amendment to a motion, may be withdrawn.



#### **4.6.6 Motions once under debate**

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- referral of the matter to a committee of the Trust Board;
- that a director be not further heard;
- a motion under Section I (2) or Section I (8) of the Public Bodies (Admissions to Meetings) Act 1960 resolving to exclude the public, including the press (see Standing Order 4.17).

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a director of the Board who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote. No resolution will be passed if it is opposed by all of the Non-Executive Directors or all of the Executive Directors.

#### **4.7 Motion to Rescind a Resolution**

4.7.1 Notice of motion to 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 director who gives it and also the signature of three other directors, and before considering any such motion of which notice shall have been given, the Trust Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

4.7.2 When any such motion has been dealt with by the Trust Board it shall not be competent for any director other than the Chair to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

#### **4.8 Chair of meeting**

At any meeting of the Trust Board the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair, if present, shall preside.

#### **4.9 Chair's ruling**

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

#### **4.10 Quorum**

4.10.1 One third of the whole number of directors, including not less than one executive director (one of whom must be the Chief executive or another executive director nominated by the Chief executive) and not less than two non-executive directors (one of whom must be the Chair or deputy Chair of the Board of Directors) shall form a quorum.

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

If the Chair or director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.8) that person 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.

## 4.11 Voting

4.11.1 The following Directors are entitled to vote:

- The Chair
- All Non-Executive Directors
- The Chief Executive
- The Deputy Chief Executive/Director of Finance
- The Medical Director
- The Director of Nursing, Innovation and Compliance
- The Chief Operating Officer
- The Director of Human Resources and Facilities (following Foundation Trust authorisation and subject to the formal appointment of a sixth Non-Executive Director)

4.11.2 Except for the provisions made in Standing Orders 4.13 - Suspension of Standing Orders and 4.14 - Variation and Amendment of Standing Orders), every question put to a vote at a meeting shall be determined by a majority of the votes of directors present and voting on the question. In the case of an equal vote, the person presiding (ie: the Chair of the meeting) shall have the casting vote.

4.11.3 At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

4.11.4 If at least one third of the directors present so request, the voting on any question may be recorded so as to show how each director present voted or did not vote (except when conducted by paper ballot).

4.11.5 If a director so requests, their vote shall be recorded by name.

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

4.11.7 A manager who has been *formally appointed to act up* for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Director.

4.11.8 A manager attending the Trust Board meeting 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. The status of people when attending a meeting will be recorded in the minutes.

4.11.9 Where the office of a director of the Board is shared jointly by more than one person: either or both of those persons may attend or take part in meetings of the Board;

- if both are present at a meeting they should cast one vote if they agree;
- in the case of disagreements no vote should be cast;
- the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order 4.10 - Quorum.

## **4.12 Disputes**

Where directors have issues that cannot be resolved about the running of the NHS Foundation Trust or a proposed action, this should be recorded in the minutes. The Chief Executive, as accounting officer, should follow the procedure set out by Monitor in the Accounting Officer's memorandum for advising the Board of Directors and members' Council and for recording and submitting objections to decisions on matters of propriety or regularity or on the wider responsibilities of the Accounting Officer

## **4.13 Suspension of Standing Orders**

4.13.1 Except where this would contravene any statutory provision or the rules relating to the Quorum (SO 4.10), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the directors of the Board are present (including at least one director who is a Non-Executive Director and one of whom is an Executive Director of the Trust) and that at least two-thirds of those directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Trust Board's minutes.

4.13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and directors of the Trust.

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

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

## **4.14 Variation and amendment of Standing Orders**

No amendment shall be made to these Standing Orders unless:

- notice of motion has been given in accordance with Standing Order 4.4;
- the amendment has been approved by a majority of the Board of Directors present at a meeting of the trust Board and by a majority of Council Members present and voting at a meeting of the Members' Council duly called by order of the Board of Directors in accordance with the constitution.
- It has been approved by Monitor

## **4.15 Record of Attendance**

The names of the Chair and Directors present at the meeting shall be recorded. Where a director arrives late or leaves before the end of the meeting, this will be reflected in the minutes. A record of each director's attendance at meetings of the trust Board and Committees of the Board will be kept and reported to the members' Council on request.

## **4.16 Minutes**

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

No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendments to the minutes will be agreed and recorded prior to being signed as a true record.

Minutes will be circulated in accordance with the wishes of the chair and, where the minutes provide a record of a public meeting, will be made available to the public as required by the Code of Practice on Openness I the NHS, the Freedom of Information Act and the Monitor Code of Governance.

#### **4.17 Admission of public and the press**

##### **4.17.1 Admission and exclusion on grounds of confidentiality of business to be transacted**

The public and representatives of the press may attend all public meetings of the Trust Board, but shall be required to withdraw upon the Trust Board 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', Section 1 (2), Public Bodies (Admission to Meetings) Act 1960

The reasons for exclusion under this standing order will be as follows:

- Discussion of matter which contains confidential personally identifiable information relating to a member of staff or a service user or carer
- Discussion of any matter which contains commercially sensitive information relating to the trust or a third party.

##### **4.17.2 General disturbances**

The Chair or the person presiding over the meeting shall give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust's 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 Trust Board resolving as follows:

- 'That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Trust Board to complete its business without the presence of the public'. Section 1(8) Public Bodies (Admissions to Meetings) Act 1960.

##### **4.17.3 Business proposed to be transacted when the press and public have been excluded from a meeting**

Matters to be dealt with by the Trust Board following the exclusion of representatives of the press, and other members of the public, as provided in 4.17.1 and 4.17.2 above, shall be confidential to the members of the Board.

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 Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

##### **4.17.4 Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings**

Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Trust or Committee thereof. Such permission shall be granted only upon resolution of the Trust.

#### **4.18 Observers at Trust meetings**

The Trust 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 Trust Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

### **5. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES**

#### **5.1 Appointment of Committees**

Subject to the constitution, Terms of Authorisation, statutory provision and directions given by Monitor, the Trust Board may appoint committees of the Trust made up wholly or partly of Directors of the trust.

The Trust 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.

Committees of the Board may appoint sub-committees consisting wholly or partly of members of the committee, whether or not they include directors, or wholly of persons who are not members of the committee, whether or not they include Directors.

Each committee or sub-committee will have terms of reference and powers approved by the Trust Board, which will have the effect of being incorporated into the Standing Orders.

#### **5.2 Joint Committees**

5.2.1 Joint committees may be appointed by the Trust by joining together with one or more other Trusts or other organisations consisting of, wholly or partly of the Chair and directors of the Trust or other health service bodies, or wholly of persons who are not directors of the Trust or other organisations in question.

5.2.2 Any committee or joint committee appointed under this Standing Order may appoint sub-committees consisting wholly or partly of directors of the committees or joint committee (whether or not they are directors of the Trust or health bodies in question) or wholly of persons who are not directors of the Trust or health bodies in question or the committee of the Trust or health bodies in question.

#### **5.3 Applicability of Standing Orders and Standing Financial Instructions to Committees**

The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Trust. In which case the term "Chair" applies to the Chair of the committee, and the term "member" is to be read as a reference to a member of the committee. (There is no requirement to hold meetings of committees established by the Trust in public.)

#### **5.4 Terms of Reference**

Each committee will have terms of reference and powers and will be subject to conditions, such as a requirement to report to the Trust Board, which will be determined by the Trust Board. The terms of reference will have effect as if incorporated into the Standing Orders.

#### **5.5 Delegation of powers by Committees to Sub-Committees**

Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Trust Board.

## **5.6 Approval of Appointments to Committees**

The Trust Board will approve the appointments to each of the committees which it has formally constituted. The Board will define the powers of such appointees and will agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

## **5.7 Appointments for Statutory functions**

Where the Trust Board is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Board such appointment shall be made in accordance with the regulations and directions made by Monitor.

## **5.8 Committees established by the Trust Board**

Without prejudicing the formation of other committees or sub-committees as are considered necessary by the trust, the major committees are:

### **5.8.1 Audit Committee**

The Audit Committee provides the Trust Board with an independent and objective view on its systems of control, including the adequacy of the governance arrangements and the systems for financial control and financial reporting. At least one of the Non-Executive directors on the Audit Committee must have relevant financial experience. The purpose of the committee is defined in its terms of reference.

### **5.8.2 The Clinical Governance and Clinical Safety Committee**

The Clinical Governance and Clinical Safety Committee provides assurance to the Trust Board on matters of service quality and the effectiveness of clinical risk management, practice effectiveness and standards of clinical and professional practice. The purpose of the committee is defined in its terms of reference.

### **5.8.3 The Mental Health Act Committee**

The Mental Health Act Committee is responsible for ensuring the organization operates within the legal requirements of the Mental Health Act and Mental Capacity Act. The purpose of the committee is defined in its terms of reference.

### **5.8.4 Remuneration and Terms of Service Committee**

The Remuneration and Terms of service Committee will be made up at least three Non-Executive Directors, all of whom must meet the independence criteria set out in the Monitor Code of Governance. The purpose of the committee is defined in its terms of reference.

### **5.8.5 The Nominations Committee (to be established following authorization)**

The Nominations Committee is responsible for overseeing the appointment of Non-Executive Directors. Its membership will include the chair of the Trust Board, the Chief Executive and at least two members of the Members' Council. The purpose of the committee is defined in its terms of reference.

#### **5.8.6 Trust and Charitable Funds Committee**

In line with its role as a corporate trustee for any funds held in trust, either as charitable or non charitable funds, the Trust Board has established a Charitable Funds Committee to administer those funds in accordance with any statutory or other legal requirements or directions set out by the Charities Commission. The purpose of the committee is defined in its terms of reference.

#### **5.8.7 Other Committees**

The Trust Board may also establish such other committees or sub committees as required to discharge the Trust's responsibilities. The Trust Board will determine those duties that can be delegated to committees or sub-committees.

## **6. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION**

### **6.1 Delegation of Functions to Committees, Officers or other bodies**

6.1.1 Subject to paragraph 3 of the constitution, the Board may make arrangements any of its functions to be carried out on its behalf by a committee, Executive Team or Executive Director, or by a third party, such as another organization, subject to approval by the Trust Board and to restrictions and conditions which will be agreed by the Board.

6.1.3 Where a function is delegated by these Regulations to another Trust, then that Trust or health service body exercises the function in its own right; the receiving Trust has responsibility to ensure that the proper delegation of the function is in place. In other situations, i.e. delegation to committees, sub-committees or officers, the Trust delegating the function retains full responsibility.

### **6.2 Emergency Powers and urgent decisions**

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 3.14) may in emergency or for an urgent decision 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 Trust Board in public session for formal ratification.

### **6.3 Delegation to Committees**

6.3.1 The Board shall agree from time to time to the delegation of executive powers to be exercised by other committees, or sub-committees, or joint-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific executive powers shall be approved by the Board in respect of its sub-committees.

### **6.4 Delegation to Executive Directors**

6.4.1 Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committee or sub-committee or joint-committee shall be exercised on behalf of the Trust 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 Trust.

6.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying decision making rights and accountability. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.

6.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability of the Director of Finance to the Trust Board to provide information and advise the Board in accordance with statutory duties. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

## **6.5 Schedule of Matters Reserved to the Trust and Scheme of Delegation of powers**

6.5.1 The arrangements made by the Board as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall have effect as if incorporated in these Standing Orders.

## **6.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions**

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 for action (which may include disciplinary action) or ratification. All members of the Trust Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## **6.7 Confidentiality**

A member of a committee will not disclose a matter dealt with by or brought before the committee without its permission until the committee.

A Director of the Trust or a member of a committee will not disclose any matter reported to the Trust Board or otherwise dealt with by the committee, whether or not it has been reported to the Trust Board, if the Trust Board or the Committee resolve that it should remain confidential.

## **7. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS**

### **7.1 Policy statements: general principles**

The Trust Board will from time to time agree and approve Policy statements which will apply to all or specific groups of staff employed by South West Yorkshire Partnership NHS Foundation Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Trust Board minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

### **7.2 Specific Policy statements**

Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- the Standards of Business Conduct and Conflicts of Interest Policy for South West Yorkshire Partnership NHS FT staff;
- the staff Disciplinary and Appeals Procedures adopted by the Trust

### **7.3 Standing Financial Instructions**

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



## 7.4 Specific guidance

Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Secretary of State for Health:

- Caldicott Guardian 1997;
- Human Rights Act 1998;
- Freedom of Information Act 2000.

## 8. DUTIES AND OBLIGATIONS OF BOARD MEMBERS/DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

### 8.1 Declaration of Interests

Trust Board directors are required to declare interests which are relevant and material to the business of South West Yorkshire Partnership NHS FT. Interests which should be regarded as "relevant and material" are set out in section 27 of the constitution.

Directors should declare any relevant or material interests in writing to the Secretary as soon as practicable. Declarations of interest should be made on appointment to the Trust Board or as soon as he/she becomes aware of the interest.

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

Board 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.

Directors may not participate in any part of the discussion or decision on any matter where they have declared a relevant or material interest

### 8.2 Register of Interests

The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or Committee members. In particular the Register will include details of all directorships and other relevant and material interests (as defined in SO 8.2.1) which have been declared by both executive and non-executive directors of the Trust Board. The Register will be available to the public.

#### 8.2.1 Definition of terms used in interpreting 'pecuniary/material' interest

The term pecuniary or material interest applies to any situation where a director may gain direct or indirect advantage (financial or otherwise) through a decision of the Board. If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair of the Trust or with the Trust's Company Secretary.

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.

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

- (i) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);

(ii) "contract" shall include any proposed contract or other course of dealing.

(iii) "Pecuniary interest"

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

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

iv) Exception to Pecuniary interests

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

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

However, where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 8.1

### **8.3 Standards of Business Conduct**

All Trust staff and members of must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy and the national guidance contained in HSG(93)5 on 'Standards of Business Conduct for NHS staff'

#### **8.3.1 Interest of Officers in Contracts**

- i) Any officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in SO 8.2) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Trust's Company Secretary as soon as practicable.
- ii) An Officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- iii) The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

### **8.3.2 Canvassing of and Recommendations by Directors in Relation to Appointments**

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

### **8.3.3 Relatives of Directors or Officers**

- i) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any 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 liable to instant dismissal.
- ii) The Chair and every director and officer of the Trust shall disclose to the Trust Board any relationship between himself and a candidate of whose candidature that director or officer is aware. It is the duty of the Chief Executive to report to the Trust Board any such disclosure made.
- iii) On appointment, directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.
- iii) Where the relationship to a director of the Trust is disclosed, that director will have no part in the appointment process.

## **9. RESOLUTION OF DISPUTES WITH THE MEMBERS' COUNCIL**

In the event of a dispute between the Trust Board and the Members' Council which cannot be resolved by the chair, the chair may at her discretion seek to bring in independent facilitation or mediation

On satisfactory completion of the disputes process, the Board of Directors will implement the agreed changes.

On unsatisfactory completion of the process, the view of the Board of Directors will prevail.

The Members' Council will not be prevented from informing Monitor that the Board of Directors has not responded constructively to the concerns of the Members' Council or reporting a failure of the Trust to meet the terms of its Authorisation.

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

### **10.1 Custody of Seal**

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

## **10.2 Sealing of Documents**

The Seal of the Trust will not be fixed to any documents unless the sealing has been authorized by a resolution of the Trust Board or a committee of the Board or where the Trust Board has delegated its powers.

Before any building, engineering, property or capital document is sealed, it must be approved and signed by the Director of Finance or an officer nominated by him and authorized and countersigned by the Chief Executive or an officer nominated by him, who will not be from the originating directorate.

The form of attestation of documents will be 'The Common Seal of South West Yorkshire Partnership NHS Partnership Foundation Trust was hereto affixed in the presence of....'.

## **10.3 Register of Sealing**

An entry of every sealing will be made and numbered consecutively in a book provided for that purpose and will be signed by the person who approved and authorized the document and those who attested the seal. A report of each sealing will be made annually to the trust Board. The report will contain details of the seal number, the description of the document and the date of sealing.

## **10.4 Signature of documents**

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

The Chief Executive or nominated officers will be authorized by resolution of the Trust Board to sign on behalf of the trust any agreement or other document document not required to be executed as a deed, the subject matter of which has been approved by the Trust Board or committee or sub committee to which the trust Board has delegated authority.

## **ANNEX 9 – ADDITIONAL PROVISIONS – MEMBERS**

(Paragraphs 4 and 8.3)

### **1. DISQUALIFICATION FROM MEMBERSHIP**

- 1.1 An individual may not become a member of the Foundation Trust if:
- 1.1.1 they are under 11 years of age; or
  - 1.1.2 within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against any registered volunteer.

### **2. TERMINATION OF MEMBERSHIP**

- 2.1 A member shall cease to be a member if:
- 2.1.1 they resign by notice to the Secretary;
  - 2.1.2 they die;
  - 2.1.3 they are expelled from membership under this constitution;
  - 2.1.4 they cease to be entitled under this constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency;
  - 2.1.5 it appears to the Secretary that they no longer wish to be a member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Board of Council Members, they fail to demonstrate that they wish to continue to be a member of the Foundation Trust;
  - 2.1.6 they behave in a way that is incompatible with the Code of Conduct for members.
- 2.2 A member may be expelled by a resolution approved by not less than two-thirds of the Council Members present and voting at a General Meeting. The following procedure is to be adopted.
- 2.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.
  - 2.2.2 If a complaint is made, the Members' Council may itself consider the complaint having taken such steps as it

considers appropriate to ensure that each member's point of view is heard and may either:

2.2.2.1 dismiss the complaint and take no further action; or

2.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution;

2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Members' Council.

2.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Members' Council, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

2.2.4 At the meeting the Members' Council will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.

2.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

2.3 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.

2.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Members' Council present and voting at a General Meeting.

### **3. MEMBERS' MEETINGS**

3.1 The Foundation Trust is to hold a members' meeting (called the annual members' meeting) within nine months of the end of each financial year.

3.2 All members' meetings other than annual meetings are called special members' meetings.

3.3 Members' meetings are open to all members of the Foundation Trust, Council Members and Directors, and representatives of the auditor, but not to members of the public unless the Board of Directors decides otherwise. The Board of Directors may invite representatives of the media and any experts or advisors whose attendance they consider to

be in the best interests of the Foundation Trust to attend a members' meeting.

- 3.4 All members' meetings are to be convened by the Secretary by order of the Board of Directors.
- 3.5 The Board of Directors may decide where a members' meeting is to be held and may also for the benefit of members:
  - 3.5.1 arrange for the annual members' meeting to be held in different venues each year:
  - 3.5.2 make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Board of Directors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 3.6 At the annual members' meeting:
  - 3.6.1 the Board of Directors shall present to the members:
    - 3.6.1.1 the annual accounts;
    - 3.6.1.2 any report of the auditor;
    - 3.6.1.3 a copy of the annual reportand
    - 3.6.1.4 forward planning information for the next Financial Year
  - 3.6.2 the Members' Council shall present to the members a report on:
    - 3.6.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
    - 3.6.2.2 the progress of the membership strategy; and
    - 3.6.2.3 any proposed changes to the policy for the composition of the Members' Council and of the non-executive Directors

- 3.7 Notice of a members meeting is to be given:
- 3.7.1 by notice to all members;
  - 3.7.2 by notice prominently displayed at the head office and at all of the Foundation Trust's places of business; and
  - 3.7.3 by notice on the Foundation Trust's website
- at least 14 clear days before the date of the meeting. The notice must:
- 3.7.4 be given to the Members' Council and the Board of Directors, and to the auditor;
  - 3.7.5 state whether the meeting is an annual or special members' meeting;
  - 3.7.6 give the time, date and place of the meeting; and
  - 3.7.7 indicate the business to be dealt with at the meeting.
- 3.8 Before a members' meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one Council Member present from each of the Foundation Trust's constituencies.
- 3.9 The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
- 3.10 It is the responsibility of the Board of Directors, the Chair of the meeting and the Secretary to ensure that at any members' meeting:
- 3.10.1 the issues to be decided are clearly explained;
  - 3.10.2 sufficient information is provided to members to enable rational discussion to take place.
- 3.11 The Chair of the Foundation Trust, or, in their absence, the Deputy Chair of the Board of Directors, shall act as chair at all members' meetings of the Foundation Trust. If neither the Chair nor the Deputy Chair of the Board of Directors is present, the members of the Members' Council present shall elect one of their number to be Chair and if there is only one Council Member present and willing to act they shall be Chair.
- 3.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board of Directors determine. If a quorum is not present within half



an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.

- 3.13 A resolution put to the vote at a members' meeting shall be decided upon by a show of hands unless a poll is requested by the Chair of the meeting.
- 3.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second and casting vote.
- 3.15 The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## ANNEX 10 – FURTHER PROVISIONS

### 1. COMMITMENTS

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

#### **Representative membership**

- 1.2 The Foundation Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:

1.2.1 the Foundation Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Members' Council, and shall be reviewed by them from time to time, and at least every three years,

1.2.2 the Members' Council shall present to each annual members' meeting a report on:

1.2.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;

1.2.2.2 the progress of the membership strategy;

1.2.2.3 any changes to the membership strategy.

#### **Co-operation with NHS bodies and local authorities**

- 1.3 In exercising its functions the Foundation Trust shall co-operate with NHS bodies and local authorities.

#### **Openness**

- 1.4 In conducting its affairs, the Foundation Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

#### **Prohibiting distribution**

- 1.5 The profits or surpluses of the Foundation Trust are not to be distributed either directly or indirectly in any way at all among members of the Foundation Trust.

## 2. FRAMEWORK

2.1 The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Members' Council and the members in accordance with this constitution and the Foundation Trust's authorisation. The members, the Members' Council and the Board of Directors are to have the roles and responsibilities set out in this constitution.

### Members

2.2 Members may attend and participate at members' meetings, vote in elections to, and stand for election to, the Members' Council, and take such other part in the affairs of the Foundation Trust as is provided in this constitution.

### Members' Council

2.3 The roles and responsibilities of the Members' Council, which are to be carried out in accordance with this constitution and the Foundation Trust's terms of Authorisation, are:

2.3.1 at a General Meeting:

2.3.1.1 to appoint or remove the Chair and the other non-executive Directors;

2.3.1.2 to approve an appointment (by the non-executive Directors) of the Chief Executive;

2.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;

2.3.1.4 to appoint or remove the Foundation Trust's auditor;

2.3.1.5 to be presented with the annual accounts, any report of the auditor on them and the annual report;

2.3.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;

2.3.3 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;

2.3.4 to undertake such functions as the Board of Directors shall from time to time request;

- 2.3.5 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the composition of the Members' Council and of the non-executive Directors and when appropriate to make recommendations for the revision of this constitution.

### **Board of Directors**

- 2.4 The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.

## **3. SECRETARY**

- 3.1 The Foundation Trust shall have a Secretary who may be an employee. The Secretary may not be a Council Member, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
  - 3.1.1 acting as Secretary to the Members' Council and the Board of Directors, and any committees;
  - 3.1.2 summoning and attending all members' meetings, meetings of the Members' Council and the Board of Directors, and keeping the minutes of those meetings;
  - 3.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
  - 3.1.4 having charge of the Foundation Trust's seal;
  - 3.1.5 publishing to members in an appropriate form information which they should have about the Foundation Trust's affairs;
  - 3.1.6 preparing and sending to Monitor and any other statutory body all returns which are required to be made.
- 3.2 Minutes of every members' meeting, of every meeting of the Members' Council and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 3.3 The Secretary is to be appointed and removed by the Board of Directors, in consultation with the Members' Council.
- 3.4 The Board of Directors of the applicant NHS Trust shall appoint the first Secretary of the Foundation Trust.

#### **4. FURTHER PROVISIONS AS TO AUDITOR**

- 4.1 A person may only be appointed as the auditor if they (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 4.2 An officer of the Audit Commission may be appointed as auditor with the agreement of the Audit Commission. Where an officer of the Audit Commission is appointed as auditor, the Commission is to charge the Foundation Trust such fees for their services as will cover the full cost of providing them.
- 4.3 The auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

#### **5. FURTHER PROVISIONS AS TO ACCOUNTS**

- 5.1 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 5.1.1 the accounts;
  - 5.1.2 any records relating to them; and
  - 5.1.3 any report of the auditor on them.
- 5.2 In preparing its annual accounts, the Accounting Officer shall cause the Foundation Trust to comply with any directions given by Monitor with the approval of the Treasury as to:
  - 5.2.1 the methods and principles according to which the accounts are to be prepared;
  - 5.2.2 the information to be given in the accounts;and shall be responsible for the functions of the Foundation Trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.
- 5.3 The Accounting Officer shall cause the Foundation Trust to:
  - 5.3.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
  - 5.3.2 once it has done so, send copies of those documents to Monitor.

## 6. FURTHER PROVISIONS AS TO ANNUAL REPORTS

- 6.1 The annual reports are to give:
  - 6.1.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership; and
  - 6.1.2 any other information Monitor requires.
- 6.2 The Foundation Trust is to comply with any decision Monitor makes as to:
  - 6.2.1 the form of the reports;
  - 6.2.2 when the reports are to be sent to it;
  - 6.2.3 the periods to which the reports are to relate.

## 7. INDEMNITY

Members of the Members' Council and the Board of Directors and the Secretary 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, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Members' Council and the Board of Directors and the Secretary.

## 8. DISPUTE RESOLUTION PROCEDURES

- 8.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:
  - 8.1.1 a member; or
  - 8.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
  - 8.1.3 any person bringing a claim under this constitution; or
  - 8.1.4 an office-holder of the Foundation Trust

will be determined by the Chair of the Trust, whose decision will be final and binding except in the case of manifest error. If a dispute is brought by or against the Chair of the Trust, the dispute will be

determined by the Board of Directors (excluding the Chair) whose decision will be final and binding except in the case of manifest error. In the event that the dispute is referred to the Chair (or the Board of Directors if it is by or against the Chair) and the Chair considers that he/she has a perceived or real interest in the outcome of the dispute (or the Board of Directors considers it has a perceived or real interest in the outcome of the dispute) and/or that the dispute would be better resolved externally, then the Chair may refer the dispute for resolution under the Rules of the Chartered Institute for Arbitrators.

- 8.2 Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Members' Council and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

## 9. **DISSOLUTION**

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

## 10. **HEAD OFFICE**

The Foundation Trust's head office is at Fieldhead, Ouchthorpe Lane, Wakefield, WF1 3SP or such other place as the Board of Directors shall decide.

## 11. **NOTICES**

11.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

11.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

## 12. **FURTHER PROVISIONS AS TO TRANSITION**

12.1 The Board of Directors of the applicant NHS Trust shall prepare and approve the first membership strategy and the first policy for the composition of the Members' Council and of the non-executive Directors.

12.2 These will be reviewed by the Members' Council following the election and appointment of the initial Council Members.

- 12.3 For the purposes of the period before the applicant NHS Trust becomes the Foundation Trust:
  - 12.3.1 elections shall be carried out in accordance with the Model Rules for Elections set out at Annex 4, using the single transferable vote method of voting;
  - 12.3.2 the Chief Executive of the applicant NHS Trust will approve
    - 12.3.2.1 a membership application form;
    - 12.3.2.2 a form of declaration required by section 60 (1) of the 2006 Act;
    - 12.3.2.3 a form of declaration required by section 60 (2) of the 2006 Act;
    - 12.3.2.4 a form of declaration required by section 60 (3) of the 2006 Act;
    - 12.3.2.5 a form confirming acceptance of a code of conduct for Council Members;
  - 12.3.3 the Chief Executive of the applicant NHS Trust will consult and agree arrangements with the appointing organisations for the appointment of appointed Council Members;
  - 12.3.4 the Chief Executive of the applicant NHS Trust shall make a final decision about the class of the Staff Constituency of which an individual is eligible to be a member.



**AUTHORISATION OF SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 2**

Mandatory Goods and Services

Trust: South West Yorkshire Partnership NHS Foundation Trust

Sub care group	Currency	Learning disability	Adult mental illness	Forensic psychiatry	Old age psychiatry
		700	710	712	715
Inpatient	Beds	10	117	-	-
Inpatient - mixed	Beds	-	-	-	52
Inpatient - functional	Beds	-	-	-	20
Inpatient - organic	Beds	-	-	-	30
Low Secure	Beds	8	37	-	-
Medium Secure	Beds	-	-	90	-
PICU	Beds	-	14	-	-
Rehabilitation - Inpatient	Beds	-	63	-	19
CMHT	Teams	-	15	-	9
Crisis resolution team	Teams	-	4	-	-
CLDT - Adult	Teams	7	-	-	-
Assertive Outreach Team	Teams	-	5	-	-
Early Intervention team	Teams	-	3	-	-
Low Secure - Community	Teams	-	1	-	-
Day Care	Teams	-	3	-	6
Other - Psychological Therapies	Teams	-	6	-	-
Psychiatric Liaison	Teams	-	1	-	6
Prison Inreach	Teams	-	2	-	-
Other - Primary Care	Teams	-	1	-	-
CLDT - Children	Teams	2	-	-	-
Specialist	Teams	3	18	-	13
Other - Assessment and Treatment	Teams	3	-	-	-
Other - S136 (Place of safety)	Teams	-	2	-	-
Other - IAPT	Teams	-	1	-	-
Other - Adult ADHD	Teams	-	1	-	-
<b>Total</b>		<b>33</b>	<b>294</b>	<b>90</b>	<b>155</b>

**AUTHORISATION OF SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 3**

Mandatory Education and Training

Commissioning body	Educational body	Contract Length	Expiry date of contract	Student group	Type of training	Number of Students	Contract Value
SHA	Yorkshire Deanery	3 years with annual review	01 March 2010	Medics	Post grad	41	1,129
SHA	SIFT	as above	as above	Medics	Undergraduate	60	85
SHA	Other/NMET	as above	as above	Non-medical training	Vocational	39	661
						Total	1,875

**AUTHORISATION OF SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 4**

Private Health Care

**AUTHORISATION OF SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION  
TRUST**

**PRIVATE HEALTH CARE**

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

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 0.0%<sup>1</sup>.

**DEFINITION:**

Private patient income

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Total patient  
related income

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<sup>1</sup> The proportion of the total patient income derived from private health charges was nil in the base year, 2002/03. Accordingly, the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 0.0%.

**AUTHORISATION OF SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 5**

Limit on Borrowing

**AUTHORISATION OF SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION  
TRUST**

**PRUDENTIAL BORROWING LIMIT**

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

- (i) Maximum cumulative long term borrowing (Tier 1): £23.8 million;
- and
- (ii) Approved working capital facility: not to exceed £9.2 million.



**AUTHORISATION OF SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 6**

Information

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