

AUTHORISATION

of

TEES, ESK AND WEAR VALLEYS NHS FOUNDATION TRUST

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



Signature:

William Riley

1 July 2008

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PART 1 Authorisation

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

PART 2 Interpretation and construction

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

PART 3 Conditions

1. Principal Purpose

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

2. General duty

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

3. Constitution

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

4. Compliance and enforcement

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

5. Governance

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

6. Health care and other standards

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

7. Mandatory Services

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

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

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

8. Authorised Services

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

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

9. Protection of property

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

10. Private health care

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

11. Limit on borrowing

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

12. Financial viability

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

13. Dividend payments on Public Dividend Capital

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

14. Information

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

15. Entry and inspection of premises

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

16. Fees

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

17. Representative membership

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

18. Co-operation with other bodies

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

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

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

19. Emergency planning

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

20. Information technology

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

21. Audit committee

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

22. Audit

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

23. Public interest reporting

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

24. Notification

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

25. Information given to Parliament and to Members of Parliament

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

AUTHORISATION OF TEES, ESK AND WEAR VALLEYS NHS FOUNDATION TRUST

Schedule 1

The Constitution (and Annexures)

Tees Esk and Wear Valleys NHS Foundation Trust Constitution

May 2008

Tees, Esk and Wear Valleys NHS Foundation Trust
Constitution

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1. Name

The name of the foundation trust is Tees, Esk and Wear Valleys NHS Foundation Trust (herein after known as the trust).

2. Principal purpose

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

3. Powers

- 3.1. The powers of the trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 3.2. The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 3.3. Any of these powers may be delegated to a committee of directors or an executive director.

4. Membership and constituencies

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

- 4.1. a public constituency
- 4.2. a staff constituency.

5. Application for membership

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

6. Public constituency

- 6.1. An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust

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6.2. Those members who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.

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

7. Staff Constituency

7.1 An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:

7.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

7.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.

7.2 Those individuals who are eligible for membership of the trust by reason of the previous provisions in paragraph 7.1 are referred to collectively as the Staff Constituency.

7.3 The Staff Constituency shall be divided into eight classes of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2

7.4 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

7.6 An individual who is:

7.6.1 eligible to become a member of Staff Constituency, and

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

8. Restriction on membership

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

9. Council of Governors – composition

- 9.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 9.2 The composition of the Council of Governors is specified in Annex 4.
- 9.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

10. Council of Governors – election of governors

- 10.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.
- 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 5.
- 10.3 A variation of the Model Rules for election by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the trust cannot amend the Model Rules.
- 10.4 An election, if contested, shall be by secret ballot.

11. Council of Governors - tenure

- 11.1 An elected governor may hold office for a period of up to 3 years.
- 11.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 11.3 An elected governor shall be eligible for re-election at the end of his term, for up to two further periods of up to three years, making a maximum total of 9 years in office.

12. Council of Governors – disqualification and removal

- 12.1 The following may not become or continue as a member of the Council of Governors:
 - 12.1.1 a person who has 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 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 Governors 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 Council of Governors are set out in Annex 6.
- 12.4 The Constitution makes provisions for the termination of office and removal of members of the Council of Governors. These are set out in Annex 9

13. Council of Governors – meetings of governors

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

13.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting for special reasons, following appropriate resolution by the Council of Governors made in accordance with its Standing Orders. The Chairman of the Council of Governors may exclude any members of the public from a meeting of the Council of Governors if they are interfering with or preventing proper conduct of the meeting.

14. Council of Governors – standing orders

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

15. Council of Governors - conflicts of interest

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

16. Council of Governors – travel expenses

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

17. Council of Governors – further provisions

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

18. Board of Directors – composition

- 18.1 The 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 Chairman
 - 18.2.2 5-7 other non-executive directors; and
 - 18.2.3 5-7 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 or a registered dentist (within the meaning of the Dentists Act 1984).
- 18.7 One of the executive directors is to be a registered nurse or a registered midwife.

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 is a member of the Public Constituency
- 19.2 where any of the 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 26 below.

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

- 20.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the trust and the other non-executive directors.

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

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

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

21.1 The Chairman of the Trust shall be appointed as the initial Chairman of the trust if he wishes to be appointed.

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

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

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

22. Board of Directors – appointment of deputy chairman

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

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 approval of the Council of Governors.

- 23.3 The initial Chief Executive is to be appointed in accordance with paragraph 25 below.
- 23.4 A committee consisting of the Chairman, 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 Trust shall be appointed as the initial Chief Executive of the trust if he wishes to be appointed.
- 24.2 The appointment of the chief officer of the Trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

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 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.

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

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

exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

28. Board of Directors – remuneration and terms of office

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

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

29. Registers

The trust shall have:

29.1 The Board of Directors shall nominate a registrar who may or may not be an employee. The registrar may not be a member of the Membership Council or the Chief Executive or Finance Director.

29.2 The registrar shall be responsible for keeping the registers up to date from information received by him, and the registers may be kept in either paper or electronic form. This will include

29.2.1 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;

29.2.2 a register of members of the Council of Governors;

29.2.3 a register of interests of governors;

29.2.4 a register of directors; and

29.2.5 a register of interests of the directors.

30. Admission to and removal from the register

30.1 Removal of members from the Members Register shall be in accordance with paragraph 9.3 of this constitution.

31. Registers – inspection and copies

- 31.1 The trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 31.2 The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the 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 trust, the trust may impose a reasonable charge for doing so.

32. Documents available for public inspection

- 32.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 32.1.1 a copy of the current constitution;
 - 32.1.2 a copy of the current authorisation;
 - 32.1.3 a copy of the latest annual accounts and of any report of the auditor on them;
 - 32.1.4 a copy of the latest annual report;
 - 32.1.5 a copy of the latest information as to its forward planning; and
 - 32.1.6 a copy of any notice given under section 52 of the 2006 Act.

- 32.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 32.3 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

33. Auditor

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

34. Audit committee

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

35. Accounts

- 35.1 The trust shall keep accounts in such form as the Independent Regulator of NHS Foundation Trusts may with the approval of HM Treasury direct.
- 35.2 The accounts are to be audited by the trust's auditor.
- 35.3 The trust shall prepare in respect of each financial year annual accounts in such form as the Independent Regulator of NHS Foundation Trusts may with the approval of the HM Treasury direct.
- 35.4 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

36. Annual report and forward plans

- 36.1 The trust shall prepare an Annual Report and send it to the Independent Regulator of NHS Foundation Trusts.
- 36.2 The trust shall give information as to its forward planning in respect of each financial year to the Independent Regulator of NHS Foundation Trusts.
- 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 Council of Governors.

37. Meeting of Council of Governors to consider annual accounts and reports

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

37.1 the annual accounts

37.2 any report of the auditor on them

37.3 the annual report.

38. Instruments

38.1 The trust shall have a seal.

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

39. Interpretation and definitions

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

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

The 2006 Act is the National Health Service Act 2006.

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

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

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

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

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

The Public Constituency is split into seven areas which are coterminous with the Local Authority election boundaries. The number of governor places available for election within each area being based on one governor for every 50,000 people residing within that locality. The areas are:

Area	Minimum number of members	Number of Elected Governors
Stockton-on-Tees	40	4
Hartlepool	20	2
Darlington	20	2
Durham	100	10
Middlesbrough	30	3
Redcar and Cleveland	30	3
North East Yorkshire	40	4

Should an individual class within the Public Constituency fail to achieve the above minimum numbers, no election shall take place in that class, until such time as the minimum number is reached. An election within that class will then take place within a time period determined jointly by the Council of Governors and the Board of Directors.

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.4 and 7.5)

The Staff Constituency is split into eight classes. These are:

Class	Minimum number of members	Number of Elected Governors
Nursing	150	1
Medical	20	1
Allied Health Professionals	30	1
Corporate Services	80	1
Psychology	15	1
Learning Disability and Forensic Directorate	100	1
Children and Young People's Services, Older people's Mental Health Services Substance Misuse and North East Yorkshire Directorate	150	1
Adult Mental Health Directorate	150	1

Should an individual class within the Staff Constituency fail to achieve the above minimum numbers, no election shall take place in that class, until such time as the minimum number is reached. An election within that class will then take place within a time period determined jointly by the Council of Governors and the Board of Directors. The numbers are based on 10% of the workforce in each class

Staff will only be able to become a member and vote in one class within the staff constituency. Staff will identify which class they will be registered to.

ANNEX 3 – THE PATIENTS’ CONSTITUENCY
(Paragraphs 8.4 and 8.6)

NOT APPLICABLE

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS
(Paragraphs 10.2 and 10.3)

ELECTED MEMBERS OF THE COUNCIL OF GOVERNORS			
Constituency	Class	Number of Members	
Public	Stockton-on-Tees	4	
	Hartlepool	2	
	Darlington	2	
	Durham	10	
	Middlesbrough	3	
	Redcar & Cleveland	3	
	North East Yorkshire	4	
Staff	Nursing	1	
	Medical	1	
	Corporate	1	
	Allied Health Professionals	1	
	Psychology	1	
	Children and Young People's Services, Older People's Mental Health Services Substance Misuse and North East Yorkshire Directorate	1	
	Learning Disability and Forensic Directorate	1	
	Adult MH Directorate	1	
Appointed Members	County Durham Primary Care Trust Darlington Primary Care Trust	1	
	Middlesbrough Primary Care Trust Redcar and Cleveland Primary Care Trust Hartlepool Primary Care Trust Stockton-on-Tees Teaching Primary Care Trust North Yorkshire & York Primary Care Trust	1	
	North East Mental Health and Learning Disability Commissioning Directorate	1	
	Durham County Council	1	
	Darlington Borough Council	1	
	Hartlepool Borough Council	1	
	Stockton-on-Tees Borough Council	1	
	Middlesbrough Borough Council	1	
	Redcar & Cleveland Borough Council	1	
	North Yorkshire County Council	1	
	University of Teesside	1	
	Durham University	1	
	North Tees and Hartlepool NHS Foundation Trust South Tees Hospitals NHS Trust County Durham and Darlington NHS Foundation Trust Scarborough and North East Yorkshire Healthcare NHS Trust	1	
	North East Prisons Directorate	1	
	Voluntary Organisations Network North East Ryedale Voluntary Action	2	
	TOTAL		53

ANNEX 5 –THE MODEL RULES FOR ELECTIONS

(Paragraph 11.2)

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
39. Rejected ballot papers
40. First stage
41. The quota
42. Transfer of votes
43. Supplementary provisions on transfer
44. Exclusion of candidates
45. Filling of last vacancies
46. Order of election of candidates

Part 7 – Final proceedings in contested and uncontested elections

47. 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

54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

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

Publicity

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

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

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

Part 1 - Interpretation

1. Interpretation

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

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

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

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

“the 2006 Act” means the National Health Service Act 2006

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

Part 2 – Timetable for election

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

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

3. Computation of time

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

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

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

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

Part 3 – Returning officer

4. Returning officer

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

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

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

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

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

(b) such remuneration and other expenses as the corporation may determine.

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

(a) the constituency, or class within a constituency, for which the election is being held,

(b) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,

(c) the details of any nomination committee that has been established by the corporation,

(d) the address and times at which nomination papers may be obtained;

(e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,

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

9. Nomination of candidates

- (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer:
 - (a) is to supply any member of the corporation with a nomination paper, and
 - (b) is to prepare a nomination paper for signature at the request of any member of the corporation,

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

10. Candidate's particulars

- (1) The nomination paper must state the candidate's:
 - (a) full name,
 - (b) contact address in full, and
 - (c) constituency, or class within a constituency, of which the candidate is a member.

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

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

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

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

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

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

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

14. Decisions as to the validity of nomination

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
 - (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination paper is invalid,
 - (c) receives satisfactory proof that the candidate is deceased, 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;

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

15. Publication of statement of candidates

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show:
- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing, as given in their nomination paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

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

18. Method of election

- (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- (2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then:
 - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot

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

20. The ballot paper

- (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- (2) Every ballot paper must specify –
 - (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies)

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

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

- (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.

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

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

Action to be taken before the poll

22. List of eligible voters

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

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

- 23. Notice of poll** - The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
 - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
 - (f) the address for return of the ballot papers, and the date and time of the close of the poll,
 - (g) the address and final dates for applications for replacement ballot papers, and
 - (h) the contact details of the returning officer.
- 24. Issue of voting documents by returning officer**
- (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters—
 - (a) a ballot paper and ballot paper envelope,
 - (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) a covering envelope.
 - (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

- (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- (2) The covering envelope is to have:
 - (a) the address for return of the ballot paper printed on it, and
 - (b) pre-paid postage for return to that address.
- (3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer:
 - (a) the completed declaration of identity if required, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

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

27. Voting by persons who require assistance

- (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- (2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

28. Spoilt ballot papers

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

- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –
 - (a) is satisfied as to the voter’s identity, and
 - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
 - (a) the name of the voter, 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

36. Interpretation of Part 6

In Part 6 of these rules;

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

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

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

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

“non-transferable vote” means a ballot paper:

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule 44(4) below, “preference” as used in the following contexts has the meaning assigned below:

“preference” as used in the following context has the meaning assigned below:

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

indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule 41 below,

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

“stage of the count” means –

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

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

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule 42 below.

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

38. The count

- (1) The returning officer is to:
 - (a) count and record the number of ballot papers that have been returned, and
 - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to

ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

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

39. Rejected ballot papers

- (1) Any ballot paper:
 - (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
 - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (d) which is unmarked or rejected because of uncertainty, shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.
- (2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- (3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

40. First stage

- (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.
- (2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.

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

41. The quota

- (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- (3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

42. Transfer of votes

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped:
 - (a) according to next available preference given on those papers for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.

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- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.
- (3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.
- (4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which:
 - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
 - (a) according to the next available preference given on those papers for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.
- (7) The vote on each ballot paper transferred under paragraph (6) shall be at:
 - (a) a transfer value calculated as set out in paragraph (4)(b) above, or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.

- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
 - (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- (11) This rule does not apply at an election where there is only one vacancy.

43. Supplementary provisions on transfer

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if:
 - (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable papers under rule 42 above:
 - (a) record the total value of the votes transferred to each candidate,

- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- (3) All ballot papers transferred under rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.
- (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

44. Exclusion of candidates

- (1) If:
 - (a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
 - (b) subject to rule 45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the lowest votes).

- (2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as:
 - (a) ballot papers on which a next available preference is given, and
 - (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).
- (3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.
- (6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.
- (8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until

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he has dealt with each sub-paragraph of a candidate excluded under paragraph (1) above.

- (10) The returning officer shall after each stage of the count completed under this Rule:
- (a) record;
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- (11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 42 and rule 43.
- (12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- (13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

45. Filling of last vacancies

- (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- (2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- (3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

46. Order of election of candidates

- (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 42(10) above.
- (2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- (3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- (4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

47. Declaration of result for contested elections

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to:
 - (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Tees, Esk & Wear Valleys NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chairman of the NHS Trust, or
 - (ii) in any other case, to the Chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.
- (2) The returning officer is to make available on request:
 - (a) the number of first preference votes for each candidate whether elected or not,
 - (b) any transfer of votes,
 - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
 - (d) the order in which the successful candidates were elected, and
 - (e) the number of rejected ballot papers under each of the headings in rule 39(1),

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

- (a) declare the candidate or candidates remaining validly nominated to be elected,

- (b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

- (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
 - (a) the counted ballot papers,
 - (b) the ballot papers endorsed with “rejected in part”,
 - (c) the rejected ballot papers, and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of:
 - (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the declarations of identity,
 - (c) the list of spoiled ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of:
 - (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and

- (d) the constituency, or class within a constituency, to which the election relates.

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

51. Forwarding of documents received after close of the poll

Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

52. Retention and public inspection of documents

- (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- (3) A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

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

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- (a) any rejected ballot papers, including ballot papers rejected in part,
 - (b) any disqualified documents, or the list of disqualified documents,
 - (c) any counted ballot papers,
 - (d) any declarations of identity, or
 - (e) the list of eligible voters, by any person without the consent of the Regulator.
- (2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- (3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:
- (a) persons,
 - (b) time,
 - (c) place and mode of inspection,
 - (d) production or opening, and the corporation must only make the documents available for inspection in accordance with those terms and conditions.
- (4) On an application to inspect any of the documents listed in paragraph (1):
- (a) in giving its consent, the regulator, and
 - (b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –
 - (i) that his or her vote was given, and
 - (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

- (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
 - (a) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity
Election expenses

- 55. Election expenses** – Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the regulator under Part 11 of these rules.
- 56. Expenses and payments by candidates** - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- (a) personal expenses,
 - (b) 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

Publicity

58. Publicity about election by the corporation

- (1) The corporation may as it considers necessary:
 - (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,
- (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 selection” 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 Trust, 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 6 - ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

ELIGIBILITY TO BE A MEMBER OF THE COUNCIL OF GOVERNORS

A person may not become a member of the Council of Governors, and if already holding such office will immediately cease to do so, if:

1. They are a Director of the Trust, or a Governor or Director of another NHS Foundation Trust or any other NHS body (unless they are appointed as a member of the Council of Governors by an appointing organisation which is a health service body).
2. They are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust.
3. They are under the age of 16.
4. They are a member of a Local Authority's Scrutiny Committee covering health matters.
5. They are a member of a Patients' Forum.
6. Being a member of one of the Public Constituencies they refuse or fail to sign a declaration, in the form specified by the Council of Governors, giving particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors.
7. They are a vexatious complainant of the Trust, as defined by Trust policy
8. He has been involved within the last 10 years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against registered volunteers.
9. They have been excluded from any of the Trust premises within the last 10 years.
10. Their name has been placed on the registers of Schedule 1 of the Children and Young Persons Act 1933 and / or the Sexual Offences Act 2003

11. On the basis of disclosures obtained through an application to the Criminal Records Bureau, they have not been considered suitable in accordance with the Trust's CRB Disclosure Policy.
12. They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body.
13. They are a person whose tenure of office as the Chairman or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
14. They have been removed from membership of a professional body or from a list of registered medical, dental, nursing or other health care practitioners as a result of disciplinary action or any conclusion that the continued inclusion of that person's name on any such list or membership of any such professional body would be prejudicial to the efficiency of the services to which the professional body or list relates and has not subsequently been re-instated to membership or such a list.

TERMINATION OF OFFICE AND REMOVAL OF MEMBERS OF THE COUNCIL OF GOVERNORS (also see paragraph 12.4 of the Constitution)

A person holding office as a member of the Council of Governors shall immediately cease to do so if:

1. They resign by notice in writing to the Trust Secretary;
2. It otherwise comes to the notice of the Trust Secretary at the time the member of the Council of Governors takes office or later that the member of the Council of Governors is disqualified in accordance with paragraph 13 of the Constitution;
3. They fail to attend two meetings in any financial year, unless the members of the Council of Governors are satisfied that:
 - a. The absences were due to reasonable causes; and
 - b. They will be able to start attending meetings of the Trust again within such a period as they consider reasonable.

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4. In the case of an elected member of the Council of Governors, they cease to be a member of the Trust;
5. In the case of an appointed member of the Council of Governors, the appointing organisation terminates the appointment;
6. They have failed to undertake any training which the Council of Governors require all members of the Council of Governors to undertake, unless the members of the Council of Governors are satisfied that:
 - a. The failure to undertake training was due to reasonable causes; and
 - b. They will be able to undertake the required training within such a period as they consider reasonable.
7. They have failed to sign and deliver to the Trust Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's and/or the Council of Governors Code of Conduct;
8. He is removed from the Council of Governors by a resolution approved by a majority of the remaining members of the Council of Governors present and voting at a General Meeting on the grounds that:
 - a. They have committed a serious breach of the Trust's and/or Council of Governors Code of Conduct, or
 - b. They have acted in a manner detrimental to the interests of the Trust, or
 - c. They have failed to discharge their responsibilities as a member of the Council of Governors.

REQUIREMENT OF MEMBER OF THE COUNCIL OF GOVERNORS TO NOTIFY TRUST

Where a person has been elected or appointed to be a member of the Council of Governors and they become disqualified from office under paragraph 12 of this constitution, they shall notify the Trust Secretary in writing of such disqualifications.

Initial Tenure of Office for Council of Governors

In the first elections of public constituency members to the Council of Governors the tenure of office will be:

Constituency	2 year Tenure (no of seats)	3 year Tenure (no of seats)
Durham	5	5
Darlington	1	1
Hartlepool	1	1
Stockton	2	2
Middlesbrough	2	1
Redcar and Cleveland	1	2
North East Yorkshire	2	2
TOTAL	14	14

The determination of those seats that will be elected for three years will be determined by the number of votes polled, with three years tenure going to those individuals receiving the most votes until all the three year tenure seat are filled. The remaining governors will be elected initially for two years

VACANCIES AMONGST MEMBERS OF THE COUNCIL OF GOVERNORS

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

1. Where the vacancy arises amongst the appointed members of the Council of Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
2. Where the vacancy arises amongst the elected members of the Council of Governors the Council of Governors shall make arrangements for the filling of vacancies.

ROLES AND RESPONSIBILITIES

The roles and responsibilities of members of the Council of Governors are:

Advisory – Communicating to the Board wishes of members and the wider community.

Guardianship – Ensuring that the Trust is operating in accordance with its Terms of Authorisation. In this regard it acts as a Trustee for the welfare of the organisation.

Strategic – Advising on the longer term direction to help the Board effectively determine its policies.

In particular the members of the Council of Governors are to:

1. Develop the membership of the Trust and represent interests of members.
2. Give the views of the Council of Governors to the Board of Directors for the purposes of the preparation (by the Directors) of the document containing information on the Trust's forward planning in respect of each financial year to be given to the Independent Regulator of NHS Foundation Trusts.
3. Respond to any matter as appropriate when consulted by the Directors.
4. Appoint or remove the Chairman and the other Non-executive Directors in accordance with paragraph 21 of this Constitution.
5. Decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and other Non-executive Directors in accordance with paragraph 29 of this Constitution.
6. Approve the appointment of the Chief Executive in accordance with paragraph 24 of this Constitution.
7. Consider the annual accounts, any reports of the auditor on them, and the annual report.
8. Appoint or remove the Trust's external auditor.

APPOINTMENT OF NON-EXECUTIVE DIRECTORS (including Chairman and Deputy Chairman)

1. The Board of Directors will identify the balance of individual skills and experience it requires at the time a vacancy arises and, accordingly, draw up a job description and person profile for each new appointment.
2. Suitable candidates will be identified by the Board of Directors which may, if it considers it appropriate in particular circumstances, engage an external organisation, recognised as expert in this field, to assist it in the whole process (including the work involved in 1 above).
3. The Council of Governors shall establish a Committee of the Council of Governors and the Board to assist in the process of appointment of Non-executive Directors (including Chairman and Deputy Chairman). The Committee shall comprise three members of the Council of Governors and two Directors (at least one of whom will be a Non-executive Director). The Committee may have an independent assessor in attendance if appropriate.

REMUNERATION OF THE CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS

In order to determine the proper level of remuneration and allowances that should be paid to the Chairman and other Non-executive Directors the Council of Governors may, from time to time, and at least every three years, consult, at the Trust's expense, with external professional advisers.

STAFF CONSTITUENCY - TIME TAKEN OUT OF NORMAL WORKING HOURS TO PERFORM COUNCIL OF GOVERNORS DUTIES

Leave from Trust duties to carry out Council of Governors duties will be dealt with in accordance with the Trust's Special Leave Policy. Special leave to undertake obligations for the Council of Governors will be considered alongside any other special leave previously or subsequently granted to staff.

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

(Paragraph 15)

FOREWORD

The Tees, Esk & Wear Valleys NHS Foundation Trust (the “Trust”) is a public benefit corporation that was established in accordance with the provisions of National Health Service Act 2006.

The principal places of business are across County Durham, Darlington, The Tees Valley, Scarborough, Whitby and Ryedale and the head office is located at Trust Headquarters, Flatts Lane Centre, Flatts Lane, Normanby, Middlesbrough, TS6 0SZ.

These Standing Orders (SOs) are for the regulation of the Trust’s Council of Governors proceedings and business.

The Council of Governors will conduct its business in an open a way as possible and will:

1. Observe the Nolan principles of Public Life of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- 2 At all times seek to comply with the NHS Foundation Trust Code of Governance; and
- 3 At all times seek to comply with the Combined Code on Corporate Governance 2003.

Everything done by the Council of Governors should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

The Council of Governors will in its business be as transparent as it can be about its activities to promote confidence between the Council of Governors, the membership, the Board of Directors, staff, services users and the public.

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1. INTERPRETATION

- 1.1 Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

“BOARD” means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chairman, and Non-executive Directors, appointed by the Council of Governors and the Executive Directors, appointed by the Non-executive Directors and (except for his own appointment) by the Chief Executive.

“CHAIRMAN OF THE TRUST” means the person appointed by the Council of Governors as chair and a non executive director and a member of the Board of Directors, with responsibility for the leadership of the Council of Governors and will chair the Council of Governors”

“CHAIRMAN” Is the Chairman of the Trust

“COMMITTEE OF THE COUNCIL” means a committee formed by the Council of Governors with specific Terms of Reference, chair and membership approved by the Council.

“COUNCIL” means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by a Chairman.

“COUNCIL MEMBER” means a person elected or appointed to the Council of Governors.

“DIRECTOR” means a person appointed to the Board of Directors

“MEMBER” means a person registered as a member of a constituency.

“MOTION” means a formal proposition to be discussed and voted on during the course of a meeting.

“OFFICER” means an employee of the Trust

“TRUST” means Tees, Esk & Wear Valleys NHS Foundation Trust.

- 1.2 Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Trust Secretary, Chief Executive and Director of Finance).

2 . GENERAL INFORMATION

- 2.1 The purpose of the Council of Governors' Standing Orders is to ensure that the highest standards of Corporate Governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance which is founded on "The Combined Code".
- 2.2 All business shall be conducted in the name of the Trust.
- 2.3 A member of the Council of Governors who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal or civil liability which is incurred in the execution or purported execution of his or her function as a member of the Council of Governors save where the member of the Council of Governors has acted recklessly. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements the Board shall put in place appropriate insurance provision to cover such indemnity.

3 . COMPOSITION OF THE COUNCIL OF GOVERNORS

- 3.1 The composition of the Council of Governors shall be in accordance with the Trust's Constitution.
- 3.2 **Appointment of the Chairman and Deputy Chairman of the Council of Governors** - The Chairman or in the absence or incapacity of the Chairman the Deputy Chairman of the Trust will preside over meetings of the Council of Governors.
- 3.3 **Duties of the Deputy Chairman** – Where the Chairman has died or has otherwise ceased to hold office or where he has been unable to perform their duties as a Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform their duties, be taken to include references to the Deputy Chairman.
- 3.4 **Removal of the Chairman or Deputy Chairman of the Council of Governors** – it shall be for the Council of Governors to determine the period of office for the Chairman and Deputy Chairman, excluding the initial Chairman and Deputy Chairman, of the Council of Governors, normally a period of up to three years after which the Council of Governors shall review the appointment. Should there be the requirement to remove the Chairman or Deputy Chairman of the Council of Governors this shall be carried out in accordance with SO 4.6.6.

4. MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Meetings held in Public

- 4.1.1 Meetings of the Council of Governors must be open to the public subject to the provisions of paragraph 4.1.2 below.
- 4.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:
- i) Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - ii) There are special reasons stated in the resolution and arising from the nature of the business of the proceedings;
- 4.1.3 The Chairman may exclude any member of public from the meeting of the Council if they are interfering with or preventing the reasonable conduct of the meeting.
- 4.1.4 Meetings of the Council of Governors shall be held at least four times each year, inclusive of an Annual General Meeting, at times and places that the Council of Governors may determine.
- 4.1.5 The Council may invite the Chief Executive of the Trust, and other appropriate Directors, to attend any meeting of the Council of Governors and enable members of the Council of Governors to raise questions about the Trust affairs.

4.2 Calling Meetings

Notwithstanding, 4.1.4 above, the Chairman may, in exceptional circumstances, call a meeting of the Council of Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of the members of the Council of Governors, or if without so refusing the Chairman does not call a meeting within fourteen days after a requisition to do so, then the members of the Council of Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of the members of the Council of Governors.

4.3 Notice of Meetings

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an officer of the Trust authorised

by the Chairman to sign on their behalf, shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such member of the Council of Governors, at least 8 clear working days before the meeting. Lack of service of the notice on any member of the Council of Governors shall not affect the validity of a meeting subject to paragraph 4.3.3.

4.3.2 Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least 50% of members of the Council of Governors.

4.3.3 In the case of a meeting called by the members of the Council of Governors in default of the Chairman, the notice shall be signed by those members of the Council of Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of the members of the Council of Governors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

4.4 **Setting the Agenda**

4.4.1 The Council of Governors 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.

4.4.2 A member of the Council of Governors desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least ten clear working days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 **Chairman of the Meeting**

At any meeting of the Council of Governors, the Chairman, if present, shall preside, initially this shall be the Chairman of the Trust in accordance with SO 3.2. If the Chairman is absent from the meeting the Deputy Chairman shall preside, initially this shall be the Deputy Chairman of the Trust in accordance with SO 3.2. Otherwise, such member of the Council of Governors as the members of the Council of Governors present shall choose, shall preside.

4.6 Notices and Motions

- 4.6.1 A member of the Council of Governors desiring to move or amend a motion shall send a written notice thereof at least 10 clear working days before the meeting to the Chairman, who shall insert it in the agenda for the meeting. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.3 of these Standing Orders.
- 4.6.2 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 4.6.3 Notice of motion to amend or rescind any resolution (or general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the members of the Council of Governors who give it and also the signature of four other members of the Council of Governors. When any such motion has been disposed of by the Council it shall not be competent for any member of the Council of Governors, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he/she considers it appropriate.
- 4.6.4 The mover of the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a member of the Council of Governors to move:
- a) An amendment to the motion.
 - b) The adjournment of the discussion or the meeting.
 - c) The appointment of an ad hoc committee to deal with a specific item of business.
 - d) That the meeting proceed to the next business.
 - e) That the motion shall be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion. In the case of motions under d) and e), to ensure

objectivity motions may only be put by a member of the Council of Governors who has not previously taken part in the debate.

- 4.6.6 A motion to remove the Chairman or a Non-executive Director must be seconded by 10 members of the Council of Governors.

4.7 **Chairman's Ruling**

- 4.7.1 Statements of members of the Council of Governors made at the meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

4.8 **Voting**

- 4.8.1 Decisions at meetings shall be determined by a majority of the votes of the members of the Council of Governors present and voting. In the case of any equality in votes, the Trust Chairman shall have a second or casting vote.
- 4.8.2 All decisions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the members of the Council of Governors present so request.
- 4.8.3 If at least one-third of the members of the Council of Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each member of the Council of Governors voted or abstained.
- 4.8.4 If a member of the Council of Governors so requests, his/her vote shall be recorded by name upon any vote (other than a paper ballot).
- 4.8.5 In no circumstances may an absent member of the Council of Governors vote by proxy. Absence is defined as being absent at the time of the vote.

4.9 **Suspension of Standing Orders (SOs)**

- 4.9.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the members of the Council are present and that the majority of those present vote in favour of the suspension.
- 4.9.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.9.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Council of Governors.
- 4.9.4 No formal business may be transacted while SOs are suspended.
- 4.9.5 The Trust's Audit Committee shall review every decision to suspend SOs.

4.10 **Record of Attendance**

- 4.10.1 The names of the members of the Council of Governors present at the meeting shall be recorded in the minutes.

4.11 **Minutes**

- 4.11.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person chairing it.
- 4.11.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.11.3 Minutes shall be circulated in accordance with the members of the Council of Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.1 of these Standing Orders (required by Code of Practice on Openness in the NHS).

4.12 **Quorum**

4.12.1 No business shall be transacted at a meeting of the Council of Governors unless at least, 13 Public, 3 Staff and 6 appointed members of the Council of Governors are present.

4.12.2 If a member of the Council of Governors has been disqualified from participating in the discussion of any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. **ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

5.1 **Emergency Powers** – The powers which the Council of Governors has retained to itself within these Standing Orders may in emergency be exercised by the Chairman after having consulted at least five elected members of the Council of Governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council for ratification.

5.2 **Delegation to Committees** – The Council of Governors may agree from time to time to the delegation of its duties to committees or sub-committees, which it has formally constituted. To ensure clarity of purpose the constitution and Terms of Reference of these committees, or sub-committees, and their specific powers shall be laid out in accordance with Trust policy and approved by the Council.

5.3 **Delegation to a Member of the Council of Governors** – The Council of Governors may delegate duties to an individual member of the Council of Governors but only under a clear remit approved by the Council.

6. **Committees – Further Provisions**

6.1 Save as stipulated in this Constitution the Council of Governors may appoint committees of the Council consisting wholly of persons who are members of the Council of Governors. Non-members of the Council of Governors may attend such committees if appropriate under the committee's terms of reference but they shall have no vote.

- 6.2 A committee so appointed may appoint sub-committees consisting wholly of persons who are members of the Council of Governors. Non-members of the Council of Governors may attend such sub-committees if appropriate under the committee's terms of reference but they shall have no vote.
- 6.3 These Standing Orders, as far as they are applicable, shall apply also, with the appropriate alteration, to meetings of any committees or sub-committees established by the Council.
- 6.4 Each committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 6.5 Committees may not delegate their powers to a sub-committee unless expressly authorised by the Council of Governors.
- 6.6 The Council of Governors shall approve the membership to all committees and subcommittees that it has formally constituted and shall determine the Chairman of each committee and sub-committee.

7. CONFIDENTIALITY

- 7.1 A member of the Council of Governors or an attendee on a committee of the Council shall not disclose a matter dealt with by, or brought before, the committee without its permission or until the committee shall have reported to the Council or shall otherwise have concluded on that matter.
- 7.2 A member of the Council of Governors or a non-member of the Council of Governors in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

8. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

8.1 Declaration of Interests

Members of the Council of Governors are required to comply with the Trust's standards of business conduct and to declare interests that are relevant and material to the Council. All members of the Council of Governors should declare such interests on appointment and on any subsequent occasion when a conflict arises.

- 8.1.1 Interests regarded as “relevant and material” are:
- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
 - b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - c) Employment with any private company, business or consultancy.
 - d) Significant share holdings (more than 5%) in organisations likely or possibly seeking to business with the NHS.
 - e) A position of authority in a charity or voluntary organisation in the field of health and social care.
 - f) Any connection with a voluntary or other organisation contracting for NHS Services.
- 8.1.2 If a member of the Council of Governors has any doubt about the relevance of an interest, they should discuss it with the Chairman who shall advise them whether or not to disclose the interest.
- 8.1.3 At the time members of the Council of Governors’ interests are declared, they should be recorded in the Council of Governors’ minutes and entered in a Register of Interests of members of the Council of Governors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 8.1.4 Members of the Council of Governors’ directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust’s annual report.
- 8.1.5 During the course of a Council meeting, if a conflict of interest is established, the member of the Council of Governors concerned shall, unless two-thirds of those Members of the Council of Governors present agree otherwise withdraw from the meeting and play no part in the relevant discussion or decision.
- 8.1.6 There is no requirement for the interests of the members of the Council of Governors’ spouses or partners to be declared. An exception to this is if a member of the Council of Governors spouse, if living together and there is an interest in contracts then this should be declared

8.2 Register of Interests

8.2.1 The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of members of the Council of Governors.

8.2.2 Details of the Register will be kept up to date and reviewed annually.

8.2.3 The Register will be available to the public.

9. COMPLIANCE – OTHER MATTERS

9.1 Members of the Council of Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.

9.2 Members of the Council of Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life, and both the Trust's and Council of Governors Code of Conduct as amended from time to time:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

10. RESOLUTION OF DISPUTES WITH BOARD OF DIRECTORS

10.1 The Council of Governors has three main roles:

Advisory Communicating to the Board the wishes of members and the wider community.

Guardianship Ensuring that the Trust is operating in accordance with its Statement of Purpose and is compliant with its Authorisation. In this regard it acts in a trustee role for the welfare of the organisation.

Strategic Advising on the longer term direction to help the Board effectively determine its policies.

10.2 The Board of Directors has overall responsibility for running the affairs of the Trust. Its role is to:

- Note advice from, and consider the views of the Council of Governors;
- Set the strategic direction and leadership of the Trust;
- Ensure the Terms of Authorisation are complied with;
- Set organisational and operational targets;
- Assess, manage and minimise risk;
- Assess achievement against the above objectives;
- Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives;
- Ensure that the highest standards of Corporate Governance are applied throughout the organisation.

10.3 Should a dispute arise between the Council and the Board of Directors then the disputes resolution procedure set out below recognises the different roles of the Council and the Board as described above.

10.3.1 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, shall first endeavour through discussion with members of the Council of Governors and Directors or appropriate representatives of them, to achieve the earliest possible conclusion, to resolve the matter to the reasonable satisfaction of both parties.

10.3.2 Failing resolution under 10.3.1 above then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

10.3.3 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

10.3.4 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, shall immediately, or as soon as is practicable communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.3.1 above shall be repeated.

- 10.3.5 If, in the opinion of the Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, and following the further discussions prescribed in 10.3.4, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council and the Board accordingly.
- 10.3.6 On the satisfactory completion of this disputes process the Board of Directors shall implement the agreed changes.
- 10.3.7 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.4 Nothing in this procedure shall prevent the Council, if it so desires, from informing the Independent Regulator of NHS Foundation Trusts that, in the Council's opinion, the Board has not responded constructively to concerns of the Council of Governors and that the Trust is not meeting the terms of its authorisation.

11. CHANGES TO STANDING ORDERS

- 11.1 These Standing Orders shall be amended only if:
- 11.1.1 A notice of motion under Standing Order 4.6 has been given; and
 - 11.1.2 No fewer than half the total of the members of the Council of Governors vote in favour of amendment; and
 - 11.1.3 At least two thirds of the voting members are present; and
 - 11.1.4 The amendment proposed does not contravene a statutory provision; and
 - 11.1.5 The amendment is agreed by Board of Directors.
 - 11.1.6 That the amendments agreed by the Board of Directors are approved by the Independent Regulator of NHS Foundation Trusts

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

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1. INTRODUCTION

The principal place of business of the Trust is Flatts Lane Centre, Flatts Lane Normanby, Middlesbrough, Cleveland, TS6 0SZ.

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

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

The Board of Directors will conduct its business in as open a way as possible and will:

1. Observe the Nolan principles of Public Life of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
2. At all times seek to comply with the NHS Foundation Trust Code of Governance; and
3. At all times seek to comply with the Combined Code on Corporate Governance 2003. Everything done by the Trust should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

These Standing Orders (SOs) are for the regulation of the Board of Directors's proceedings and business.

2. INTERPRETATION

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

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“ACCOUNTING OFFICER” shall be the Officer responsible and accountable for funds entrusted to the Trust. He/she shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

“BOARD” means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chairman, and Non-executive Directors, appointed by the Council of Governors and Executive Directors, appointed by the Non-executive Directors and (except for his own appointment) by the Chief Executive.

“BUDGET” shall mean 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.

“CHAIRMAN” is the person appointed by the Council of Governors to lead the Board to ensure it successfully discharges its overall responsibility for the Trust as a whole. The Chairman shall be deemed to include the Non-executive Director appointed by the Council of Governors to take on the Chairman’s duties if the Chairman is absent from the meeting or is otherwise unavailable, known as the Deputy Chairman. The term Chairman shall also, for the purposes of SOs refer to the person appointed by Board members to preside in exceptional circumstances should either the Chairman or Deputy Chairman be temporarily unavailable.

“CHIEF EXECUTIVE” shall mean the chief officer of the Trust.

“COMMITTEE” shall mean a committee formed by the Board of Directors.

“COMMITTEE MEMBERS” shall be persons formally appointed by the Board of Directors to sit on or to chair specific committees.

“DEPUTY CHAIRMAN” means the Non-Executive Director appointed by the Council of Governors to take on the Chairman’s duties if the Chairman is absent for any reason.

“DIRECTOR” Means a person appointed to the Board of Directors

“DIRECTOR OF FINANCE” shall mean the Chief Finance Officer of the Trust

“FUNDS HELD ON TRUST” shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Sch 3 and 4 para 14.1c National Health Service Act 2006. Such funds may or may not be charitable.

“MEMBER” means a person registered as a member of a constituency in terms of paragraph 4 of this Constitution

“**MONITOR**” is the Regulator appointed under the National Health Service Act 2006 to regulate NHS Foundation Trusts.

“**MOTION**” means a formal proposition to be discussed and voted on during the course of a meeting.

“**NOMINATED OFFICER**” means an officer charged with the responsibility for discharging specific tasks within SOs and SFIs.

“**NON-EXECUTIVE DIRECTOR**” is a person appointed through the Appointments Committee of the Council of Governors to be a member of the Board of Directors. Initially Non executives of the applicant NHS Trust will automatically become Non-executives of the Foundation Trust. This includes the chairman of the Trust.

“**OFFICER**” means an employee of the Trust.

“**SFIs**” means Standing Financial Instructions.

“**SOs**” means Standing Orders.

“**TRUST**” means the Tees Esk and Wear Valleys NHS Foundation Trust.

“**TRUST SECRETARY**” this role will act as independent advice to the Board and monitor the Trust’s compliance with the law and SOs.

3. THE BOARD OF DIRECTORS – ITS COMPOSITION, APPOINTMENTS AND INDEMNITY ARRANGEMENTS

- 3.1 All business shall be conducted in the name of the Trust.
- 3.2 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 3.3 The powers of the Trust established under statute shall be exercised by the Board meeting except as stated in Standing Order 5.
- 3.4 The Board of Directors has resolved that certain powers and decisions may only be exercised or made by the Board. These powers and decisions are set out in “Reservation of Powers to the Board” and have effect as if incorporated into the Standing Orders. The Board of Directors must adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

3.5 Composition of the Board of Directors – The composition of the Board of Directors will be:

The Chairman of the Trust (Non Executive Director as required by Schedule 7 of the NHS Act 2006)

5-7 Non Executive Directors

5-7 Executive Directors including:

- One of the executive directors shall be the Chief Executive.
- The Chief Executive shall be the Accounting Officer.
- One of the executive directors shall be the Finance Director.
- One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- One of the executive directors is to be a registered nurse or a registered midwife.

The Trust Secretary to the Board of Directors will be in attendance at all Board meetings.

The number of Directors may be increased, with the approval of the Board, provided always at least half the Board, excluding the Chairman, comprises Non-executive Directors determined by the Board to be independent.

3.6 Terms of Office of the Chairman and Members of the Board

3.6.1 The regulations governing the period of tenure of office of the Chairman and Non-executive Directors and the termination or suspension of office of the Chairman and Directors are contained in the Foundation Trust Code of Governance.

3.6.2 Non Executive Directors including the Chairman will be appointed by the Council of Governors for a period of 3 years and subject to re-appointment at intervals of 3 years. Any term beyond six years for a Non Executive Director will be subject to rigorous review by the Council of Governors. Non Executive Directors may serve more than nine years subject to an annual re-appointment.

- 3.7 **Appointment of the Chairman and Non-executive Directors** – the Chairman and Non-executive Directors are appointed/removed by the Council of Governors.
- 3.8 **Appointment of Deputy Chairman** – The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-executive Directors as a Deputy Chairman.
- 3.9 Any Non-executive Director so elected may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman. The Council of Governors may thereupon appoint another Non-executive Director as Deputy Chairman in accordance with paragraph 3.8.
- 3.10 **Powers of Deputy Chairman** – Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he/she has been unable to perform his/her duties as Chairman owing to illness, absence or any other cause, references to the Chairman in the Standing Orders shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Deputy Chairman.
- 3.11 **Senior Independent Director** – The Chairman shall appoint one of the Non-executive Directors as a “Senior Independent Director” in consultation with the Council of Governors and other Non-executive Directors.
- 3.12 In accordance with paragraph 24 of this Constitution the Non-executive Directors shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors) and a committee consisting of the Chairman, Chief Executive and the non executive directors shall appoint or remove the other Executive Directors.
- 3.13 The Board shall nominate a Trust Secretary, who, under the direction of the Chairman, shall ensure good information flows within the Board and Council of Governors and their Committees, between Directors and members of the Council of Governors, and between senior management and the Board. The Trust Secretary shall also advise the Board and Council of Governors on all governance matters and shall facilitate induction and professional development as required.
- 3.14 A Director of the Trust, who has acted honestly and in good faith will not have to meet out his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her function as a Director save where the Director has acted recklessly. On behalf of the Directors and as part of the Trusts overall insurance arrangements the Board of Director shall put in place appropriate insurance provision to cover such indemnity.

- 3.15 Non-executive Directors may, at the Trust's expenses, seek external advice or appoint an external adviser on any material matter of concern provided the decision to do so is a collective one by the majority of Non-executive Directors.

4. MEETINGS OF THE BOARD OF DIRECTORS

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

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

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

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

4.3 Confidentiality.

- 4.3.1 Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Board of Directors. Proceedings shall not be transmitted in any manner whatsoever without the prior agreement of the Board of Directors.

- 4.3.2 Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public shall be confidential to the members of the Board of Directors.

- 4.3.3 Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Board of Directors meeting, without the express permission of the Board of Directors. This prohibition shall apply equally to the content of any discussion during the Board of Directors' meeting which may take place on such reports or papers.
- 4.4 **Calling Meetings** - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 4.5 The Chairman of the Trust may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him/her at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 4.6 **Notice of Meetings** - Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least three clear days before the meeting.
- 4.7 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 4.8 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these Standing Orders. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 4.9 Agendas will wherever possible be sent to Directors at least five clear days before the meeting and supporting papers, whenever possible.
- 4.10 Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.
- 4.11 **Setting the Agenda** - The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.

- 4.12 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.13 **Petitions** - Where a petition has been received by the Trust the Chair of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting subject to the powers granted to the Chair by these Standing Orders to regulate arrangements for Board of Directors' meetings.
- 4.14 **Chair of Meeting** - At any meeting of the Board of Directors, the Chair of the Board of Directors, if present, shall preside. If the Chair is absent from the meeting the Vice-Chair, if there is one and he/she is present, shall preside. If the Chair and Vice-Chair are absent such Director (who is not also an officer of the Trust) as the Directors present shall choose shall preside.
- 4.15 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Vice-Chair, if present, shall preside. If the Chair and Vice-Chair are absent, or are disqualified from participating, such non-executive director as the Directors present shall choose shall preside. If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or to the interests of the non-executive Directors as a class, neither the Chair nor any of the non-executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair or the non-executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 4.16 **Annual Public Meeting** – The Trust will publicise and hold an annual public meeting.
- 4.17 **Notices of Motion** - A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to Standing Order 4.8.

- 4.18 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.19 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months; however the Chair may do so if he/she considers it appropriate.
- 4.20 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.21 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceed to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)
 - A motion resolving to exclude the public (including the press).

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

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

- 4.22 **Chair's Ruling** - Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final. In this interpretation he/she shall be advised by the Trust Secretary on standing orders and the case of Standing Financial instructions by the Director of Finance.
- 4.23 **Voting** - Every question put to a vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.

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- 4.24 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 4.25 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.26 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.27 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.28 An officer who has been appointed formally by the Board of Directors to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board of Directors to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.
- 4.29 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 4.30 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.31 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.
- 4.32 **Joint Directors** - Where the office of a Director is shared jointly by more than one person:
- (a) either or both or any of those persons may attend or take part in meetings of the Board of Directors:
 - (b) if both/any are present at a meeting they should cast one vote if they agree:
 - (c) in the case of disagreements no vote should be cast;

- (d) the presence of either/any or both/any of those persons should count as the presence of one person for the purposes of Standing Order 4.40 (Quorum).
- 4.33 **Suspension of Standing Orders** - Except where this would contravene any provision of the constitution or any direction made by the Independent Regulator of NHS Foundation Trusts, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 4.34 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.35 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.36 No formal business may be transacted while Standing Orders are suspended.
- 4.37 The Audit Committee shall review every decision to suspend Standing Orders.
- 4.38 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 4.17 has been given; and
 - no fewer than half the total of the Trust's non executive directors vote in favour of amendment; and
 - at least two-thirds of the Directors are present; and
 - the variation proposed does not contravene a statutory provision or
 - direction made by the Regulator of NHS Foundation Trusts and is approved by the Independent Regulator of NHS Foundation Trusts.
- 4.39 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.
- 4.40 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors appointed, (including at least one non-executive director and one executive director) are present.
- 4.41 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

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

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

5. **ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

- 5.1 The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.1 or 5.2 below or by a Director of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
- 5.2 **Emergency Powers** – The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised jointly by the Chief Executive and the Chairman after having consulted at least two other Non-executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.

- 5.3 **Delegation to Committees** – The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.
- 5.4 **Delegation to Officers** – Those functions of the Trust which have not been retained as reserved to the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Board.
- 5.5 The Chief Executive shall prepare a Scheme of Decisions Reserved to the Board and Schedule of Decision/Duties Delegated by the Board, identifying their proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.
- 5.6 Nothing in the Schedule of Decision/Duties Delegated by the Board shall impair the discharge of the direct accountability to the Board of the Director of Finance or other Director to provide information and advise the Board in accordance with any statutory requirements.
- 5.7 The arrangements made by the Board as set out in the Scheme of Decisions Reserved to the Board and Schedule of Decision/Duties Delegated by the Board shall have effect as if incorporated in these Standing Orders.
- 5.8 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 or ratification. All members of the Board and officers have a duty to disclose any non compliance with these Standing Orders to the Chief Executive as soon as possible.

6. COMMITTEES

- 6.1 **Formation of Committees** – The Board may form committees of the Trust, consisting wholly or partly of members of the Board of Directors or wholly of persons who are not members of the Board of Directors.
- 6.2 A committee so formed under SO 5.1 may, form sub-committees consisting wholly or partly of members of the committee (whether or not they include members of the Board of Directors) or wholly of persons who are not members of the Trust committee (whether or not they include members of the Board of Directors).
- 6.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee formed by the Trust.
- 6.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 6.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither Non executive Directors nor Directors, shall be appointed to a committee, the terms of such appointment shall be defined by the Board. Those appointed would be entitled to the payment of travelling and other allowances.
- 6.7 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations and directions laid down by the Board of Directors.
- 6.8 The Board of Directors may appoint sub-committees of the Board. Attendance at these Boards will be determined in the committees terms of reference.

The major committees and sub-committees established by the Board of Directors shall be:

- Audit Committee
- Remuneration and Appointments Committee
- Mental Health Act Committee

Other committees and sub-committees of the Board may from time to time be formed.

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

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 7.1 **Declaration of Interests** – Paragraph 28 of the Constitution requires Board members to declare interests which are relevant and material to the Board of which they are a member. All existing members of the Board should declare such interests. Any Board members appointed subsequently should do so on appointment.

- 7.2 Interests which should be regarded as “relevant and material” are:

- (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- (b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- (d) A position of trust in a charity or voluntary organisation in the field of health and social care;
- (e) Any connection with a voluntary or other organisation contracting for NHS services;
- (f) Any other commercial interest in the decision the committee or Board meeting may be considering

- 7.3 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman.

- 7.4 At the time Board members’ interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.

- 7.5 Board members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 7.6 During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion (unless the Board decides otherwise) or decision.
- 7.7 The interests of Board members' spouses or cohabiting partners should be declared.
- 7.8 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.
- 7.9 **Register of Interests** – In accordance with paragraph 31 of the Constitution, the Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both Director and Non-executive Directors, as defined in Standing Order 7.2.
- 7.10 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 7.11 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 8. DISABILITY OF CHAIRMAN AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**
- 8.1 Subject to the following provisions of this Standing Order, if the Chairman or any member of the Board of Directors has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he/she shall at the meeting

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and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter, without the Chairman of the meeting's agreement, or vote on any question with respect to it.

- 8.2 The Board of Directors shall exclude the Chairman or a Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 8.3 Any remuneration, compensation or allowances payable to a member by virtue of paragraph 11 of Schedules 3 and 4 to the National Health Service Act 2006 shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.4 For the purpose of this Standing Order the Chairman or a Director shall be treated, subject to SO 7.1 and SO 7.5, as indirectly having a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) he/she, or a nominee of him/her, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matters under consideration; or
 - (b) he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and in the case of persons living together, the interest of one person shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 8.5 The Chairman or a member shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only because:
- (a) of their membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
 - (b) of an interest in any company, body or person with which he/she is connected as mentioned in SO 7.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

- 8.6 Where the Chairman or a Director:
- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - (b) the total nominal value of those securities does not exceed one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.
- 8.7 Standing Order 7 applies to a committee or sub-committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such committee or subcommittee (whether or not they are also a member of the Board of Directors) as it applies to a member of the Board of Directors).

9. STANDARDS OF BUSINESS CONDUCT

- 9.1 **Policy** - Staff must comply with the Trust's detailed Standards of Business Conduct and Capability policy documents.
- 9.2 **Interests of Officers in Contracts** – If it comes to the knowledge of a Director of the Trust that a contract is which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein.
- 9.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of him/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships so declared by staff to be entered in a register of interests of staff.

9.4 Canvassing of, and recommendations by, Members in relation to Appointments –

Canvassing of members of the Board of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment by the Trust shall disqualify the candidate from 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.

9.5 A member of the Board of Directors shall not solicit for any person any appointment by the Board of Directors or recommend any person for such appointment, but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Board of Directors.

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

9.7 **Relatives of Members of the Board of Directors** – Candidates for any staff appointment shall when making application disclose in writing whether they are related to any member of the Board or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

9.8. The Chairman, and every Director of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that the Chairman, members or Director is aware. It shall be the duty of the Chief Executive or nominated Director to report to the Board of Directors any such disclosure made.

9.9 On appointment, the Chairman and members of the Board (and prior to acceptance of an appointment in the case of Directors) should disclose to the Board of Directors whether they are related to any other member or holder of any office under the Trust.

9.10 Where the relationship of a Director or another member of the Board or another member of the Trust is disclosed, the Standing Order headed (SO 7) shall apply (Disability of Directors in proceedings on account of pecuniary interest).

10. RESOLUTION OF DISPUTES WITH THE COUNCIL OF GOVERNORS

10.1 The Council of Governors has three main roles:

- Advisory – Communicating to the Board the wishes of members of the Council of Governors and the wider community
- Guardianship – Ensuring that the Trust is operating in accordance its Terms of Authorisation. In this regard it acts in a trustee role for the welfare of the organisation.
- Strategic – Advising on a longer term direction to help the Board effectively determine its policies.

10.2 The Board of Directors has overall responsibility for running the affairs of the Trust. Its role is to:

- Note advice from, and consider the views of the Council of Governors
- Set a the strategic direction and leadership of the Trust
- Ensure the Terms of Authorisation are complied with
- Set organisational and operational targets
- Assess, manage and minimise risk
- Assess achievement against the above objectives
- Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives
- Ensure that the highest standards of Corporate Governance are applied throughout the organisation

10.3 The disputes resolution procedure recognises the different roles of the Council of Governors and the Board as described above.

10.4 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, shall first endeavour through discussion with members of the Council of Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them to resolve the matter to the reasonable satisfaction of both parties.

10.5 Failing resolution under 10.4 above then the Board or the Council of Governors, as appropriate, shall, at its next formal meeting, approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

10.6 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of

the Board or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

- 10.7 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, shall immediately or as soon as is practicable, communicate the outcome to the other party and deliver the Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.4 above shall be repeated.
- 10.8 If, in the opinion of the Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board or the Council of Governors as appropriate, and following the further discussion prescribed in 10.7, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Deputy Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and the Board accordingly.
- 10.9 On the satisfactory completion of this disputes process the Board shall implement agreed changes.
- 10.10 On the unsatisfactory completion of this disputes process the view of the Board shall prevail.
- 10.11 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing the Independent Regulator of NHS Foundation Trusts that, in the Council of Governors' opinion, the Board has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the Terms of its Authorisation.

11. NOTIFICATION TO INDEPENDENT REGULATOR OF FOUNDATION TRUSTS AND COUNCIL OF GOVERNORS

The Board shall notify the Independent Regulator of Foundation Trusts and the Council of Governors of any major changes in the circumstances of the Trust which have made or could lead to a substantial change to its financial well being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with the terms of Authorisation.

12. BOARD PERFORMANCE

The Chairman, with the assistance of the Trust Secretary, shall lead, at least annually, a performance assessment process for the Board. This process should act as the basis for determining individual and collective professional development programmes for Directors.

13. TENDERING AND CONTRACT PROCEDURE

- 13.1 **Duty to comply with Standing Orders** – The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where Suspension of SOs is applied).
- 13.2 **Formal Competitive Tendering** – The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 13.3 Formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in (c) to (f) below) where:
- (a) the estimated expenditure or income does not, or is not reasonably expected to, exceed £50,000, (this figure to be reviewed annually); or
 - (b) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for waiving tender procedures; or
 - (c) specialist expertise is required and there is clear and convincing evidence readily at hand that it is available from only one source; or
 - (d) the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different parties for the new task would be inappropriate; or
 - (e) there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
 - (f) where provided for in the Capital Investment Manual. The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to avoid further work to a party originally appointed through a competitive procedure.
 - (g) Where it is decided that competitive tendering is not applicable and should be waived by virtue of (b) to (e) above the fact of the waiver,

and the reasons should be documented and reported by the Chief Executive to the Board in a formal meeting.

- 13.4 Except where SO 13.3, or a requirement under SO 13.2, applies, the Board shall ensure that invitations to tender are sent to a sufficient number of firms/individual to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 13.5 The Board shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists. Where in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive for approval.
- 13.6 Tendering procedures are set out in Attached 1.
- 13.7 **Competitive Quotations** – are required where formal tendering procedures are waived under SO 13.3 (a) or (b) and where the intended expenditure or income exceeds, or is reasonably expected to exceed £10,000.
- 13.8 Where quotations are required under SO 13.9 they should be obtained from at least three firms/individuals on the approved list based on specifications or terms of reference prepared by, or on behalf of, the Board.
- 13.9 Quotations should be in writing unless the Chief Executive or their nominated officer determines that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 13.10 All quotations should be treated as confidential and should be retained for inspection.
- 13.11 The Chief Executive or their nominated officer should evaluate the quotations and select the one which gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
- 13.12 Non-competitive quotations in writing may be obtained for the following purposes:

- (a) the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or their nominated officer, possible or desirable to obtain competitive quotations.
- (b) the goods/services are required urgently. Failure to place the work properly is not a justification for waiving tender procedures.

13.13 **Where tendering or competitive quotation is not required** – The Trust shall use the agreed management procurement process for procurement of all goods and services unless the Chief Executive or nominated officers deem it inappropriate. The decision to use alternative sources must be documented. Procurement shall normally be through the procurement process unless agreed by the Chief Executive or a nominated officer.

13.14 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board may also determine from time to time that in-house services should be market tested by competitive tendering.

13.15 **Private Finance** – When the Board proposes, or is required, to use finance provided by the private sector the following should apply:

- (a) The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector;
- (b) Where the sum exceeds delegated limits (at the time of writing £8m except for property leases where the other level is £4m.
- (c) The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to vires.
- (d) The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

13.16 **Contracts** – The Trust may only enter into contracts within its statutory powers and shall comply with:

- (a) Standing Orders;
- (b) The SFIs;
- (c) EU Directives and other statutory provisions;

- 13.17 In all contracts made by the Trust, the Board shall endeavour to obtain best value for money. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.
- 13.18 **Procurement of Agency Staff** – The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment regarding staff, agency staff or temporary staff service contracts.
- 13.19 **Healthcare Services Contracts** – shall be drawn up in accordance with Department of Health model contracts.
- 13.20 The Chief Executive shall nominate officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.
- 13.21 **Cancellation of Contracts** – Except where specific provision is made in model forms of Contracts or standard Schedules of Conditions approved for use within the National Health Service and in accordance with Standing Orders 13.2 and 13.3, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation:
- if the contractor shall have offered, or given or agreed to give, any person any gift (exceeding £10) or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract of any other contract with the Trust; or
 - for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust; or
 - if the like acts shall have been done by any person employed by them or acting on his behalf (whether with or without the knowledge of the contractor); or
 - if in relation to any contract with the Trust the contractor or any person employed by them or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.
- 13.22 **Determination of Contracts for Failure to Deliver Goods or Material** – There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice cancel the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly cancelled the goods or material remaining to be delivered. The clause shall further secure that the amount

by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

- 13.23 **Contractors Involving Funds Held on Trust** – shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Act.

14. DISPOSALS

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

- (a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or their nominated officer;
- (b) obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
- (c) items to be disposed of with an estimated sale value of less than £10,000 (this figure to be reviewed annually);
- (d) items arising from works of construction, demolition or site clearance which should be dealt with in accordance with the relevant contract;
- (e) land or buildings whether or not classed as protected assets under the Trust's Terms of Authorisation.

15. IN-HOUSE SERVICES

- 15.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:

- (a) Specification group, comprising the Chief Executive or nominated officer(s) and specialists(s);
- (b) In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support;
- (c) Evaluation group, comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £250,000, a nominated Non-Executive Director should be a member of the evaluation team.

- 15.2 All groups should work independently of each other but individual officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.
- 15.3 The evaluation group shall make recommendations to the Board.
- 15.4 The Chief Executive shall nominate an officer to oversee and manage the contract.

16. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 16.1 **Custody of Seal** – The Common Seal of the Trust shall be kept by the Chief Executive or nominated person in a secure place.
- 16.2 **Sealing of Documents** – The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee thereof or where the Board has delegated its powers.
- 16.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by any two as delegated by the Board – Chairman, Chief Executive, Director of Finance or Chief Operating Officer (or a nominated officer who shall not be from within the originating directorate).
- 16.4 The form of the attestation of documents shall be “The Common Seal of the Tees Esk and Wear Valleys NHS Foundation Trust was hereto affixed in the presence of”.
- 16.5 **Register of Sealing** – An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and attested the seal. A report of all sealing shall be made to the next Board of Directors meeting. (The report shall contain details of the seal number, the description of the document and date of sealing).

17. SIGNATURE OF DOCUMENTS

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

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

18. DISSEMINATION OF STANDING ORDERS

The Chief Executive is responsible for ensuring all existing Directors and officers, and all new appointees are notified of, and understand their responsibility within the Standing Orders.

Attached 1

TENDERING PROCEDURE

1. INVITATION TO TENDER

- 1.1 All invitations to tender on a formal competitive basis shall state that no tender will be considered for acceptance unless submitted in either:
- (a) a plain, sealed package bearing a pre-printed label supplied by the Trust (or bearing the word “Tender” followed by the subject to which it relates and the latest date and time for the receipt of such tender); or
 - (b) in a special envelope supplied by the Trust to prospective tenderers and the tender envelopes/packages shall not bear any names or marks indicating the sender.
- 1.2 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and below.
- 1.3 Every tender for building and engineering works, except for maintenance work only where Estmancode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institute of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects.

2. RECEIPT, SAFE CUSTODY AND RECORD OF FORMAL TENDERS

- 2.1 Formal competitive tenders shall be addressed to the Chief Executive.
- 2.2 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package.
- 2.3 The Chief Executive shall designate an officer or officers, not from the originating department, to receive tenders on their behalf and to be responsible for their endorsement and safe custody until the time

appointed for their opening, and for the records maintained in accordance with Section 3.

3. OPENING FORMAL TENDERS

- 3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior officers designated by the Chief Executive and not from the originating department.
- 3.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening.
- 3.3. A permanent record shall be maintained to show for each set of competitive tender invitations despatched:
- (a) the names of firms/individuals invited;
 - (b) the names of and the number of firms/individuals from which tenders have been received;
 - (c) the total price(s) tendered;
 - (d) closing date and time;
 - (e) date and time of opening; and the record shall be signed by the persons present at the opening.
- 3.4 Except as in Section 3.5 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialled by two of those present at the opening.
- 3.5 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure in Section 3.4 unreasonable.

4. ADMISSIBILITY AND ACCEPTANCE OF FORMAL TENDERS

- 4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive.
- 4.2 Tenders received after the due time and date may be considered only if the Chief Executive or nominated officer decides that there are

- exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or nominated officer shall decide where such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.
- 4.3 Technically late tenders (i.e. those despatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.
 - 4.4 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.
 - 4.5 Where examination of tenders reveals errors which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing their offer.
 - 4.6 Necessary discussions with a tenderer of the contents of their tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender.
 - 4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the Chief Executive.
 - 4.8 Where only one tender/quotation is received the Trust shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
 - 4.9 A tender other than the lowest (if payment is to be made by the Trust), or other than the highest (if payment is to be received by the Trust) shall not be accepted unless for good and sufficient reason. All such decisions should be reported to the Board.
 - 4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.

5. LIST OF APPROVED FIRMS

- 5.1 The Director of Finance shall compile and maintain a list of approved firms and individuals from whom tenders may be invited, as provided for in SO 13.5, and shall keep these under review. The lists shall be selected from all firms which have applied for permission to tender provided that:
- (a) in the case of building, engineering and maintenance works, the Chief Executive is satisfied on their capacity, conditions of labour, etc, and that the Director of Finance is satisfied that their financial standing is adequate.
 - (b) in the case of the supply of goods, materials and related services, and consultancy services the Chief Executive or the nominated officer is satisfied as to their technical competence, and that the Director of Finance is satisfied that their financial standing is adequate.
 - (c) in the case of the provision of healthcare services to the Trust by a private sector provider, the Director of Finance is satisfied as to their financial standing and the Medical Director is satisfied as to their technical/medical competence.
- 5.2 The Trust shall arrange for advertisements to be issued as necessary, and not less frequently than every third year, in trade journals and national newspapers inviting applications from firms for inclusion in the prescribed lists.
- 5.3 If in the opinion of the Chief Executive or the Director of Finance it is impractical to use from the list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the Chief Executive should ensure that appropriate checks are carried out on technical and financial capability of firms invited to tender or quote.
- 5.4 A permanent record should be made of the reasons for inviting a tender or quotation other than from an approved list.

Attached 2

Scheme of Decisions Reserved to the Board and Schedule of Decision/Duties Delegated by the Board

1. Introduction

Paragraph 5.5 of the Trust's Standing Orders provides that The Chief Executive shall prepare a Scheme of Decisions Reserved to the Board and Schedule of Decision/Duties Delegated by the Board, identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion.

The purpose of this document is to provide details of those powers which are reserved to the Board, while at the same time detailing those delegated to the appropriate level. However, the Board remains accountable for all of its functions, even those delegated to the Chairman, individual directors or officers and would therefore expect to receive information about the exercise of delegated functions to enable it to maintain a monitoring role.

1.1 Role of the Chief Executive

All powers of the Trust which have not been retained as reserved by the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall prepare a Scheme of Delegation identifying which functions he/she shall perform personally and which functions have been delegated to other directors and officers.

All powers delegated by the Chief Executive can be re-assumed by him/her should the need arise. As Accounting Officer the Chief Executive is accountable for the funds entrusted to the Trust.

1.2 Caution over the Use of Delegated Powers

Powers are delegated to directors and officers on the understanding that they would not exercise delegated powers in any matters which in their judgment was likely to be a cause for public concern.

1.3 Directors' Ability to Delegate their own Delegated Powers

The Scheme of Delegation shows only the "top level" of delegation within the Trust. The Scheme is to be used in conjunction with the Trust's Budgetary Control Framework and other established procedures within the Trust.

1.4 Absence of Directors or Officer to Whom Powers have been Delegated

In the absence of a director or officer to whom powers have been delegated those powers shall be exercised by that director or officer's superior unless alternative arrangements have been approved by the Board. It may be fitting for the Chairman to take advice from the designated Deputy Chief Executive (where such a designation exists) or the most appropriate director, depending on the particular issue.

2. Matters Reserved to the Board

2.1 It is for the Board to determine those matters on which decision are reserved unto itself. These reserved matters are set out in paragraphs 2.2 to 2.9 below:

2.2 General Enabling Provision

The Board may determine any matter it wishes in full session within its statutory powers.

2.3 Regulation and control

2.3.1 Approval of, suspension, variation or amendments of Standing Orders (SOs), a schedule of matters reserved to the Board and Standing Financial Instructions for the regulation of its proceedings and business.

2.3.2 Ratification or otherwise, of instances of failure to comply with Standing Orders brought to the Chief Executives' attention.

2.3.3 Approval of a scheme of delegation of powers from the Board to officers.

2.3.4 To requiring and receive the declaration of officers' and Board members' interests, which may conflict, with those of the Trust and determining the extent to which that director or officer may remain involved with the matter under consideration.

2.3.5 Requiring and receiving the declaration of interests from officers, which may conflict, with those of the Trust.

2.3.6 Discipline members, employees and directors who are in breach of statutory requirements or SOs.

- 2.3.7 Approval of the disciplinary procedure and personal responsibility framework for officers of the Trust.
- 2.3.8 Approval of arrangements for dealing with complaints.
- 2.3.9 Adoption of the organisational structures, processes and procedures to facilitate the discharge of business by the Trust and to agree modifications there to.
- 2.3.10 Establishment of terms of reference and reporting arrangements of all committees and subcommittees that are established by the Board.
- 2.3.11 To receive reports from committees including those which the Trust is required by regulation to establish and to take appropriate action thereon.
- 2.3.12 To confirm the recommendations of the Trust's committees where the committees do not have executive powers. To establish terms of reference and reporting arrangements for committees of the Board of Directors.
- 2.3.13 Ratification of any urgent decisions taken by the Chairman and Chief Executive in accordance with SO 5.2.
- 2.3.14 Approval of arrangements relating to the discharge of the Trust's responsibilities as a corporate trustee for funds held on trust.
- 2.3.15 Approval of arrangements relating to the discharge of the Trust's responsibilities as a bailee for patients' property.
- 2.3.16 Authorisation of the use of the seal.

2.4 Appointments

- 2.4.1 The setting up and dismissal of committees.
- 2.4.2 The appointment, appraisal, disciplining and dismissal of executive directors (subject to SO 3.6).
- 2.4.3 The appointment of members of any committee of the Board of Directors.
- 2.4.4 The appointment, appraisal, discipline and dismissal of the Secretary to the Board.

- 2.4.5 The approve of proposals of the Remuneration Committee regarding executive directors and senior employees. The Chief Executive will approve proposals for staff not covered by the Remuneration Committee.
- 2.4.6 The confirmation of the appointment of any member of any committee of the Trust as Trust representatives on external bodies.

2.5 Policy Determination

- 2.5.1 The approval of Management Policies including Human Resource policies incorporating the arrangements for the appointment, removal and remuneration of staff.

2.6 Strategy and Business Plans and Budgets

- 2.6.1 Definition of the strategic aims and objectives of the Trust.
- 2.6.2 Annual approval of plans in respect of:
- Health investment and purchasing intention.
 - The application of available financial resources.
- 2.6.3 Overall approval of programmes of investment to guide the letting of contracts for the supply of clinical services.
- 2.6.4 Approval and monitoring of the Trust's policies and procedures for the management of risk.
- 2.6.5 Approval of individual proposals for making write-offs and special payments above the limits of delegation (£50,000) previously delegated to the Chief Executive and Director of Finance by the Board.
- 2.6.6 Approval of arrangements for consultation on service reconfiguration proposals in excess of £500,000 per annum or of a novel or contentious nature.

2.7 Direct Operational Decisions

- 2.7.1 Acquisition, disposal or change of use of land and/or buildings in excess of £500,000, where the said land and/or building is not a protected asset as detailed in the Trust's Terms of Authorisation.
- 2.7.2 The introduction or discontinuance of any significant activity or operation. An activity or operation shall be regarded as significant

where it is of a novel or contentious nature, or if it has a gross annual income or expenditure (that is before any set off) in excess of £500,000 or 20% of budget.

- 2.7.3 Approval of individual contracts (other than NHS contracts) of a capital or revenue nature amounting to, or likely to amount to over £500,000 over a 3 year period or the period of the contract if longer.
- 2.7.4 Approval of individual compensation payments over £25,000.
- 2.7.5 Agreement to policy on litigation against or on behalf of the Trust.

2.8 Financial and Performance Reporting Arrangements

- 2.8.1 Continuous appraisal of the affairs of the Trust by means of the receipt of reports as it sees fit from directors, committees, members and officers of the Trust as set out in management policy statements. All monitoring returns required by the Independent Regulator of Foundation Trusts and the Charity Commission shall be reported, at least in summary, to the Trust.
- 2.8.2 Approval of the opening or closing of any bank or investment account, excluding individual patient accounts.
- 2.8.3 Receipt and approval of a schedule of NHS contracts signed in accordance with arrangements approved by the Chief Executive.
- 2.8.4 Consideration and approval of the Trust's Annual Report including the annual accounts.
- 2.8.5 Receipt and approval of the Annual Report for funds held on trust.

2.9 Audit Arrangements

- 2.9.1 To approve audit arrangements (including arrangements for the separate audit of funds held in trust) and to receive reports of the Audit Committee meetings and take appropriate action.
- 2.9.2 The receipt of the annual audit letter received from the external auditor and agreement of action on the recommendation where appropriate of the Audit Committee.

3. Delegation of Powers

3.1 Delegation to Committees

The Board may determine that certain of its powers shall be exercised by Standing Committees. The composition and terms of reference of such committees shall be that determined by the Board from time to time taking into account where necessary the requirements of Independent Regulator of NHS Foundation Trusts and or the Charity Commissioners (including the need to appoint an Audit Committee and a Remuneration Committee). The Board shall determine the reporting requirements in respect of these committees. In accordance with SO 5.3 committees may not delegate executive powers to sub-committees unless expressly authorised by the Board.

Scheme of delegation Implied by Standing Orders for Board of Directors

SO REF DELEGATED TO DECISIONS AND DUTIES DELEGATED

2.1 CHAIRMAN

Final authority in interpretation of Standing Orders.

4.5 CHAIRMAN

Calling meetings.

4.14 CHAIRMAN

Chair all Board meetings and associated responsibilities.

4.22 CHAIRMAN

Give final ruling in questions of order, relevancy and regularity of meetings.

4.23 CHAIRMAN

Having a second or casting vote.

4.37 AUDIT COMMITTEE Audit Committee to review every decision to suspend Standing Orders (power to suspend Standing Orders is reserved to the Board).

5.2 CHAIRMAN & CHIEF EXECUTIVE The powers which the Board has retained to itself within these Standing Orders may in an emergency be

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Constitution

exercised by the Chairman and Chief Executive after having consulted at least two non-officer members.

- 5.5 CHIEF EXECUTIVE The Chief Executive shall prepare a Scheme Of Decisions Reserved to the Board and Decisions/Duties Delegated by the Board identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion.
- 7.9 CHIEF EXECUTIVE
Register of interests.
- 9.8 CHIEF EXECUTIVE The Chairman and every member and officer of the Trust shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- 10.4 CHAIRMAN Facilitate the resolution of disputes between the Council of Governors and the Board
- 10.6 CHAIRMAN The Disputes Statement for any unresolved disputes between the Council of Governors and the Board is included as an agenda item at the next formal meeting of the Board.
- 10.7 CHAIRMAN Communicate the outcome of a dispute discussed at Trust Board to the Council of Governors and deliver the Response to Dispute Statement.
- 12 CHAIRMAN Lead the annual performance assessment of the Board.
- 13.14 CHIEF EXECUTIVE Demonstrate there is best value for money for all services provided under contract or in-house.
- 13.15 (a) CHIEF EXECUTIVE Demonstrate that the use of private finance represents best value for money and transfers risk to the private sector.
- 13.17 CHIEF EXECUTIVE
Nominate an officer to oversee and manage each contract on behalf of the Trust.

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- 13.18 CHIEF EXECUTIVE Nominate officers to enter into contracts of employment, regarding staff, agency staff or consultancy service contracts.
- 13.20 CHIEF EXECUTIVE Nominate officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.
- 13.3 NAMED OFFICERS Power to waive tendering without reference to CE by reference to SO 12.5 (a).
- 13.3 CHIEF EXECUTIVE: Power to approve waiving of tenders relating to SO 13.3 except in (c) to (f).
- 13.5 CHIEF EXECUTIVE Duty to document the reasons why, and report tenders waived by virtue of SO
- 13.3 (b) to (g), to the Board in a formal meeting.
- 13.5 DIRECTOR of FINANCE: Decision to use a firm not on the approved suppliers list.
- 13.5 CHIEF EXECUTIVE Receive reports regarding the Director of Finance's decision to use a firm not on the approved list.
- 13.9 CHIEF EXECUTIVE: Determine that a quotation need not be in writing as this would be impracticable.
- 13.11 CHIEF EXECUTIVE or Nominated Officers Evaluate: quotations and select the one which gives best value.
- 14(a) CHIEF EXECUTIVE Determine any items to be sold by sale or negotiation.
- 15.4 CHIEF EXECUTIVE Nominate an officer to oversee and manage a contract (for in-house services) on behalf of the Trust.

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16.1 CHIEF EXECUTIVE Keep the seal in safe place and maintain a register of sealing.

16.3 CHAIRMAN, CHIEF EXECUTIVE, DIRECTOR OF FINANCE, CHIEF OPERATING OFFICER

Approve and sign all building, engineering, property or capital documents.
(Any two as delegated by the Board)

17.2 CHIEF EXECUTIVE

Approve and sign all documents which will be necessary in legal proceedings.

18 CHIEF EXECUTIVE

Sign, on behalf of the Trust, any agreement or document not requested to be executed as a deed.

18 CHIEF EXECUTIVE

Ensure that existing Directors and employees, and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Attached 1,2.3

CHIEF EXECUTIVE Designate an officer responsible for receipt and custody of tenders before opening.

TWO SENIOR OFFICERS DESIGNATED BY THE CHIEF EXECUTIVE AND NOT FROM THE ORIGINATING DEPARTMENT

Open tenders. Attached 1, 2.3

CHIEF EXECUTIVE Decide whether any late tenders should be considered.
Attached 1. 4.7

DIRECTOR OF FINANCE Keep lists of approved firms for tenders.
Attached 1, 5.1

ANNEX 9 - Further Provisions in Relation to Members and Directors

Disqualification from Membership

A person may not become a member if:

1. Within the last 10 years they have been involved in a serious incident of violence at any of the Trust's hospitals, facilities or sites or against any of the Trust's employees, or registered volunteers.
2. They are under 14 years of age.
3. They have acted in a way, which is detrimental to the Trust.

A person may not become or remain a member of the Public Constituency if they are eligible to become a member of the Staff Constituency.

A person may not be a member of more than one constituency. Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member it shall give the member 14 days written notice for them to show cause why their name should not be removed from the register of members. On receipt of any such information supplied by a member, the Registrar may, if he considers it appropriate, remove the member from the Register of Members. In the event of any dispute the Registrar shall refer the matter to the Council of Governors. All Members of the Trust shall be under a duty to notify the Registrar of any change in their particulars, which may affect their entitlement as a member.

Termination of Membership

A member shall cease to be a member if:

1. They resign on notice to the Trust Secretary;
2. They cease to be entitled under this Constitution to be a member of any of the constituencies;
3. They are expelled under this Constitution;
4. If it appears to the Trust Secretary that they no longer wish to be a member and after enquiries made in accordance with a process approved by the Council of Governors, they fail to confirm that they wish to continue to be a member of the Trust.

Expulsion

A member may be expelled by a resolution of the Council of Governors. The following procedure is to be adopted:

1. Any member may complain to the Registrar that another member has acted in a way detrimental to the interests of the Trust.
2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
 - a. Dismiss the complaint and take no further action; or
 - b. Arrange for a resolution to expel a member to be considered at the next meeting of the Council of Governors.
3. If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
4. At the meeting the Council of Governors will consider oral and written evidence produced in support of the complaint and any oral and written evidence submitted for or on behalf of the member about whom complaint has been made.
5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence. A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried. 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 of the Council of Governors present and voting at a meeting of the Council of Governors.

Board of Directors Termination of Tenure and Disqualification

- i. A Non-executive Director may resign from that office at any time during his term of office by giving notice to the Trust Secretary
- ii. In the case of a Non-executive Director, he or she is no longer a member of the public constituency.
- iii. He or she has been removed from membership of a professional body or from a list of registered medical, dental, nursing or other health care practitioners as a result of disciplinary action or any conclusion that the continued inclusion of that person's name on any such list or membership of

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Constitution

- any such professional body would be prejudicial to the efficiency of the services to which the professional body or list relates and has not subsequently been re-instated to membership or such a list;
- iv. He or she has been dismissed within the preceding two years, otherwise than by reason of redundancy or retirement, from any paid employment with a health service body;
 - v. He or she becomes a member of the Council of Governors
 - vi. He or she has been removed as a Director of the Trust or any other Foundation Trust or has been suspended from office or has been disqualified from holding office as a Director of the Trust or of any other Foundation Trust for a specified period by the Independent Regulator of NHS Foundation Trusts in exercising its powers over Foundation Trusts within its jurisdiction

He or she is otherwise disqualified at law from holding the office of non-executive director of an NHS Foundation Trust

AUTHORISATION OF TEES, ESK AND WEAR VALLEYS NHS FOUNDATION TRUST

Schedule 2

Mandatory Goods and Services

Tees Esk and Wear Valleys NHS Foundation Trust
Mandatory Goods and Services
2008/09

Code	Specialty	Inpatient					Day Care (1) Attendances	Community		Assertive Outreach Team (1) Caseload	Court diversion (1) Community Contact	Crisis resolution (1) Community Contact	Eating Disorder (1) Community Contact	Prison Inreach (1) Community Contact	Psychiatric Liaison (1) Community Contact	Early Intervention team (1) Community Contact
		Occupied BD (1) Occupied Bed Days	Rehabilitation - Inpatient (1) Occupied Bed Days	Continuing Care (1) Occupied Bed Days	PICU (1) Occupied Bed Days	Community interventions (1) Community Contact		Primary Care (1) Community Contact								
700	Learning disability (previously known as mental handicap)	18,909	-	-	-	2,250	25,341	-	-	-	-	-	-	-	-	-
710	Mental illness	100,340	38,489	-	5,418	37,644	176,684	19,965	532	417	22,023	1,726	1,304	3,668	-	
711	Child and adolescent psychiatry	3,563	-	-	-	-	45,725	-	-	-	-	-	-	-	15,000	
712	Forensic psychiatry	54,401	-	-	-	-	6,800	-	-	-	-	-	-	-	-	
715	Old age psychiatry	72,895	-	13,585	-	-	112,528	-	-	-	-	-	-	-	-	
420	Other	-	-	-	-	-	81,612	-	-	-	-	-	-	-	-	
Total		250,108	38,489	13,585	5,418	39,894	448,690	19,965	532	417	22,023	1,726	1,304	3,668	15,000	

AUTHORISATION OF TEES, ESK AND WEAR VALLEYS NHS FOUNDATION TRUST

Schedule 3

Mandatory Education and Training

Tees Esk and Wear Valleys NHS Foundation Trust
Mandatory Education and Training
2008/09

Commissioning body	Educational body	Contract Length	Expiry date of contract	Student group	Type of training	Number of Students	Contract Value
							(£000s)
North East SHA	Northern Deanery	1 year	31.03.09	Medical	MADEL	59	1669.9
North East SHA	Northern Deanery	1 year	31.03.09	Medical	SIFT	N/A	568.2
North East SHA	Various	1 year	31.03.09	Nursing	Nursing	92	1271.2
North East SHA	Various	2 year	31.03.10	Nursing	Workforce Dev	N/A	307
Yorkshire SHA	Yorkshire Deanery	1 year	31.03.09	Medical	MADEL	12	108.2
Yorkshire SHA	Various	1 year	31.03.09	Nursing	Nursing	4	53.4

AUTHORISATION OF TEES, ESK AND WEAR VALLEYS NHS FOUNDATION TRUST

Schedule 4

Private Health Care

AUTHORISATION OF TEES, ESK AND WEAR VALLEYS 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%.

DEFINITION:

Private patient income

Total patient
related income

AUTHORISATION OF TEES, ESK AND WEAR VALLEYS NHS FOUNDATION TRUST

Schedule 5

Limit on Borrowing

AUTHORISATION OF TEES, ESK AND WEAR VALLEYS NHS FOUNDATION TRUST

PRUDENTIAL BORROWING LIMIT

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

- (i) Maximum cumulative long term borrowing: £48.6 million and
- (ii) Approved working capital facility: not to exceed £17.0 million

AUTHORISATION OF TEES, ESK AND WEAR VALLEYS 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.